

Council Agenda

Date: Thursday, 13th October, 2011
Time: 2.00 pm
Venue: The Council Chamber, Municipal Buildings, Earle Street,
Crewe, CW1 9TL

The agenda is divided into two 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. **Prayers**
2. **Apologies for Absence**
3. **Minutes of the Meeting Held on 21 July 2011** (Pages 1 - 28)

To approve the minutes as a correct record.
4. **Mayor's Announcements**

To receive such announcements as may be made by the Mayor.
5. **Declarations of Interest**

To provide an opportunity for Members to declare any personal and/or prejudicial interests in any item on the agenda.
6. **Public Speaking Time/Open Session**

In accordance with Council Procedure Rule 35 and Appendix 7 to the rules, a total period of 15 minutes is allocated for members of the public to speak at Council meetings.

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

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. It is not a requirement to give notice of the intention to make use of public speaking provision. However, as a matter of courtesy, a period of 24 hours notice is encouraged.

7. **Notices of Motion** (Pages 29 - 30)

To consider the attached Notices of Motion, which have been received in accordance with Procedure Rule 12.

8. **Recommendation from the Licensing Committee -Re-adoption of sections 14 - 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended)** (Pages 31 - 36)

To consider the recommendations of the Licensing Committee.

9. **Recommendation from the Licensing Committee -Re-adoption of Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 - Street Trading** (Pages 37 - 42)

To consider the recommendations of the Licensing Committee.

10. **Recommendation from the Constitution Committee - Honorary Aldermen** (Pages 43 - 50)

To consider the recommendation of the Constitution Committee.

11. **Recommendation from the Constitution Committee - Planning Protocol of Conduct** (Pages 51 - 74)

To consider the recommendations of the Constitution Committee.

12. **Recommendation from the Constitution Committee -Review of Polling Districts and Polling Places** (Pages 75 - 82)

To consider the recommendations of the Constitution Committee.

13. **Recommendation from the Constitution Committee - Urgent Decision-Making** (Pages 83 - 96)

To consider the recommendations of the Constitution Committee.

14. **Recommendation from the Constitution Committee - Questions at Council Meetings** (Pages 97 - 108)

To consider the recommendations of the Constitution Committee.

15. **Recommendation from the Constitution Committee - Member Access to Part 2 and Confidential Reports** (Pages 109 - 122)

16. **Recommendation from the Constitution Committee - Proposed Amendments to Contract Procedure Rules** (Pages 123 - 160)

To consider the recommendations of the Constitution Committee.

17. **Recommendation from the Constitution Committee - Proposed Interim Amendments to the Officer Delegation Scheme** (Pages 161 - 226)

To consider the recommendations of the Constitution Committee.

18. **Recommendation from the Constitution Committee - Boundary Commission for England: Review of Parliamentary Constituency Boundaries** (Pages 227 - 234)

To consider the recommendations of the Constitution Committee.

19. **Recommendation from Cabinet - Draft National Planning Policy Framework** (Pages 235 - 250)

To consider the recommendations of Cabinet.

20. **Supplementary Capital Estimate - Alderley Edge By-pass Scheme** (Pages 251 - 254)

To approve a Supplementary Capital Estimate request of £3,062,498, for Alderley Edge By Pass, as detailed in the Appendix to the report.

21. **Leader's Report to Full Council**

The Leader to report changes to the Cabinet.

22. **Questions**

In accordance with Procedure Rules 11, opportunity is provided for Members of the Council to ask the Chairman, the appropriate Cabinet Member or the Chairman of a Committee any question about a matter which the Council, the Cabinet or the Committee has powers, duties or responsibilities.

Questions must be sent in writing to the Monitoring Officer at least 3 clear working days before the meeting.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Council**
held on Thursday, 21st July, 2011 at The Assembly Room, Town Hall,
Macclesfield, SK10 1DX

PRESENT

Councillor R West (Chairman)
Councillor G M Walton (Vice-Chairman)

Councillors C Andrew, Rachel Bailey, Rhoda Bailey, A Barratt, G Barton, G Baxendale, D Bebbington, G Boston, D Brickhill, D Brown, L Brown, B Burkhill, P Butterill, R Cartledge, J Clowes, W S Davies, R Domleo, D Druce, K Edwards, I Faseyi, J P Findlow, W Fitzgerald, R Fletcher, H Gaddum, S Gardiner, L Gilbert, M Grant, P Groves, J Hammond, M Hardy, A Harewood, P Hayes, S Hogben, D Hough, P Hoyland, O Hunter, J Jackson, L Jeuda, M Jones, F Keegan, A Kolker, W Livesley, J Macrae, D Mahon, D Marren, P Mason, S McGrory, R Menlove, G Merry, A Moran, B Moran, G Morris, B Murphy, H Murray, D Neilson, D Newton, P Nurse, M Parsons, L Roberts, J Saunders, M Sherratt, B Silvester, M J Simon, L Smetham, D Stockton, C G Thorley, A Thwaite, D Topping, M J Weatherill, P Whiteley, S Wilkinson and J Wray

Apologies

Councillors S Corcoran, H Davenport, P Edwards, D Flude, S Jones, A Martin, M A Martin and P Raynes

23 APOLOGIES FOR ABSENCE**24 MINUTES OF THE MEETING HELD ON 18 MAY 2011****RESOLVED**

That the minutes be approved as a correct record, subject to an amendment to the resolution in minute number 4, to correct a typographical error, so that the year reads 2011/12.

25 MAYOR'S ANNOUNCEMENTS**The Mayor :-**

1. Informed Members of the results of the election for the Crewe South Ward, where Councillors Dorothy Flude and Steven Hogben were elected. He noted that Cllr Flude had offered her apologies for the meeting and welcomed Cllr Hogben to his first Cheshire East Council meeting.
2. Reported that he had attended a large number of engagements in the last two months. One particularly memorable event had been the

lighting of the Olympic flame for the special Olympics and then, later in the month, the extinguishing of the flame. The Cheshire East team had won ten gold, five silver and five bronze medals and he had been delighted to attend.

3. Announced that, earlier in the week, several venues in Cheshire East had the honour of being visited by Their Royal Highnesses, The Duke and Duchess of Gloucester. He was at Macclesfield to greet the Duke and show him some of the installations to mark the town's 750th Charter. The Deputy Mayor had welcomed the Duchess to Queens Park, where she had met some veterans and members of Friends of Queens Park. The Royal couple were reunited at the RHS Show at Tatton Park, where they visited the Cheshire East floral bed, which had Queens Park as its theme.
4. Announced that the previous week had seen the launch of the Place Shaping Consultation, which asked for views on how the Council could improve its towns and villages, over the next 20 years. The results would help to prepare the new development plan for Cheshire East – the Local Development Framework. Everyone who lived or worked in Cheshire East had been invited to complete the questionnaire and let the Council know what they liked about their town and what they wanted to see improved. More information was available via a series of exhibitions, which were in all the major towns in Cheshire East and on the Council's website.
5. Was delighted to announced that Cheshire East Adult Services had won the "Personalisation and Choice Achievement of the Year" awarded at the Municipal Journal (MJ) National Awards 2011, which was a prestigious national competition. Cheshire East were one of six finalist, of which two got Highly Commended but Cheshire East took the award. The award reflected the work of Adult Services in modernising personal care and the support given by Corporate colleagues. The Mayor congratulated all those staff involved.
6. Was pleased to announce that Cheshire East Council won 2 Gold medals at the RHS show at Tatton – Gold for the Queens Park Flower Bed and Gold for Tatton's Japanese Garden . He congratulated all those staff involved.

He also announced that it was the centenary of the Japanese garden, at Tatton park and that the Japanese Ambassador would be visiting the garden, where the Mayor would meet him, on the following day.
7. Referred to various news bulletins, throughout the day, relating to the publication of a serious case review by the Cheshire East Safeguarding Children Board.
8. Announced that the formal feedback from OFSTED, on the effectiveness of Cheshire East's safeguarding and support,

provided to cared for children, had been positive.

9. Informed Members that he had agreed to an additional item being added to the agenda for the meeting, due to the resignation of the Health and Wellbeing Portfolio Holder and the requirement for the Leader of the Council, under the Constitution, to make an announcement to Council about changes to his Cabinet.

He was satisfied of the special circumstances of this matter, which justified this urgent item being added to the agenda and that the provisions of S100B(4) of the Local Government Act 1972 had been met. The reason for the urgency was the need to ensure seamless continuity of Portfolio Holder cover in respect of the currently vacant Health and Wellbeing Portfolio.

This item would be dealt with immediately after item 6 of the agenda: "Public Speaking Time".

26 **DECLARATIONS OF INTEREST**

The Mayor reported that a number of Members had sought advice from the Monitoring Officer with regard to declarations of interest in respect of item 19 – Harmonisation of Terms and Conditions, where they were related to an employee of Cheshire East Council.

Members had been advised that they should declare a personal interest in these circumstances.

The following Members declared a personal interest in this item ;-

<u>Member</u>	<u>Relationship</u>
Cllr Marren	Son
Cllr Bebbington	Sister
Cllr Hogben	Daughter
Cllr Sherrat	Partner

27 **PUBLIC SPEAKING TIME/OPEN SESSION**

Mr T Beard used public speaking time to request that the Council review its decision to increase market rents in Crewe, in view of the number of vacant market stalls and the effect on the vibrancy of the town centre.

The Mayor undertook to request that a written response be provided to Mr Beard.

28 URGENT ITEM OF BUSINESS - ANNOUNCEMENT BY THE LEADER OF CHANGES TO THE CABINET

The Leader of the Council announced that, following the resignation of Cllr Peter Hayes from the Cabinet, Cllr R Domleo would take on the responsibilities for the Health and Well-being Portfolio, in addition to his responsibilities as Adult Services Portfolio Holder and that Cllr J Clowes had been appointed as a Cabinet Support Member for the Health and Well-being Portfolio.

29 NOTICES OF MOTIONS

Consideration was given to the following Notice of Motion, submitted by Cllrs S Jones and Fletcher :-

This Council is concerned about the capacity of the Quality Care Commission (QCC) ,to carry out its functions effectively. The Council resolves to ask the Chief Executive to register our concerns, at Ministerial level and with the Chief Executive of QCC, with copies of correspondence to our local MPs.

This Council asks Cabinet to refer to the relevant Scrutiny Committees with a view to establishing an all-party Task/Finish group to investigate the position in Cheshire East regarding the interface between the QCC and our own safeguarding service to ensure that our vulnerable residents, particularly those in receipt of domiciliary care, are properly protected.

RESOLVED

That the motion stand referred to Cabinet.

Consideration was given to the following Notices of Motion Submitted by Cllrs D Neilson and D Hough :-

One

In the written answer to Cllr. John Narraway's question to full Council, regarding the cost of redundancies and subsequent savings, it looks like the cost has been £23.8m, with estimated savings of £2m per annum. This would appear to give a payback time of over 10 years, when Cabinet reports have suggested a payback period of 4 years.

Motion :-

That this Council ask the Corporate Scrutiny Committee to review the costs of redundancies and pay back time and report back to Council on their findings.

Cllr Mason, Portfolio Holder Procurement, Assets and Shared Services provided the following information in respect of how the figures, included in the response, relating to the cost of redundancies and payback, had been calculated :-

Monthly Staffing Costs

April 2009 – £26.385m

April 2011 – £24.958m

This 2 year reduction was rounded to £1.5m, giving an average monthly reduction of £750k. This was then multiplied by 24 months = £18m.

Redundancy Cost 9/10 – £13.9m

Redundancy Costs 10/11 – £9.8m

£23.7m = £23.7m Costs

£18.0m Savings = 1.3 Year Pay Back

It having been suggested that the motion was founded on erroneous information, the Mayor put the matter to the vote and it was : -

RESOLVED

That the motion will not be referred to Cabinet.

Two

That the Council suspends all new redundancy requests, until a review is carried out, relating to the counter productive effect of employees getting jobs with other employers, while their services are still required and being allowed voluntary redundancy. Thus leaving extra redundancy cost to the Council, plus the extra costs involved of recruiting from outside the organisation.

It having been suggested that the second motion was consequential upon the first, the Mayor put the matter to the vote and it was :-

RESOLVED

That the motion will not be referred to Cabinet.

30 POLITICAL REPRESENTATION ON THE COUNCIL'S COMMITTEES

Consideration was given to a report, reviewing the political representation on the Council's Committees, following the election in the Crewe South Ward.

RESOLVED

That the political group representation, as set out in Appendices 1 and 2 to the report and the methods, calculations and conventions used in arriving at them, as outlined in the report, be adopted.

31 APPOINTMENT OF MEMBERS TO COMMITTEES

Consideration was given to a report reviewing the memberships of the Council's decision-making bodies, listed in Appendix 2 of the previous agenda item.

The Political Groups had reviewed their nominations and an appendix to the report, providing details of the political groups' nominations of Members to the various bodies was circulated at the meeting.

In proposing the nominations the Leader of the Council reported that, in view of the fact that Cllr J Clowes had now been appointed as a Cabinet Support Member, she would no longer be a member of the Children and Families Scrutiny Committee and a member/Vice-chairman of the Health and Wellbeing Scrutiny Committee. The Leader would notify the Borough Solicitor of her replacement.

The Labour group notified the replacement of Cllr L Jeuda with Cllr A Harewood on the Local Service Delivery (Macclesfield) Committee.

The Liberal Democrat Group notified the filling of the Liberal Democrat vacancy on the Standards Committee, by Cllr R Fletcher.

It was also reported that, with effect from 15 July 2011, Cllr D Flude was the Leader of the Labour Group and Cllr J Jackson was the Deputy Leader of the Labour Group.

The above changes have been incorporated into an appendix to the report, which is attached to these minutes.

RESOLVED

That, subject to the above changes, the nominations as set out in the Appendix as circulated at the meeting and as attached, be agreed.

32 APPOINTMENTS TO CHESHIRE FIRE AUTHORITY AND JOINT CHESHIRE PENSION FUND COMMITTEE

Consideration was given to a report inviting Council to review appointments to Cheshire Fire Authority and the Cheshire Pension Fund Committee.

The following nominations, as submitted by the political groups, were circulated at the meeting :-

Cheshire Fire Authority

Councillors M Simon, J Weatherill, J W Livesley, D Topping, G Merry, C Thorley, D Flude and D Brickhill.

Joint Cheshire Pension Funds Committee

Councillors F Keegan, P Mason, P Raynes, and D Newton.

RESOLVED

That the nominations, as set out above, be approved.

**33 RECOMMENDATION FROM CONSTITUTION COMMITTEE -
APPOINTMENT OF APPEALS SUB-COMMITTEE**

The Constitution Committee had considered a report on proposals for the appointment of an Appeals Sub-Committee. It was proposed that the appeals function should become the responsibility of the Constitution Committee and that the Committee appoint an Appeals Sub Committee of 5 Members, on a politically-proportionate basis.

In considering the proposals, the Constitution Committee recommended to Council that the Sub-Committee be appointed and that it comprise a pool of 10 Members, to be nominated by the Political Groups, from whom 5 Members could be drawn, on a political proportionate basis.

The following nominations were made at the meeting :-

Labour Group – Cllrs A Harewood and I Faysei.

Independent Group – Cllrs B Murphy and M Parsons.

RESOLVED

1That the following functions become the responsibility of the Constitution Committee, which will appoint an Appeals Sub Committee with full delegated powers to hear and determine the following:

- appeals lodged under the Marriage Act
- appeals lodged with the Council for determination, as authorised under all relevant education legislation, excluding those duties falling to the Independent Appeals Panel (school 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 That the Sub-Committee comprise five members on a politically proportionate basis, the members to be drawn from a wider pool of ten members to be nominated by the political groups.

3 That the Officers arrange suitable training for those Members nominated.

4 That 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.

34 RECOMMENDATION FROM CONSTITUTION COMMITTEE - WHISTLEBLOWING POLICY

The Constitution Committee had considered a report, which advised them on the content of the revised Whistleblowing Policy, which formed part of the Constitution and required endorsement by the Constitution Committee, prior to its referral to full Council for approval and adoption.

The Committee had made number of suggestions in relation to the Policy, including that the wording of the Policy should reflect the fact that it also applied to elected Members as well as employees; the Whistleblower should be kept up to date on progress with the investigation; and the telephone number for the external auditor be included. The Committee had recommended that Council agree that the Borough Solicitor and Monitoring Officer, in liaison with the Vice Chairman of the Constitution Committee, agree the wording of proposed changes to the revised Policy. In light of this, a meeting had taken place between the Vice- Chairman, Cllr Marren and the Borough Solicitor, where amendments were agreed and these were circulated at the Council meeting.

RESOLVED

1. That the revised Whistleblowing Policy, as circulated at the meeting, be adopted and included in the Constitution.

35 RECOMMENDATION FROM CONSTITUTION COMMITTEE - EXECUTIVE ARRANGEMENTS AND CABINET PROCEDURE RULES

The Constitution Committee had considered a report on the proposed changes to the Executive and Cabinet Procedure Rules, as part of the review of the Council's Constitution.

The Constitution contained both Executive Procedure Rules and Cabinet Procedure Rules. Both contained similar or duplicate information and following review, a consolidated Cabinet Procedure Rules Section had

been produced. The Cabinet and Corporate Management Team had been consulted and no specific matters had been raised.

The Committee suggested that questions at Cabinet be included in the work programme, as part of the review of the Constitution and recommended to Council that the Constitution be amended, to include the consolidated Cabinet Procedure Rules and that a review of rules for Member questions at Cabinet be included in the review of the Constitution.

RESOLVED

1 That the Constitution be amended, to include the newly consolidated Cabinet Procedure Rules.

2 That a review of rules for Member questions at Cabinet be included in the review of the Constitution.

36 RECOMMENDATION FROM CONSTITUTION COMMITTEE - PROPOSED AMENDMENTS TO THE COUNCIL'S CONTRACT PROCEDURE RULES

The Constitution Committee had considered a report on proposed amendments to the Council's Contract Procedure Rules. The amendments were proposed to reflect best practice, developed by the Procurement Unit, including clarification on the taking of Delegated Decisions by Chief Officers. Amendments were also proposed, to take into account new legislation and the Council's ability to receive electronic tenders, as well as to clarify and remove parts of the Rules, which were no longer applicable.

The Committee had a number of queries and concerns about the proposed amendments and proposed that a decision be deferred and further work be carried out on the amendments to the Rules and recommended that Council note this.

The following motion was moved and seconded :-

That :-

- 1 Council note that the Constitution Committee has deferred consideration of the report to a future meeting to enable further work to be carried out.
- 2 A report be brought to a future meeting reviewing and amending the Finance element of the Finance and Contract Procedure Rules.

Amendment

An amendment to add the words "that, in the interim and in no way fettering the Constitution Committee, the financial threshold at which the Rules

require a formal tendering procedure be increased from £50,000 to £75,000” was moved and seconded and declared carried.

RESOLVED: That :-

- 1 That Council note that the Constitution Committee has deferred consideration of the report to a future meeting to enable further work to be carried out.
- 2 That a report be brought to a future meeting of the Constitution Committee, reviewing and amending the Finance element of the Finance and Contract Procedure Rules.
- 3 That, in the interim and in no way fettering the Constitution Committee, the financial threshold at which the Rules require a formal tendering procedure be increased from £50,000 to £75,000.

**37 RECOMMENDATION FROM CONSTITUTION COMMITTEE -
OVERVIEW AND SCRUTINY COMMITTEES TERMS OF REFERENCE**

The Constitution Committee considered a report on the Terms of Reference for the six Overview and Scrutiny Committees.

Council, at its Annual Meeting on 18 May 2011, had increased the number of Overview and Scrutiny Committee from five to six, by dividing the functions of the former Health and Adult Social Care Overview and Scrutiny Committee and thereby creating two new Committees: Health and Wellbeing Overview and Scrutiny Committee and Adult Social Care Overview and Scrutiny Committee.

The two new Committees had considered the draft terms of reference and the Scrutiny Chairmen’s Group had met with the Leader of the Council to review the terms of reference of all six Committees, in light of the changes made by the Leader in respect of the Portfolio responsibilities for each of the Cabinet Members. The Constitution Committee had recommended that Council approve the proposed terms of reference

RESOLVED

- 1 That the proposed terms of reference for the six Overview and Scrutiny Committees, as set out in the Appendix to the report, and part 3 of the Council’s Constitution, be amended accordingly.
- 2 That the Constitution be amended, to incorporate into the General Responsibilities of all Scrutiny Committee, as contained in part 3, the responsibility for undertaking pre-decision scrutiny work, as expressed in paragraph 10.5 of the report.

38 OVERVIEW AND SCRUTINY ANNUAL REPORT 2010/11

Consideration was given to the Overview and Scrutiny Annual Report 2010/11.

The Leader of the Council and other Members paid tribute to Cllr Thwaite for his work as Chairman of the Scrutiny Chairmen's Group, over the past few years.

RESOLVED

That the Overview and Scrutiny Annual Report 2010/11 be received and posted on the Council's website.

39 QUESTIONS

The Following questions had been submitted in accordance with Procedure Rule 11 :-

Question 1 – Cllr Jeuda

The phasing out by the Government of the Independent Living Fund, which allows disabled people with high support needs to live independently will affect people living in Cheshire East who are in receipt of the benefit.

Can the Cabinet member assure those affected by this change that they will not suffer further hardship by a reduction in their care and income from Cheshire East and that funding will be at the same level protected by inflation?

Response from Cllr Domleo

Independent Living Funds were awarded to individuals who meet specific ILF eligibility criteria. Funding awards were made on an individual basis depending upon the service users circumstances and particular needs. Awards received by Cheshire East Council service users range from £30 per week to the maximum award of £475 per week. Current awards are protected as long as the eligibility criteria continues to be met but are frozen, which means there are no increases for current claimants and no new awards for new eligible service users. If a claimants circumstances change the ILF award can be reduced or withdrawn but will not be increased to meet additional need.

All Local Authorities await further news on the future of ILF and it is, therefore difficult to assess the impact as the future of the funding stream is currently under review. Cheshire East Council has amended its charging policy to enable the collection of client contributions directly from ILF recipients should the ILF funding devolve to Local Authority control - however, this is certainly not confirmed as an outcome of the ILF review at this stage. Any shift is likely to be subject to tight controls and guidance from Government.

Cheshire East Council, Adult Services has supported 83 service users to access additional care and support through the Independent Living Fund amounting to a total annual funding figure of £1.5m. This is made up of £1.3m direct funding to our service users from the ILF organisation and £200k in client contributions to their ILF monies as claimants are required to contribute.

Cheshire East Council has an Officer with responsibility for overseeing ILF reviews with the current priority to retain as much of this award as possible, given there is no growth.

The total estimated financial impact on costs for Cheshire East Council as a result of these changes to ILF funding is £1.3m per annum.

The Council has a statutory duty to fund unmet substantial and critical care needs. Irrespective of the changes to ILF the Council's obligation to fund such care needs remains and will be fulfilled

Supplementary Question

What is the likely financial impact of such support in current and forthcoming years?

Response from Cllr Domleo

£1.3M.

Question 2 – Cllr Jeuda

In view of the changes proposed to the salaries of employees of Cheshire East detailed in the Harmonisation of Terms and Conditions document. For many this will mean a significant cut in pay and changes to their present conditions. In the interest of fairness will the Leader of the Council follow the advice of the Prime Minister and the Secretary of State for Communities and look closely and critically at the salaries of all Council employees who are currently earning more than the Prime Minister?

Response from Cllr Fitzgerald

Thank you for your question Councillor Jeuda. I have a few points I would like to make in response.

Firstly if I could begin by stressing that I think that any comparisons which seek to compare the Prime Minister's pay with other staff in the public sector are fundamentally flawed.

Indeed, Will Hutton in his review of Fair Pay in the Public Sector, which was commissioned by the Prime Minister and Chancellor, said that "the trend to compare salaries of all public servants with that of the Prime Minister is profoundly flawed." He then went on to look at how the Prime Minister's total remuneration was significantly higher than his salary, citing one estimate which placed this at over £580,000. I am pleased to

report that our most senior salaries and remuneration levels are well and truly below this value.

Secondly, I think we need to reflect upon why the Council is undertaking a review of terms and conditions of employment. This review was not about cutting the salaries of staff at any level of the Council, whether this is at the entry level or at the highest level in the Council, rather it was about putting in place equal pay so that all staff are treated equitably and fairly.

It was also about reviewing terms and conditions to ensure that they are modern, flexible and importantly affordable.

Question 3 – Cllr Boston

Following the recent Panorama revelations about the disgraceful treatment of people with Learning Disabilities placed in Winterbourne View can the Cabinet member for Adult services reassure us that

- 1) They are confident there are no similar concerns about the way people with Learning disabilities are cared for in Cheshire East.

Response from Cllr Domleo

We are confident that there are no similar concerns about the way people with an LD are supported in East Cheshire. We have no safeguarding investigations currently underway on any individual Learning Disability establishment. Our staff, and those of our colleagues in the Cheshire and Wirral Partnership Trust and in the Eastern and Central Cheshire Primary Care Trust, are trained in Adult Safeguarding and review individual clients regularly.

Any safeguarding concerns for Learning Disability clients living in Cheshire East are reported via our Safeguarding procedures and initially investigated by the local team managers. All providers within Cheshire East are briefed on what these procedures entail. Training for staff on Safeguarding is provided by the Safeguarding team and this is available free of charge to all providers of social care in Cheshire East.

It is a regulation requirement for all providers registered with the Care Quality Commission (CQC) that all Safeguarding concerns or incidents are reported to CQC as well as the Local Authority. A safeguarding trigger form is used for this purpose

- 2) Cheshire East have not placed anyone with Learning Disabilities either in Winterbourne view or any of the other Learning Disability Establishments owned and or run by Castlebeck the company that owns Winterbourne view.

Response from Cllr Domleo

Cheshire East have not placed anyone at Winterberbourn View. This facility has now been closed. Cheshire East do, however, have a small number of individuals placed within Out of Area service which are run by the Castlebeck Company. All these individuals have been reviewed regularly and no concerns have been identified. Following this TV documentary, we have taken steps to ensure that each of these individuals has a further review. We are satisfied that the care and support for Cheshire East residents placed within these other services run by Castlebeck is of a good standard and that there are currently no safeguarding issues affecting these individuals.

Supplementary Question

I am surprised to find we have people from Cheshire East in Castlebeck services. I would like to ask, do we think this is reasonable? I think we should review it, as a matter of urgency.

Response from Cllr Domleo

My information is that we have reviewed it and no concerns have been identified.

Question 4 – Cllr Brickhill

The Royal Mail site business case summary you sent to me a month after my last question to council, states that there are no revenue costs associated with the funding of the acquisition site.

Are there any capital costs over and above the £2.75m spent on its purchase?

If not where are we prudentially borrowing money from at no cost?

What is the limit to which the council can borrow without permission?

If the money is being taken from reserves what is the notional interest cost on replacing these reserves.

Response from Cllr Fitzgerald

There have been no additional capital costs associated with the site to date.

The acquisition was funded from prudential borrowing.

The Council does not prudentially borrow without permission. The money has not been taken from reserves.

Supplementary Question

What is the cost of that prudential borrowing and what interest do you pay?

Response from Cllr Fitzgerald

Prudential borrowing is not from outside sources. It is internal and is probably £180,000 - £185,000 per year.

Question 5 – Cllr Brickhill

If the Council does not own the railway station, the business case for the purchase of the Royal Mail site should have included details of the council's proposals for moving forward with Network Rail. Have such proposals been agreed with Network Rail. If so what are they? If not why not?

Response from Cllr Fitzgerald

The Council is working closely with Network Rail to promote the redevelopment of Crewe Station to which the Royal Mail Site is key. Network Rail have been kept fully informed and remain a key partner in the overall regeneration of Crewe.

Supplementary Question

Do you have any written agreement with Network Rail?

Response from Cllr Fitzgerald

Network Rail have been closely involved in the vision for Crewe and will be invited onto the Steering group, led by Tom Russell. We expect them to be very much a part of that. They are delighted that we have provided the opportunity to get the station revitalised.

Question 6 – Cllr Brickhill

This business case for the Royal Mail site would have been rejected outright by any board of directors of a public company as there are no income or expenditure or cash flow figures.

- A. It is now six months after purchase, has any part of the site yet been let? If so to whom and at what income to the Council?
- B. What total income has so far been generated by the site?
- C. What are the projections of income for the rest of this year.
- D. What figures of income and expenditure both capital and revenue are likely be included in next year's budget
- E. Please estimate the date when income from the site will exceed ALL costs including interest on the £2.75 M

Response

- A. The Council is actively marketing the site for lease. Negotiations with interested parties are ongoing and I am hoping that the letting is quite imminent.

- B. No income has been generated so far.
- C. Income levels are dependant on leasing the site.
- D. The ongoing management of the site will continue to be part of our overall asset portfolio and therefore no specific costs are likely to be allocated to any individual site.
- E. This Council has a vision for Crewe and the station & central area of Crewe town centre is at the heart of our regeneration plans. The Council acquired the Royal Mail Site as a strategic investment to accelerate and support the regeneration of Crewe. The future development of the site will be linked to the redevelopment of Crewe Station

Question 7 – Cllr Brickhill

Since it took a whole month to send the very poor quality business plan to me after the last council meeting, it clearly had not been written before the decision to purchase the site. Do you now admit that the site was purchased without the faintest idea of costs and income or any sound business plan?

Response

I don't accept that this is the case.

The Council acquired the Royal Mail site, Weston Road, Crewe as a strategic long term investment to support the delivery of the redevelopment of Crewe Station as part of our 'All Change for Crewe' regeneration programme.

Supplementary Question

Does the Leader now agree that the purchase of the site, without a proper business plan, was an enormous error of judgement and against democratic principles?

Response from Cllr Fitzgerald

No, I disagree with that.

Question 8 - Cllr Brickhill

What was the level of the Council's reserves at close of business on July 1st 2011.

Response from Cllr Fitzgerald

I refer you to our draft Statement of Accounts 2010/11 for the detailed position however I will tell you that the Council's general reserve position increased from £10.2 m to £12.5m in the last financial year. This position has not changed as at 1st July 2011.

Question 9 – Cllr Fletcher

With the advent of the new refuse/recycling system from May of this year councillors in Alsager have been inundated with complaints of bins not being emptied (missed) and bins belonging to elderly and disabled people that loaders have been collecting from within their property prior to May not being collected. Also many of these people when they have tried to ring the council have found the lines engaged or they have not been answered. Also damaged bins are not being replaced very quickly.

Can the cabinet member please advise what action he is taking to ensure that bins that are put out for collection are emptied?

Can I have an assurance that the elderly and infirm will have their bins collected and emptied?

Response from Cllr Menlove

We have had some challenges in introducing a completely new service and I think we should congratulate our frontline staff for working hard to get the new service delivered. Failure rates are now returning to normal and for example complaints this week are averaging one per day in the southern area where we are making more than 25000 collections a day.

We will be communicating to residents that their continued commitment to recycling is greatly appreciated and helps the Council avoid the damaging and expensive practice of landfilling.

Can I have an assurance that the elderly and infirm will have their bins collected and emptied?

Response from Cllr Menlove

Yes. In fact we provide this service to more than 6000 households. We are in the process of undertaking a review to make sure that households receiving the service still need it.

Can the Cabinet Member arrange for broken bins to be replaced more quickly?

Response from Cllr Menlove

Currently, we are working on a turnaround time of between 5 and 7 working days for standard bins. We prefer to package these elements of work for reasons of efficiency wherever possible.

Can the Cabinet advise what action is being taken to enable members of the public to communicate more easily with Cheshire East Council?

Response from Cllr Menlove

We experienced an unprecedented increase in call volumes as a result of the changes in waste and recycling collections in the south of the borough. Contact Centre resourcing levels are based on similar previous experiences. When we wrote to all residents in the former Crewe and Congleton Boroughs in June 2009 to inform them of changes to their waste and recycling collections we received 6,350 calls in response. Following the communication and introduction of the recent changes, we have received 28,000 calls. Our resourcing in the Contact Centre was based on our 2009 experience, and unfortunately we were not prepared for the volume of calls we have received. The increase in calls relating to the waste roll out, combined with the seasonal increase in Council Tax calls, also revealed that we had a technical constraint within our telephony infrastructure that limited the number of calls that we could receive into the Council's call management system at peak times, with customers receiving the engaged tone or a recorded message informing them that all lines are busy. A fix was implemented on 15th June to remove this constraint.

Supplementary Question

I am interested to hear that there was only one complaint last week, as people keep complaining. Will the Cabinet Member keep this under review and learn from mistakes made, when future changes are implemented in the North of the Borough?

Response from Cllr Menlove

I said one complaint per day. Yes we will keep it under review. There has been a lot of learning from the experiences in the South and the lessons learnt will be put into place for the North.

Question 10 – Cllr Edwards

Subsidies for transport for young people attending Schools and Colleges in Cheshire East

Given the strong support the Leader of Cheshire East Council has given to abolishing subsidies on transport for post 16 education for young people and for the abolition of subsidies for pupils attending schools on the basis of their faith will he now issue a clear statement on the current policy of Cheshire East with regard to subsidised transport to school and college for the academic years 2011/12 and 2012/13?

Response from Cllr Gaddum

At its meeting on 4th July the Cabinet considered a number of proposed changes to School Transport. A decision was made to implement an inflationary increase in charges of 5% for denominational and post-16 transport. The decision was also made to postpone all other proposed changes for a year. During this period, it was decided that all available options would be thoroughly investigated with the assistance of the Scrutiny Committees, taking due consideration of the need to continue to provide a stable education system.

Essentially, this means that Cheshire East's school transport policies remain unchanged for 2011-12. This has been communicated through a press release, the Council's website and was included in the Schools Bulletin with a request to inform parents/carers. Other interested parties have also been informed of this decision.

Supplementary Question

I thank Cllr Gaddum for her response. Would she agree that since she agreed with the Leader of the Council to put school transport on hold, there is a need to be very clear with parents, as to what the future is for subsidised transport?

Response from Cllr Gaddum

That was more of a statement than a question. This needs to be looked at as a whole issue, in the round. Incidentally, I understand that Cheshire West and Chester have removed their subsidy.

Question 11 – Cllr Edwards

Question to the Cabinet Member for Children and Families

Title: What is Cheshire East Council going to do to reduce child poverty during the next four years?

After 18 years of Tory Government there were 3.4 million children living in poverty. After 13 years of Labour Government there were 2.8 million children still living in poverty. There is a commitment to eliminate child poverty by 2020.

How many children in Cheshire East are living in households where the income before housing costs is deemed to be 60% less than the national median income which is the common definition used for children living in poverty?

Response from Cllr Gaddum

In general terms, before housing costs means total income including any housing benefit as income. This is the measure used by the government to enable it to compare with European data. Using the National Indicator 116 (2008), derived from the Households Below Average Income (HBAI) survey, this shows that in Cheshire East there are 8,885 children aged 0-18 considered to be living in poverty. This equates to 10.6% of children in Cheshire East. This is much lower than the North West regional average (22.8%) and the national average (20.9%).

Since the publication of this data, further unofficial evidence has been released to suggest that this figure has increased as a result of the recession. However, the data was based on population estimates from 2008 and made assumptions that the number of children living in poverty correlated with increases in unemployment figures within a ratio of 1% increase in child poverty for every 3% increase in unemployment.

On 16th December 2010 Cllr, Brown stated that a grant had been received from the DCLG in order to produce a Child Poverty Needs Assessment and that the Council would produce, after a public consultation, a final strategy for reducing Child Poverty by June 2011.

a) Where is that Strategy ,

Response from Cllr Gaddum

The Coalition Government's first Child Poverty National Strategy, A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives, was published on 5 April 2011. The strategy emphasised policies and programmes to:

Support families into work and achieve financial independence
improve the life chances of families and children; and
support wider government agendas such as Localism and the Big Society.

Prior to the publication of the national strategy, the government issued guidance on the development of Child Poverty Needs Assessment and Strategy at a local level. The guidance did not regulate when and how local child poverty needs assessments must be published, reviewed, revised or consulted upon and this has been left to local discretion.

In parallel to the national strategy, innovative work has taken place in local areas through a programme of Child Poverty Pilots. These ended in March 2011 and the learning from these is being used to shape local child poverty strategies.

In Cheshire East, significant work has taken place on developing a comprehensive child poverty needs assessment (CPNA) which can be

found on the Council's website. However, this has been mostly a desktop exercise and it is recognised that there is a need for a period of intensive engagement with key partners to make the CPNA a more robust and real evidence base. This engagement will be carried out through the Children's Trust who will also be responsible for the development of the strategy. This means that, once completed, this will be firmly rooted in an evidence base, it will have the benefit of significant input from key partners, it will not duplicate existing strategies and plans and will have an opportunity to learn from the national pilot programme so that it can reflect what works.

b) what does it state the Council and its partners should be doing ?

Response from Cllr Gaddum

When completed, the strategy will set out the priorities and actions where together partners can make the biggest impact on child poverty.

c) what policies are in place ?

Response from Cllr Gaddum

Cheshire East does not have a specific child poverty policy in place, however, there are a number of initiatives that are already working towards eradicating child poverty, including:

- Early help through children's centres which aim to give children the best start in life and to support parents offer a range of integrated services including care, education, health and family support.
- Better use of local data and intelligence to target interventions.
- The Virtual School for cared for children, which is continuing to raise educational achievement for children in care.
- Work with schools around reducing health inequalities and promoting social inclusion.
- Extended schools schemes, including breakfast clubs.
- Intervention programmes at all key stages focused on improving educational achievement and aspirations.
- The Total community project - a short term project, funded by CWIEC (Cheshire & Warrington Improvement & Efficiency Commission) which seeks to deliver a tangible model of partnership working which will achieve improvements in health inequalities, reduction in crime, and improvements in safeguarding vulnerable citizens.

In addition, the government recently announced plans for the further roll out of Community Budgets for Families with Multiple Problems. Cheshire East has been invited to take part in the next phase to be up and running by April 2012. The Department for Work and Pensions is also running a major European social fund project

around poverty (current provision 2011-2013), focusing on the Provision of Employment Related Support Services (ERSS).

Finally Cheshire East Council has recently supported the Voluntary, Community and Faith Sector in its recent bid to secure funding under the Government's Improving Futures Programme aimed at targeting support to vulnerable families.

d) what is the budget allocation for those policies to work towards eradicating Child Poverty in Cheshire East Borough?

Response from Cllr Gaddum

There are a number of funding streams linked to delivery against the child poverty agenda. In Children's Services, most of these are within the Early Intervention Grant, for example, the provision for children's centres and early education, including disadvantaged two year olds. One of the aims of the strategy will be to maximise these funding streams through joined up planning and service delivery. Tackling health inequalities will also be key in this approach.

It is acknowledged that Cheshire East is one of the wealthiest Boroughs in the north west of England. Will the Portfolio holder of Children and Families agree that we should aim to eradicate child poverty in this Borough before 2020.

When will she lay out a policy and practical strategies to achieve this aim?

Response from Cllr Gaddum

Although one of the wealthiest boroughs, it is acknowledged there are hot spots of child poverty across Cheshire East. In some places these are aggregated pockets (areas around Crewe and Handforth); in others, child poverty is isolated, for example in rural areas. There is evidence that, in parts of the borough, child poverty and associated deprivation is endemic and inter-generational. In these areas, child poverty correlates highly with levels of worklessness and low adult educational attainment. Significant work is currently taking place in these areas and the strategy and action plan will set out what further steps Cheshire East and its partners will make to address child poverty. Further work will also take place to understand more about the less visible sectors of the population including those families and children living on the edge of poverty (who do not appear in the statistics) and the black and minority ethnic (BME) population.

The government's definition of eradicating child poverty by 2020 means to reduce child poverty to between 5 and 10% to make us 'among the best in Europe' (Child Poverty Unit, 2010) and is therefore not a pledge to eradicate child poverty completely. Cheshire East is well placed to achieve this target by 2020.

Supplementary Question

Does she, having absorbed all the information, think that at least in Cheshire East, we should have the aim of reducing child poverty by 2020, or before?

Response from Cllr Gaddum

It is based on average income, so it becomes very clear that to get rid of child poverty is relative. In view of poverty being based on average income, the figures kept on changing. I think that Cllr Edwards will see a huge amount of work going on and put in place on this issue.

Question 12 – Cllr Cartlidge

Community Wardens

Can the Portfolio Holder please explain the rationale behind the decision to move the Community Wardens to Macclesfield Fire Station?

Response from Cllr Bailey

There are no community wardens based at, or working from Macclesfield Fire station.

Following a recent review of the community warden service by the Sustainable Communities Scrutiny Committee, the wardens now focus on environmental crime and anti-social behaviour including littering, fly tipping and dog fouling.

It was also agreed that the wardens should be split into two teams. The Southern team is based at Crewe police station and the Northern team at Macclesfield police station.

This has allowed us to reinforce our partnership working with the police and avoid any duplication or contradiction of our efforts in tackling the environmental problems which blight our communities and the daily lives of our residents.

Question 13 – Cllr Cartlidge

Queens Park

Can the Portfolio Holder Environmental services please confirm that all necessary outstanding works connected with the park works such as pathways and landscaping will be finished to a satisfactory standard in time for the 10th of September Grand reopening celebration.

Response from Cllr Menlove

The Capital Programme of works is due for completion in advance of the Park reopening event to be held on September 10th 2011. The works that will be completed are: -

- the construction of the two new pavilions,
- the dredging and reconstruction of the lake,
- construction of the five bridges,
- the restoration of the two lodges,
- the bandstand,
- two park shelters,
- new play area,
- new gates and railings,
- restoration of the Boer War Monument and Clock Tower.
- The main drive has been resurfaced and the resurfacing of the other driveways and paths will continue until the budget fund is exhausted. The Broadwalk Path is priority although funds may not be sufficient.
- The demolition and removal of the old grounds maintenance
- depot should also be completed.
- Demolition & removal of the old Toilet Block.

In the next couple of months a draft, long term management and maintenance plan will be published for consultation. This document will outline the maintenance required to keep the restored elements of the park. The document will also set out a programme for the continuing restoration of those elements of the park that could not be afforded from the project capital budget. This will include the completion of the restoration of the path network and the ongoing restoration of the "Kempian" planting schemes (After Edward Kemp) . The restoration of the Coronation Walk is another key project that will need addressing within the Management and Maintenance Plan as will the development of the community garden in the area behind the East Lodge and the ongoing additional planting schemes in the lake and its environs. Cheshire East Council will need to reassure the Heritage Lottery Fund that the resources to implement the Management and Maintenance Plan are in place before they will release the final payment (£500,000) of their budgetary commitment.

The restoration of the Park is a major achievement and a credit to all who have been involved in this long running project.

Supplementary Question

Would the Portfolio Holder confirm that once the work is complete that the park will be maintained to a high standard, so as to prevent vandalism.

Response from Cllr Menlove

Yes, the Maintenance Plan will do this.

Question 14 – Cllr Cartlidge

Bin Pull out services

Can the Portfolio Holder please explain why the arrangements for the disabled, elderly or infirmed householders, why has this service been curtailed?

Response from Cllr Menlove

The assisted collections service has not been curtailed. In fact we provide this service to more than 6000 households. We are in the process of undertaking a review to make sure that households receiving the service still need it.

Supplementary Question

Why has this Council, with the changes to the recycling and collection days not collected the bins of a disabled lady on ten occasions?

Response from Cllr Menlove

Ten occasions is unacceptable. Please can you provide the details and I will investigate.

Question 15 – Cllr Cartlidge

Taxi Charges

Can the Portfolio Holder confirm that price increases on taxi fares will go out to consultation and due notice and consideration be given to taxi firms whether individual and companies if they wish to retain the current prices they charge.

Response from Cllr Bailey

The process by which the Council varies the taxi 'table of fares' is prescribed by legislation.

On 7th March 2011 the Licensing Committee authorised the publication of notices relating to the variation of taxi tariffs in each of the three zones.

Consultation in relation to the proposed variations took place in accordance with section 65 of the Local Government (Miscellaneous Provisions) Act 1976.

On 8th June 2011 the Licensing Committee considered any representations received in response to the statutory consultation exercise and determined the tariffs for each of the three zones.

Whilst the 'table of fares' set by the Council represents the maximum fare that a hackney carriage proprietor may charge for a journey, it is open to drivers to charge less than that fare if they so wish.

Question 16 – Cllr Cartlidge

Open space

Can the Portfolio Holder tell me when an open space audit will be carried out in the Crewe Area?

Response

An open space audit is currently being carried out across Cheshire East. Individual summary reports are being produced for the main settlements. A draft report has been completed for Crewe, the results of which have fed into the Local Development Framework Snapshot Report for Crewe as part of the Place Shaping Consultation. It is anticipated that the open space audit work will be completed by the end of November 2011. Any further detailed questions can be dealt with by Stella Kemp in Spatial Planning (01270 685640).

Supplementary Question

Thanks, but there is a problem if that is the case, does it include the trees, grass verges and hedges that Cheshire East is responsible for?

Response from Cllr Menlove

The audit is really a highway asset data base audit and they will be included.

The accompanying green infrastructure plan for Crewe will identify areas and road corridors where environmental improvement will be particularly important. Trees, verges and hedges are part and parcel of that wider picture which encompasses a wide range of issues such as economic regeneration, air quality, biodiversity and green transport.

40 EXCLUSION OF PRESS AND PUBLIC

RESOLVED

That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 4 of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

41 HARMONISATION OF TERMS AND CONDITIONS.

Consideration was given to a report, which had been recommended on to Council by Cabinet and Staffing Committee, relating to the review and harmonisation of employee terms and conditions.

The Chairman of the Staffing Committee, Cllr Topping, in presenting the report, paid tribute to the officers and the Trade Union representatives for their hard work in respect of this matter.

RESOLVED

1. That the report be noted.
2. That the Chief Executive, as Head of Paid Service, be given full delegated authority, on behalf of the Council to:
 - i. Jointly agree, in consultation with the Trade Unions, changes to terms and conditions of employment of all employees affected by the current review and as set out in paragraphs 10.6 and 10.7 of the report.
 - ii. Following a positive ballot of the Trade Union membership to arrange for their implementation as a new single set of terms and conditions for all employees affected by the review through collective agreement with the joint Trade Unions.
 - iii. In the event that the ballot of the Trade Unions membership does not endorse the joint proposal as set out at recommendation i above, to determine, in consultation with the Council's Staffing Committee, the final terms and conditions of employment for all employees affected by the review, together with the appropriate options for implementation.
 - iv. Separately consider in consultation with the Council's Staffing Committee appropriate options for the implementation of a two year Increment Freeze for all staff affected by the review.

42 **STRATEGIC DIRECTOR (CHILDREN, FAMILIES AND ADULTS) AND
DIRECTOR OF FINANCE AND BUSINESS SERVICES**

Consideration was given to a report informing Council of appointments to the posts of Strategic Director (Children, Families and Adults) and noting the designation of the Director of Finance and Business Services as the Council's Chief Finance Officer.

RESOLVED

That Council notes the appointments and the designation of the Director of Finance and Business Services as the Council's Chief Finance Officer and Section 151 Officer.

The meeting commenced at 6.15 pm and concluded at 9.45pm
Councillor R West (Chairman)
CHAIRMAN

Notices of Motion – Council Meeting 13 October 2011**Notices of Motion Submitted by Councillor Brickhill**

1. That the Council's decision at its meeting on 24th February 2011 to approve an Interim Planning Policy on the Release of Housing Land (Minute 95 refers) should be rescinded.
2. In view of the Scrutiny Committee recommendation not to set up a new 125 year lease for the Crewe Heritage site being ignored, the Council has extremely grave concerns about the process which was adopted.
3. That since the relocation of the Crewe Market to the Lyceum Square, market trade has dramatically declined and accordingly the outdoor market should be relocated to the position required by the residents when consulted, which was in and adjacent to the Town Square near to Marks and Spencer's.
4. That since the introduction of the higher than RPI increase in charges for the Crewe Market, the number of traders has dropped considerably and the new charges should be reviewed and be returned to the 2009 level to encourage the regeneration of the market.
5. That the delegated powers to officers to alter car parking charges be rescinded and the powers returned to the Cabinet Member.
6. That the annual target for housing in Cheshire East, set in the regional spatial strategy, already rescinded by the Government, be reduced from 1000+ to 710 per annum to give a five year requirement of 3550 which is already available.
7. That since the government is running the Photovoltaic roof panel scheme for householders to generate green electricity and have exempted this from all planning permission requirements, that this Council notify any enquirers that planning permission is not required and cease to require details, drawings or charges except for listed buildings or conservation areas for which permission is still required.

Notice of Motion Submitted by Councillors D Neilson and B Murphy

8. The Local Service Delivery Committee for Macclesfield

In view of the consultative role of the Local Service Delivery Committee for Macclesfield, plus the request from the Cabinet in relation to precepting powers for the Committee and in order to enhance its mandate to reflect opinion across the town, the Council requests the Constitution Committee to re-consider the Committee's composition, with a view to incorporating into its membership all elected Councillors for the unparished area.

Notice of Motion Submitted by Councillors M Simon and J Saunders

9. This Council is concerned about the smooth transition of the Cheshire East Local Involvement Network (LiNK) into Healthwatch, due to uncertainty around funding arrangements for the Support Team.

The Support Team has funding to March 2012 which makes forward planning difficult. It is very important that the LiNK is able to maintain its current training programme, which is necessary to enable members to be authorised to carry out Enter and View inspections (for which the LiNK has been commended by the Care Quality Commission) and to enable the LiNK to fulfil its intentions as set out in the Pathfinder application to the Department of Health.

Funding is also needed to pump prime Healthwatch activity to enable a seamless transition from LiNK to Healthwatch (in October 2012), including an engagement strategy, rebranding and maintaining and developing current and future relationships.

This Council urges Cheshire East MPs to confirm and clarify that funding for LiNKs will be available at the earliest opportunity to enable transition arrangements to be planned and a smooth handover to be achieved.

COUNCIL MEETING – 13 OCTOBER 2011**Extract from the Minutes of the Licensing Committee Meeting on 12th September 2011****10 RE-ADOPTION OF SECTIONS 14 - 17 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 (AS AMENDED)**

The Committee considered a report regarding a proposal to re-adopt the provisions of sections 14 - 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), which related to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis within the Borough of Cheshire East.

Each of the three predecessor district Councils had made resolutions to adopt sections 14 – 17 of the 1982 Act. Re-adoption of the legislation would consolidate the three previous resolutions into one resolution, providing consistency and ensuring certainty in any enforcement action taken under the legislation.

RESOLVED - That it be recommended to Council

- (a) That sections 14 to 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the 1982 Act') be adopted and shall apply to the Borough of Cheshire East with effect from 1 December 2011; and that section 15 of the 1982 Act shall apply within the Borough of Cheshire East to all of the descriptions of persons within sub-section 15(1), i.e. persons carrying on the business of tattooing, of semi-permanent skin-colouring, of cosmetic piercing, or of electrolysis; and
- (b) That the Borough Solicitor, or officer acting on her behalf, be authorised to publish notice of the above resolution in accordance with statutory requirements.

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CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting: 12th September 2011
Report of: Head of Safer & Stronger Communities
Subject/Title: Re-adoption of sections 14 – 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended)

1.0 Report Summary

- 1.1 The report provides details of a proposal to re-adopt the provisions of sections 14 - 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), which relate to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis within the Borough of Cheshire East.

2.0 Recommendations

- 2.1 The Licensing Committee is requested to recommend the following resolution to Council:
- 2.1.1 That sections 14 to 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the 1982 Act') shall be adopted and shall apply to the Borough of Cheshire East with effect from 1st December 2011; and that section 15 of the 1982 Act shall apply within the Borough of Cheshire East to all of the descriptions of persons within sub-section 15(1), i.e. persons carrying on the business of tattooing, of semi-permanent skin-colouring, of cosmetic piercing, or of electrolysis.
- 2.1.2 That the Borough Solicitor, or officer acting on her behalf, be authorised to publish notice of the above resolution in accordance with statutory requirements.

3.0 Reasons for Recommendations

- 3.1 Re-adoption of the legislation is proposed in order to consolidate the three previous resolutions of the predecessor district authorities into one resolution and to ensure certainty in any enforcement action taken under the legislation.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications, including Carbon Reduction/Health

- 6.1 The adoption of the legislation is necessary to ensure that the Council has a consistent approach to the enforcement of the legislative provisions.

7.0 Financial Implications 2011/12 and beyond (Authorised by the Borough Treasurer)

- 7.1 There will be a cost implication relating to the publication of notice of the adoption. It is suggested that these costs, which are estimated to be in the region of £2,500, would be met from existing budget provision within the Environmental Services Section.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') (as amended by the Local Government Act 2003) makes provision for the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis. Further details in relation to the provisions of sections 14 – 17 are contained within paragraph 10.0 of the report.
- 8.2 Section 13 of the 1982 Act provides that a local authority may resolve that the provisions of Part VIII of the Act are to apply to its area and, if it does so resolve, the provisions specified in the resolution shall come into force in the area of the local authority on the day specified in the resolution (which must not be before the expiration of the period of one month beginning on the day on which the resolution is passed).
- 8.3 Section 13 of the 1982 Act also states that notice of a resolution to adopt the legislation must be published in a local newspaper circulating in the area in two consecutive weeks. The first publication may not be later than 28 days before the date specified in the resolution for the coming into force of the provisions specified.
- 8.4 By virtue of paragraph 17 within Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) the function of adopting the legislation is a non-executive function.

9.0 Risk Management

- 9.1 It is suggested that re-adoption of the legislation, in accordance with section 13 of the 1982 Act, will ensure certainty in any enforcement action.

10.0 Background and Options

- 10.1 Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Local Government Act 2003) contains provisions in relation to the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.
- 10.2 Section 14 of the 1982 Act deals with acupuncture and provides that persons carrying on the practice of acupuncture must be registered with the local authority. Section 15 of the 1982 Act deals with tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis and states that a person who carries on a business involving these activities must be registered with the local authority. Both sections 14 and 15 allow

local authorities to make byelaws for the purposes of securing (a) the cleanliness of the registered premises and any fittings in such a premises; (b) the cleanliness of the registered person and any persons assisting them; and (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment. It is an offence to contravene the requirement to register (in accordance with sections 14 and 15). It is also an offence to contravene any byelaw made under section 14 or section 15. The offence provisions are contained within section 16 of the 1982 Act; section 17 contains provisions in relation to powers of entry.

- 10.3 Each of the three predecessor district Councils made resolutions to adopt sections 14 – 17 of the 1982 Act. Crewe and Nantwich Borough Council made a resolution on 29th June 1983; Macclesfield Borough Council on 2nd December 1982; and Congleton Borough Council on 3rd February 1983. Subsequently Congleton Borough Council made byelaws (which came into effect on 1st January 1987) under section 15 in relation to ear-piercing and electrolysis. Crewe and Nantwich Borough Council made byelaws (which came into force on 1st October 2007) under both sections 14 and 15 in relation to tattooing, semi-permanent skin colouring, cosmetic piercing or electrolysis.
- 10.4 It is suggested that it would be beneficial to consolidate the adoption resolutions for the purpose of consistency and to ensure certainty in any enforcement action taken under the legislation. It is proposed that following the adoption of the legislation draft byelaws for the whole of the Borough of Cheshire East will be formulated and a further report submitted for consideration in due course.
- 10.5 The alternative would be not to make the recommendations to Council with paragraph 2.0 above, however this would mean that the benefits referred to in paragraph 10.4 could not be achieved.

11.0 Access to Information

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

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COUNCIL MEETING – 13 OCTOBER 2011

Extract from the Minutes of the Licensing Committee Meeting on 12th September 2011

**11 RE-ADOPTION OF SCHEDULE 4 LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT 1982 - STREET TRADING**

The Committee considered a report regarding a proposal to re-adopt the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (in relation to street trading) within the Borough of Cheshire East.

Each of the three predecessor district Councils had made resolutions to adopt Schedule 4 of the 1982 Act. Re-adoption of the legislation would consolidate the three previous resolutions into one resolution, providing clarity for the future and ensuring certainty in any enforcement action taken under the legislation.

RESOLVED - That it be recommended to Council that Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) be adopted and shall apply to the Borough of Cheshire East with effect from 1 December 2011.

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CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting: 12th September 2011
Report of: Head of Safer & Stronger Communities
Subject/Title: Re-adoption of Schedule 4 Local Government
(Miscellaneous Provisions) Act 1982 – Street Trading

1.0 Report Summary

- 1.1 The report provides details of a proposal to re-adopt the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (in relation to street trading) within the Borough of Cheshire East.

2.0 Recommendation

- 2.1 The Licensing Committee is requested to recommend the following resolution to Council:

That Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) shall be adopted and shall apply to the Borough of Cheshire East with effect from 1st December 2011.

3.0 Reasons for Recommendations

- 3.1 Re-adoption of the legislation is proposed in order to consolidate the three previous resolutions of the predecessor district authorities into one resolution and to ensure certainty in any enforcement action taken under the legislation.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications, including Carbon Reduction/Health

- 6.1 The decision requested relates to the re-adoption of legislation which was originally adopted by the predecessor district councils.

7.0 Financial Implications 2011/12 and beyond (Authorised by the Borough Treasurer)

7.1 None

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') makes provision for the regulation of street trading. 'Street trading' for these purposes means, subject to certain prescribed exceptions including markets/fairs, news vendor, pedlars and roundsmen, "the selling or exposing or offering for sale of any article (including a living thing) in a street." Further information about the detail within Schedule 4 is provided within paragraph 10.

8.2 Section 3 of the 1982 Act provides that Councils may "resolve that Schedule 4 to this Act shall apply to their district and, if a council so resolve, that Schedule shall come into force in their district on such day as may be specified in the resolution." There is no statutory requirement to publish a notice of adoption of Schedule 4 to the 1982 Act.

8.3 By virtue of paragraph 20 within Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) the function of adopting the legislation is a non-executive function.

9.0 Risk Management

9.1 It is suggested that re-adoption of the legislation, in accordance with section 3 of the 1982 Act, will ensure certainty in any enforcement action.

10.0 Background and Options

10.1 Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the 1982 Act') contains provisions in relation to the regulation of street trading. "Street trading" for the purposes of the 1982 Act means, subject to certain prescribed exemptions, "the selling or exposing or offering for sale of any article (including a living thing) in a street." Councils which have adopted Schedule 4 have the power to designate 'streets' (i.e. any road, footway, beach or other area to which the public have access without payment) within their area as 'consent streets,' 'licence streets' or 'prohibited streets.' A 'consent street' is a street in which street trading is prohibited without the consent of the Council; a 'licence street' is a street in which street trading is prohibited without a licence granted by the Council; and, as the name suggests, a 'prohibited street' is a street in which street trading is prohibited. A person who engages in street trading in a prohibited street or engages in street trading in a licence or consent street without the requisite authorisation is guilty of an offence and would be liable on conviction to a level 3 fine (i.e. not exceeding £1,000).

10.2 Each of the three predecessor district Councils made resolutions to adopt Schedule 4 of the 1982 Act. Crewe and Nantwich Borough Council made a resolution on 29th June 1983; Macclesfield Borough Council on 21st April 1983

and Congleton Borough Council on 3rd February 1983. Each of the district Councils subsequently made further decisions to designate various streets within their areas as either prohibited or consent streets. At present there is one consent in force in the Crewe and Nantwich area, six in the Macclesfield area and twelve in the Congleton area.

- 10.3 It is suggested that it would be beneficial to consolidate the adoption resolutions for the purpose of clarity for the future and to ensure certainty in any enforcement action taken under the legislation. It is proposed that following the adoption, the Licensing Section will carry out a review of the street trading function in order to establish a harmonised approach across the Borough.
- 10.4 The Licensing Committee is therefore requested to make the recommendation to Council contained within paragraph 2 above as the first step in the process of the review of the street trading function.
- 10.5 The alternative option would be not to recommend the adoption of the legislation to Council; however this would mean that the benefits identified in paragraph 10.3 would not be achieved.
- 10.6 There is no statutory requirement within section 3 of the 1982 Act to publish either a notice of intention to adopt Schedule 4, or to publish a notice of adoption after a resolution has been made, however it is proposed that should Council make the requested resolution, a notice of adoption will be published on the Council's website.

11.0 Access to Information

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

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 HONORARY ALDERMEN**

The Committee considered the recommendations of the Civic Sub-Committee in relation to conferring on former Members of the Council the title of Honorary Alderman.

The Civic Sub-Committee at its meeting on 7th September 2011, having considered a report on the matter, had resolved as follows:

That

(1) the Constitution Committee be asked to recommend to Council that

1. the title of Honorary Alderman be conferred on the following former Members of the Council:

Mr Ainsley Arnold
Mr David Cannon
Mr Ray Westwood
Mr Andrew Knowles
Mr Tony Ranfield
Mr John Goddard

2. the formal ceremony take place at a special meeting of the Council to be held on a day other than the day of an ordinary Council meeting;
3. the ceremonial procedure set out in paragraph 6.6 of the report be approved for the special Council meeting;

(2) the Officers identify a suitable date, time and venue for the special Council meeting in consultation with the Chairman and Vice-Chairman and report thereon to the Constitution Committee; and

(3) the Communications Officer ascertain whether there are any other events of an appropriate civic nature which could be dealt with at the special Council meeting.

With regard to resolution (3), the Communications Officer had identified a number of individuals who could be considered for Freedom of the Borough. It was felt, however, that this should be pursued as a separate process and not attached to the Honorary Alderman ceremony.

Officers reported that the Lyceum Theatre, Crewe had been identified as a suitable venue for the special Council meeting and relevant Members were

being consulted on a number of optional dates in November. Final arrangements would be determined in consultation with the Chairman and Vice-Chairman of the Civic Sub-Committee.'

RESOLVED

That Council be recommended that

- (1) the title of Honorary Alderman be conferred on the following former Members of the Council:

Mr Ainsley Arnold
Mr David Cannon
Mr Ray Westwood
Mr Andrew Knowles
Mr Tony Ranfield
Mr John Goddard

- (2) the formal ceremony take place at a special meeting of the Council to be held on a day other than the day of an ordinary Council meeting, the arrangements to be determined in consultation with the Chairman and Vice-Chairman of the Civic-Sub-Committee; and
- (3) the ceremonial procedure set out in paragraph 6.6 of the Appendix be approved for the special Council meeting.

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Recommendations of the Civic Sub-Committee

1.0 Report Summary

- 1.1 This report sets out the recommendations of the Civic Sub-Committee to the Constitution Committee in relation to conferring on former Members of the Council the title of Honorary Alderman.

2.0 Recommendation

- 2.1 That the Committee consider the recommendations of the Civic Sub-Committee as set out in the report.

3.0 Wards Affected

- 3.1 N/A

4.0 Local Ward Members

- 4.1 N/A

5.0 Financial Implications

- 51 The costs associated with the ceremony will be met from within the Civic Budget.

6.0 Legal Implications

- 6.1 Under the provisions of Section 249 of the Local Government Act 1972, “a principal council may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, confer the title of Honorary Alderman on persons who have, in the opinion of the council, rendered eminent services to the council as past members of that council, but who are not then members of that council”.

7.0 Risk Management

- 7.1 None identified.

10.0 Background and Options

- 10.1 The Civic Sub-Committee at its meeting on 7th September 2011 considered the report attached as an Appendix. The Sub-Committee resolved as follows.

That

(1) the Constitution Committee be asked to recommend to Council that

1. the title of Honorary Alderman be conferred on the following former Members of the Council:

Mr Ainsley Arnold
Mr David Cannon
Mr Ray Westwood
Mr Andrew Knowles
Mr Tony Ranfield
Mr John Goddard

2. the formal ceremony take place at a special meeting of the Council to be held on a day other than the day of an ordinary Council meeting;
3. the ceremonial procedure set out in paragraph 6.6 of the report be approved for the special Council meeting;

(2) the Officers identify a suitable date, time and venue for the special Council meeting in consultation with the Chairman and Vice-Chairman and report thereon to the Constitution Committee; and

(3) the Communications Officer ascertain whether there are any other events of an appropriate civic nature which could be dealt with at the special Council meeting.

- 10.2 The Committee is invited to consider the recommendations of the Sub-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

Civic Sub-Committee

Date of Meeting:	7 September 2011
Report of:	Democratic and Registration Services Manager
Subject/Title:	Honorary Aldermen

1.0 Report Summary

- 1.1 To make recommendations that the title of Honorary Alderman be conferred on former Members of the Council.

2.0 Recommendations

- 2.1 That

- (1) the Constitution Committee be asked to recommend to Council that the title of Honorary Alderman be conferred on the following former Members of the Council:

Mr Ainsley Arnold
Mr David Cannon
Mr Ray Westwood
Mr Andrew Knowles
Mr Tony Ranfield
Mr John Goddard

- (2) the Sub-Committee indicate when the Council meeting should take place and consider the form of ceremony.

3.0 Financial Implications

- 3.1 Under the provisions of Section 249 of the Local Government Act 1972 Councils are allowed to spend 'such reasonable sum as they think fit' on presenting an address or casket containing the address to the Honorary Alderman. Any costs can be met by the Civic budget.

4.0 Legal Implications

- 4.1 Under the provisions of Section 249 of the Local Government Act 1972, "a principal council may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, confer the title of Honorary Alderman on persons who have, in the opinion of the council, rendered eminent services to the council as past members of that council, but who are not then members of that council".

5.0 Risk Management

- 5.1 No issues have been identified.

6.0 Background

- 6.1 Every Council should have its own criteria for the appointment of Honorary Aldermen, a list of rights and duties for Honorary Aldermen and its own ceremony for their Admission. At the meetings of Council held on 14 October 2010 and 12 December 2010 the Council approved a scheme relating to the appointment, rights and privileges of Honorary Aldermen.
- 6.2 For the purposes of the Council's scheme it was resolved that the term 'eminent service' should mean a minimum of 12 years' service, whether consecutive or otherwise. Where a Member had served on one or more predecessor authorities of Cheshire East, whether concurrently or otherwise, including the shadow authority, the service with each authority should be taken into account separately for the purpose of determining eminent service.
- 6.3 The Council's records indicate that former Councillors Arnold, Cannon, Westwood, Knowles, Ranfield and Goddard have served the minimum of 12 years and are eligible to be appointed as Honorary Aldermen of the Council. Other than Mr Knowles each has confirmed that he would accept the title of Alderman if the Civic Sub Committee nominated him. The position in respect of Mr Knowles will be given at the meeting.
- 6.4 As this is a formal civic ceremony all Cheshire East Alderman and Freeman will be invited to attend. At the ceremony, those upon whom the title is to be conferred will be presented with a framed scroll and a medallion.
- 6.5 After consulting with the Group Leaders on the date for the ceremony the recommendation is that a special meeting of Council and a short civic reception should be held on the same day as an ordinary meeting of the Council. The next ordinary meetings of Council will be held in Crewe Town Hall on 13 October and Congleton Town Hall on 15 December.
- 6.6 The following ceremonial procedure is suggested:
1. The Mayor will open and welcome those present to the Meeting
 2. The Leader will propose a formal motion
 3. The Mayor will invite a Member to second the motion
 4. The Leader will give a tribute to those upon whom the title is to be conferred

5. The Mayor will invite other members to give similar tributes
 6. The Mayor will invite the Council to pass the formal resolution
 7. The Mayor will invite the recipient(s) to come forward and sign the Roll of Honorary Alderman and Freeman
 8. The Mayor will present a scroll and medallion to the recipient
 9. The recipient will give a response
 10. The Mayor will conclude proceedings
- 6.7 The Civic Sub Committee is asked to indicate when the Council meeting should take place and consider the form of ceremony at which the titles will be conferred.

7.0 Access to Information

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

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 PLANNING PROTOCOL OF CONDUCT**

The Committee considered an amended version of the Planning Protocol of Conduct which had been developed by the Planning Protocol Sub-Committee. The Sub-Committee had been appointed to review the existing Planning Protocol with a view to redrafting it as short, sensible guide.

The revised version of the Protocol had been submitted to the Strategic Planning Board and the Standards Committee for comments. The Standards Committee had recommended the adoption of the revised Protocol for inclusion in the Constitution. The Standards Committee at its meeting on 25th July 2011 had recommended the approval and adoption of the Protocol subject to the amendment of paragraph 13.1 from

“You should attend the mandatory training prescribed by the Council before you participate in decision-making at meetings”

to

“You **must** attend the mandatory training prescribed by the Council before you participate in decision-making at meetings”.

The Standards Committee had felt that this amendment better reflected actual practice, as Members were not permitted to take part in meetings until they had undergone the required training. This amendment had been made to the revised version of the Planning Protocol which was attached to the report.

RESOLVED

That Council be recommended to approve the revised Planning Protocol of Conduct for adoption and inclusion in the Constitution.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Monitoring Officer and Head of Planning and Housing
Subject/Title: Planning Protocol of Conduct

1.0 Report Summary

- 1.1 This report attaches as Appendix 1 an amended version of the Planning Protocol that has been developed by a sub-committee of the Constitution Committee. This revised version has been to the Strategic Planning Board and the Standards Committee prior to the Constitution Committee.

2.0 Recommendation

- 2.1 That the Constitution Committee review the amended version of the Planning Protocol of Conduct and recommend it to Council for inclusion in the Constitution as a replacement for the existing Protocol.

3.0 Reasons for Recommendations

- 3.1 Since the adoption of the original version of the Planning Protocol by the Council, updated versions of guidance for Planning Councillors have been published, and additionally the Planning Protocol has been reviewed by the Chairmen and Vice-Chairmen of the Strategic Planning Board and Planning Committees, in conjunction with Officers. A revised version of the original Planning Protocol was presented to the Strategic Planning Board and the Standards Committee previously. However, the Constitution Committee subsequently considered that the Planning Protocol should be reviewed more fully. As a result, a Sub-Committee was set up by the Committee to re-draft the Planning Protocol and undertake a more comprehensive review of the document prior to re-consideration of the document by the relevant Committees.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Strategic Planning Board and Planning Committee Members

6.0 Policy Implications, including Climate change/Health

6.1 None

7.0 Financial Implications

7.1 None

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 There is a risk of legal challenge to the decisions made by the Strategic Planning Board and Planning Committees if robust and consistent procedures are not in place in line with current national guidance.

8.2 There is also a greater risk of a Local Government Ombudsman complaint being upheld if the Authority does not provide clear, consistent and up-to-date advice to Councillors on carrying out their duties and responsibilities when determining Planning Applications and considering planning matters.

9.0 Risk Management

9.1 The Planning Protocol, in order to operate effectively, needs to be reviewed and updated regularly, and those amendments reported to the relevant Committees so that members involved in the planning process are fully aware of the contents and their responsibilities.

9.2 If the reviews and updates do not take place, and members are not made aware of them, a number of risks can be identified:

- Generally, a lack of up-to-date advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of the Board or Committees and for those involved as Local Ward Members.
- Personal and prejudicial interests and fettering of discretion not being identified and declared at the required times and the appropriate actions carried out as a result.
- lack of, or inconsistent, up-to-date advice concerning how Councillors respond to requests for any meetings with developers, applicants, neighbours, Parish/Town Councils
- lack of, or inconsistent, advice regarding lobbying of and by Councillors and how to react to this
- lack of clarity and inconsistent procedures applied throughout Cheshire East with regard to decision-making at Board/Committee meetings.

- Complaints to the Local Government Ombudsman being upheld over conduct and matters that occur at Board/Committee meetings and during the conduct of planning applications.

9.3 The updated protocol provides updated guidance and requirements on these points, as well as including a contents page and summary to the document to assist Members in reading and understanding the Planning Protocol.

10.0 Background and Options

10.1 A Planning Protocol was adopted as part of the Constitution by the Council in February 2009. It was expected to be reviewed by both Officers and Members in light of any new Guidance that had been published and in light of experience gained in the operation of the Planning Protocol following the first few months of the Strategic Planning Board and Planning Committees, taking decisions as the Local Planning Authority for Cheshire East.

10.2 Members of the Constitution Committee may be aware that a report was placed before their meeting on 30th September 2010, with an amended version of the Planning Protocol attached for their comments which took into account updated guidance issued since the adoption of the original Planning Protocol.

10.3 At the Constitution Committee on 30th September 2010, Members considered the amended Planning Protocol and resolved that:

“(1) The Planning Protocol not be referred to Council for approval at this stage;

and

(2) a sub-committee be appointed, the size, proportionality and membership to be determined in consultation with the Chairman and Group Whips, to be charged with examining the Protocol and, if necessary, redrafting it as a short sensible guide with the assistance of the Officer who drafted the amendments.”

10.4 The Planning Protocol Sub-Committee was set up, and met on the 6th January 2011, 8th February 2011 and 7th March 2011. As a result of these meetings, an amended Planning Protocol has now been produced and approved by the Planning Protocol Sub-Committee, and is attached as Appendix 1 to this report.

10.5 The main changes to the Planning Protocol from that previously before the Committee are the form of the document and the inclusion of a Contents page, and Summary sheet.

10.6 The Planning Protocol Sub-Committee acknowledged that due to the introduction of the Localism Bill by the Government, further amendments to the Planning protocol were likely to be required in the near future.

- 10.7 The Strategic Planning Board considered the amended Planning Protocol at its meeting of 20th April 2011, and resolved that the amended version of the Planning Protocol should be recommended to both the Standards Committee and the Constitution Committee for adoption by the Council and inclusion in the Constitution.
- 10.8 The Standards Committee considered the amended Planning Protocol at its meeting of 25th July 2011, and considered that paragraph 13.1 should be amended. This paragraph deals with training prior to participating in decision-making at the Strategic Planning Board or Planning Committees. The Standards Committee was happy to recommend the Planning Protocol to the Constitution Committee subject to this paragraph changing from reading:

“You should attend the mandatory training prescribed by the Council before you participate in decision-making at meetings”

to

“You *must* attend the mandatory training prescribed by the Council before you participate in decision-making at meetings”.

- 10.9 The Standards Committee felt that this amendment better reflected actual practice, as Members were not permitted to take part in meetings until they had undergone the required training. This amendment has been made in the amended version of the Planning Protocol that is attached to this report.

11.0 Access to Information

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

None – all public documents

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

Section	Subject	Page Number
	Summary	1
1	Development proposals and interests under the members' code	3
2	Pre-determination (fettering discretion) in the planning process	4
3	Membership of Parish Councils and outside bodies	5
4	Cabinet Members	6
5	Contact with Applicants, Developers, Objectors	7
6	Pre-Application discussions	8
7	Lobbying of Planning Committee members	8
8	Membership of lobby or general interest groups	9
9	Site Inspections	11
10	Public Speaking at Meetings	12
11	Officers	13
12	Decision Making	14
13	Training	15
14	Involvement in s106 Agreements	15
15	Monitoring and review	16

The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and **applies to members of the Strategic Planning Board or Northern and Southern Committees when they are involved in the planning process.**

The Members Code of Conduct should be applied throughout the decision making process and this Planning Protocol seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not follow this Planning Protocol you may put the Council and yourself at risk of proceedings on the legality or maladministration of the related decision.

If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any meeting takes place.

In this Planning Protocol "planning meeting" covers all meetings of the Strategic Planning Board and the Northern and Southern Planning Committees.

SUMMARY

Important things to remember –

1. apply the rules in the Members' Code of Conduct first, which should be complied with throughout the decision making process, and disclose the existence and nature of any interest at the relevant meeting
2. understand what personal and prejudicial interests are, and the consequences and differences of a declaration of either
3. don't make your mind up on how you will vote on a matter prior to the formal consideration of the matter at the meeting
4. be aware that if you do lobby or campaign on a particular issue it may remove you from the decision making process
5. as a cabinet member, don't take part in a planning meeting in a matter that you are considered to be the advocate of a proposal
6. if you are approached for technical planning advice, refer the person to Officers
7. if you attend meetings individually with developers or lobby groups be careful not to put yourself in a position where you appear to favour a person or a group over another
8. if you do attend a meeting make sure it is clear that you do not bind the authority to a particular course of action, or views, and that the meeting is noted in your diary
9. you can ask that Officers attend and/or organise meetings
10. avoid accepting gifts or hospitality from anyone involved in a planning proposal
11. it is not advisable to become a member of a group or organisation whose primary purpose is to promote or oppose specific planning proposals in your area
12. a site inspection is the opportunity to seek information and observe the site not to start the debate into the merits of the application
13. you can call-in an application to be determined by Committee that would otherwise be delegated to Officers, and can seek advice from officers over the wording

14. you can discuss applications with Officers but the Officer must be able to reach their own conclusion
15. make sure you are present at the planning meeting for the entire item, including the Officers introduction and update, otherwise you cannot vote on that item
16. not to allow members of the public to communicate with you during planning meetings
17. you may exercise your public speaking rights at a planning meeting if you cannot attend the meeting as a member of the Committee
18. make sure your decisions at a planning meeting take into account the development plan and other relevant material planning considerations
19. put your and your local community concerns forward at the planning meeting, and consider whether planning gain requirements under s106 could help make acceptable development that would otherwise be unacceptable in planning terms
20. include the content of s106 agreements in the debate at a planning meeting
21. if you are proposing or seconding a decision that is contrary to Officer recommendation that you need to identify the planning reasons with the assistance of the Officers for doing so
22. you should try to attend all training sessions arranged by the Council

This summary provides a list of the main points to remember while the body of the Protocol provides more detailed information, explanation and assistance.

1 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE

- 1.1 It is your responsibility to declare the existence and nature of any interest, including any perceived interest, at the relevant meeting, including informal meetings or discussions with Officers and other Councillors. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any interest apply whenever you are in attendance at a meeting, regardless of whether you are a member of the Committee or not.
- 1.2 Where your interest is personal and prejudicial:-
- You cannot participate in, or give the appearance of trying to participate in, the making of any decision on the matter by the planning authority, including the processing of the application. You must withdraw from the meeting room when the matter is announced unless you are exercising your public speaking rights. Please see section 10 for your right to attend and make representations under the Public Speaking Protocol.
 - You shouldn't try to represent local, Ward or Area views, get another Member to do so instead.
 - Be careful not to seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not be able to do the same.
 - Whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate Officer, in person or in writing, be aware that the Code places greater limitations on you than would apply to a normal member of the public.
- 1.3 You do need to notify the Monitoring Officer and Head of Planning and Housing in writing if you are submitting your own application, or if you are employed as an agent and:-
- The notification to the Monitoring Officer and the Head of Planning and Housing should be made no later than submission of the application;
 - the proposal will always be reported to a planning meeting and not dealt with by Officers under the scheme of delegation; and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the planning meeting (where appropriate) to avoid public criticism

- you can make written representations to Officers about the proposal and may address the planning meeting pursuant to the Public Speaking Protocol subject to certain additional restrictions.

2 PRE-DETERMINATION (FETTERING DISCRETION) IN THE PLANNING PROCESS

- 2.1 Councillors of the planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, so must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings. Not to do so puts the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 2.2 In order to avoid pre-determination and therefore your ability to participate in planning decision-making wait until the formal planning meeting to hear the Officers presentation, any public speakers and arguments on both sides before expressing your view on an application.
- 2.3 Take care in the wording of your planning reasons on a call-in that you do not suggest that you have already formed a view on the application, if you have not done so, and have therefore pre-determined the application. Seek advice on this from Officers if necessary prior to completion of your form. Wording such as "I consider that this application may raise issues of ..." will help avoid claims of pre-determination if you have not done so.
- 2.4 If the Council is the landowner, developer or applicant and you have acted as, or could be viewed as being, a chief advocate for the proposal then you are likely to have pre-determined the application. (This is more than a matter of dual membership, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 2.5 You are always free to listen to a persons point of view about a planning proposal, give basic procedural advice and can agree to forward any comments, but beyond this you should refer the person to the appropriate planning Officer.
- 2.6 If there are other ward Councillors available that do not sit as a member of the same planning meeting then they will not be subject to

the same restrictions regarding pre-determination and can therefore be an alternative contact for members of the public or lobby groups.

- 2.7 Political group meetings prior to the planning meeting should not determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning Officer's report and update and heard any further representations and the debate at the planning meeting.
- 2.8 You should not speak and vote on a proposal as a member of the planning meeting where you have pre-determined an application. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 2.9 If you have pre-determined an application you should explain that you have, or could reasonably be perceived as having already made up your mind on an application so that this can be recorded in the minutes. You may then exercise separate speaking rights, where you do wish to speak:
 - advise the democratic services Officer or Chairman that you wish to speak in this capacity before the planning meeting;
 - remove yourself from the member seating area to the public gallery for all of that item and consider whether you need to leave the room; and
 - ensure that your actions are recorded in the minutes.

3 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

- 3.1 The Members' Code of Conduct provides for a presumption that you may regard yourself as not having a personal interest in matters which relate to specific organisations and if you do not intend to speak on the matter at the planning meeting.
- 3.2 You do need to exercise your discretion in deciding whether or not to participate in each case and where you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of :`
 - (a) another local or public authority of which you are a member; or
 - (b) a body to which you have been appointed or nominated by the Council as its representative; or

(c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

you should always disclose a prejudicial as well as personal interest and withdraw from the planning meeting.

3.3 Where you do intend to speak on a matter at the planning meeting, or are unsure if you wish to do so, it is advisable to declare that interest at the start of the meeting, although you are not legally obliged to.

3.4 You can take part in the debate on a proposal when acting as part of a consultee body for a planning application (where you are a member of the Parish Council, for example), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- you make it clear to the consultee body at the time they consider the matter that:

(a) your views are expressed on the limited information before you only;

(b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and

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

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

4 CABINET MEMBERS

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

4.2 You should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have demonstrated there, and can do so at the relevant planning meeting, that you have not predetermined the application.

4.3 At a planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member, and so pre-determined the matter, do not take part in the debate, but you can exercise separate speaking rights under the Public Speaking Protocol provided you do not have a personal and prejudicial interest. Where you do wish to speak :

- advise the democratic services Officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
- ensure that your actions are recorded in the minutes

5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If you are approached for technical planning advice you should refer the person to Officers, and can always refer a person to Officers if you are uncomfortable giving procedural or other advice.
- 5.2 Where you feel that a formal meeting would be useful in clarifying issues, you should request the Head of Planning and Housing to organise this. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the planning meeting.
- 5.3 If you are invited to attend a meeting with applicants, developers or groups of objectors you should exercise care particularly between the submission of an application and the planning meeting where it is to be determined. You can attend meetings but need to be careful not to express views or opinions on the application if you are intending to take part in the planning meeting.
- 5.4 In addition you should consider:
- the advice on lobbying;
 - whether or not it would be prudent in the circumstances to make notes when contacted;
 - notifying the Head of Planning and Housing of any significant contact with the applicant and other interested parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
 - asking relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.
- 5.5 Don't attend a planning presentation unless an Officer is present and/or it has been organised by Officers, as it is a form of lobbying and you need to be careful not to express any views on the application or give the impression you have made up your mind.
- 5.6 Remember that a presentation is not part of the formal process of debate and determination of any application, this will be carried out by

the appropriate planning meeting of the planning authority, but you are able to ask relevant questions for the purposes of clarifying your understanding of the proposals.

6 PRE-APPLICATION DISCUSSIONS

- 6.1 It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with Officers present and a written record of the discussions made and kept.
- 6.2 If you are involved by an Officer in pre-application discussions ensure that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation will have taken place.
- 6.3 Officers should deal with any queries or give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. This ensures a consistent and co-ordinated approach from the Council.
- 6.4 Where there is a legitimate reason justifying non-disclosure respect a request for confidentiality. Seek advice from the Officers present if you are unsure.
- 6.5 Make sure you provide information on matters of fact, local knowledge and geography to any pre-application meeting rather than dealing with the merits of any proposed application.
- 6.6 Make sure you do not use your position to improperly influence decisions in pre-application meetings.
- 6.7 You can ask an Officer for a briefing or update on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

7 LOBBYING OF PLANNING COMMITTEE MEMBERS

- 7.1 While you can listen to those lobbying or attempting to lobby you, you should explain that it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to declare an intention to vote one way or another or express such a firm point of view that it amounts to the same thing.

- 7.2 As a member of the planning meeting your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 7.3 You should not accept any gifts or hospitality from a person involved in or affected by a planning proposal. Where a degree of hospitality is entirely unavoidable, you must ensure it is of a minimum level, its acceptance is declared as soon as possible and remember the Code of Conduct provides that you register any gift or hospitality where its value is over £25.
- 7.4 Remember you can copy or pass on lobbying correspondence you receive to the Head of Planning and Housing, if relevant or raising new issues, or declare the receipt of lobbying information at the planning meeting.
- 7.5 If you receive any offers of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise, refer the person to the Head of Planning and Housing.
- 7.6 If you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), notify the Monitoring Officer who will in turn advise the appropriate Officers to follow the matter up.
- 7.7 Unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening to or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

8 MEMBERSHIP OF LOBBY OR GENERAL INTEREST GROUPS

- 8.1 Avoid becoming a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals

or those within a limited geographical area, as if you do, you are likely to have fettered your discretion and have a personal and prejudicial interest and have to withdraw from the planning meeting.

- 8.2 Remember to register your membership of any lobby group and declare the existence and nature of your interest in any lobby group at planning meetings. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.
- 8.3 If a matter relates directly to the lobby group of which you are a member rather than to the views it holds, or is submitted by the group you should ordinarily consider that you have a personal and prejudicial interest and should act accordingly.
- 8.4 Where your lobby group has expressed a public view on a matter you need to consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors you should consider are:
 - the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 8.5 If the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.
- 8.6 Remember that if you publicly support a particular outcome on a proposal within your Ward or actively campaign for it, you will not be able to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. There is a fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining any application in accordance with the law.
- 8.7 You are able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or

a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.

- 8.8 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- 8.9 You should not ever decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

9 SITE INSPECTIONS

The Council has a separate protocol that deals with Site Inspections in more detail.

- 9.1 Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to both Councillors requests for a Site Inspection and those the Head of Planning and Housing may arrange without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.
- 9.2 It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors at site visits will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all planning meeting members will attend all formal site inspections and a record of attendance will be maintained and monitored.
- 9.3 You should try to attend site inspections organised by the Council.
- 9.4 You can request a site inspection if you feel it is strictly necessary because:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 9.5 The site inspection is an opportunity for you to seek information and to observe the site, and therefore you can ask the Officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection. Officers may seek clarification from the applicant or an objector on your question, but you should not do this directly.
- 9.6 Be careful not to be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind while on a site inspection by expressing opinions or views to anyone. The decision can only be made at the planning meeting and you should make this clear to any applicant or other party who approaches you and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the Officer present.
- 9.7 Information that you gain from the site inspection should be reported back to the planning meetings, so that all Councillors have the same information.
- 9.8 You should not enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias. If you feel it is essential for you to visit the site other than through attending the official site inspection you should speak to the Head of Planning and Housing about your intention to do so and give him the opportunity of an Officer accompanying you. If you do attend site on your own ensure you comply with these good practice rules on site inspections.

10 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with the procedure for Public Speaking at meetings in more detail.

- 10.1 Members of the public and non-committee members should not communicate with you during the planning meeting (orally or in

writing) other than through the scheme for public speaking, as this may give the appearance of bias.

- 10.2 Make sure that you comply with the Council's Protocol for Public Speaking at planning meetings if you are attending the planning meeting other than as a member.
- 10.3 Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member.
- 10.4 Where you have a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so you must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain.
- 10.5 Planning Councillors who have pre-determined a matter may also exercise public speaking rights and should consider withdrawing from the meeting room having spoken on a matter to counter any potential suggestion that the remaining members were influenced by your continued presence.

11 OFFICERS

- 11.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst Officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to Officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.
- 11.2 You can submit views on current applications to the Head of Planning and Housing, which can be incorporated into any committee report.
- 11.3 Officers are part of a management structure and you can discuss a proposal, outside of any arranged meeting, with those Officers who are authorised by the Head of Planning and Housing to deal with the proposal at a Member level or the Head of Planning and Housing. However, you should not seek to do anything that would compromise, or is likely to compromise, the impartiality of Officers who must be free to reach their own conclusion.

- 11.4 Officers who are involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors.
- 11.5 Remember the Council's Member/Officer Relations Protocol.

12 DECISION MAKING

The Strategic Planning Board has adopted a separate protocol that deals with the Call in of planning applications in more detail.

- 12.1 Ensure that the planning reasons in your request for a proposal to go before the planning meeting rather than be determined through Officer delegation are recorded and repeated correctly in the report to the planning meeting.
- 12.2 Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless other material considerations indicate otherwise.
- 12.3 It is important that you reach your decision only after due consideration of all of the information reasonably required upon which to base a decision. You should come to meetings with an open mind and if you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information, and if necessary, defer or refuse the application.
- 12.4 It is vital that you have been present to hear the entire item, including the Officers' introduction to the matter before you vote or take part in the meeting's discussion on a proposal.
- 12.5 Check that the minutes of the meeting record correctly the reasons for the planning meeting's decision to grant, refuse or defer any proposal.
- 12.6 The planning meeting can delegate to the Head of Planning and Housing in conjunction with the Chairman, if necessary, the specific wording of conditions that the planning meeting may wish to add or amend when they are considering an application for approval. An explanation of why the change or addition is required should be given to the planning meeting.
- 12.7 Be aware that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you

need to clearly identify and explain the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and will be recorded and Officers will be able to assist with formal wording. Be aware that you may have to assist in defending a resulting decision by giving evidence in the event of any challenge.

- 12.8 Where necessary, you can consider deferring the determination of sensitive applications that the planning meeting wish to approve against Officer recommendation to the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.
- 12.9 Where necessary, you can consider deferring the determination of an application to another meeting if there is a very strong objection from Officers on the validity of reasons for refusal against Officer recommendation, to allow the proposed reasons to be further investigated and form the basis of an updated report to a future meeting.
- 12.10 You should ensure that you are aware of, and comply with the Protocols adopted by the Strategic Planning Board.

13 TRAINING

- 13.1 You must attend the mandatory planning training prescribed by the Council before you participate in decision-making at meetings.
- 13.2 Try to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and assist you in carrying out your role properly and effectively.

14 INVOLVEMENT IN SECTION 106 AGREEMENTS

- 14.1 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by such benefits offered.
- 14.2 Remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or

compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.

- 14.3 Requirements of Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the Head of Planning and Housing as soon as you become aware of them.
- 14.4 The content of Section 106 Agreements needs to be discussed at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 14.5 If you feel that a meeting would be useful to clarify issues of content of potential Section 106 agreements, you should ask the Head of Planning and Housing to arrange a meeting with relevant Officers. Participants can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 14.6 Do remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that the Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors can contact Officers for any information required on completed Section 106 Agreements.

15 MONITORING AND REVIEW

- 15.1 The Head of Planning and Housing will report annually to the Portfolio Holder regarding compliance with the arrangements set out in this Planning Protocol and will identify any proposals for amendment in light of issues that have arisen, although any amendments would be required to go through the Council's formal process.
- 15.2 In particular, the Head of Planning and Housing shall monitor the following:-
 - (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 REVIEW OF POLLING DISTRICTS AND POLLING PLACES**

The Committee considered a proposal to recommend to Council that the final decision concerning the outcome of the Polling Districts and Polling Places Review be delegated to the Constitution Committee at its meeting on 17th November 2011.

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 31st December 2007, and at least every four years thereafter. The Committee had appointed a Sub-Committee with delegated powers to undertake the Review and report back to the Committee with final recommendations.

The timetable for the review indicated that the final decision needed to be made by the full Council in accordance with the requirements of the Council's constitution. The final decision also needed to be made before the 1st December 2011 in order to meet the statutory timescale for the review. To meet the timescale, a special Council meeting would therefore need to be convened. The most likely date for such a meeting would be 18th November 2011. However, it was now apparent that there would be no other items of business requiring decision at such a meeting. It was therefore suggested that Council could be asked to delegate the final decision on the review to the Constitution Committee at its scheduled meeting on 17th November 2011, thereby removing the need for a Special Council meeting.

RESOLVED

That Council be recommended to agree that the final decision concerning the outcome of the Polling Districts and Polling Places Review be delegated to the Constitution Committee at its meeting on 17th November 2011, thereby removing the need for a Special Council meeting to be convened on 18th November 2011.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Review of Polling Districts and Polling Places

1.0 Report Summary

- 1.1 At its meeting held on 2 June 2011, the Constitution Committee authorised the publication of the notice of the Polling Districts and Polling Places Review and appointed a Sub Committee with delegated powers to undertake the Review of Polling Districts and Polling Places as required by the Electoral Administration Act 2006.
- 1.2 The Electoral Administration Act 2006 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.
- 1.3 The Committee noted the timetable for the review (set out in Appendix A).
- 1.4 The timetable indicates that the final decision needs to be made by the full Council, in accordance with the requirements of the Council's constitution. The final decision also needs to be made before the 1 December 2011, to meet the statutory timescale for the review and also the statutory publication date for the annual register of electors. For these reasons it was proposed that a special meeting of the Council be convened in November 2011.
- 1.5 Following consultation with the Mayor and Leader of the Council, a provisional date for the Special Council meeting was agreed for 18 November 2011. However, as it is now apparent that there are no other items of business requiring decision at that meeting, the Committee may wish to consider an alternative course of action. Upon the recommendation of this Committee, Council could determine to delegate the final decision for the review to the Constitution Committee, at its scheduled meeting on 17 November 2011, thereby removing the need for a Special Council meeting. By making a recommendation on this matter to the Council meeting on 13 October 2011, the Council can determine its preferred course of action. The convening of a Special Council meeting on 18 November could still be arranged if this is the preferred view of members.

2.0 Recommendation

- 2.1 To recommend to Council that the final decision concerning the outcome of the Polling Districts and Polling Places Review be delegated to the Constitution Committee at its meeting on 17 November 2011, as opposed to the requirement for a Special Council meeting to be convened on 18 November 2011.

3.0 Wards Affected

- 3.1 All wards are affected by the review.

4.0 Local Ward Members

- 4.1 As above.

5.0 Policy Implications

- 5.1 None.

6.0 Financial Implications

- 6.1 Costs incurred will be met from existing budgets.

7.0 Legal Implications

- 7.1 The proposed course of action is permissible under the Council's Constitution.

8.0 Risk Management

- 8.1 Undertaking this Review is a statutory duty. 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. The suggested approach to delegate the final decision to the Constitution Committee would be in keeping with the remit of the Committee as detailed in the Council's constitution and provides for "the overseeing, monitoring, co-ordinating and implementing the Council's administrative business, including electoral matters".

9.0 Background

- 9.1 A **Polling District** is the area created by the division of a constituency, ward or division into smaller parts within which a Polling Place can be determined which is convenient to electors.
- 9.2 A **Polling Place** is the building or area in which Polling Stations will be selected by the Returning Officer.

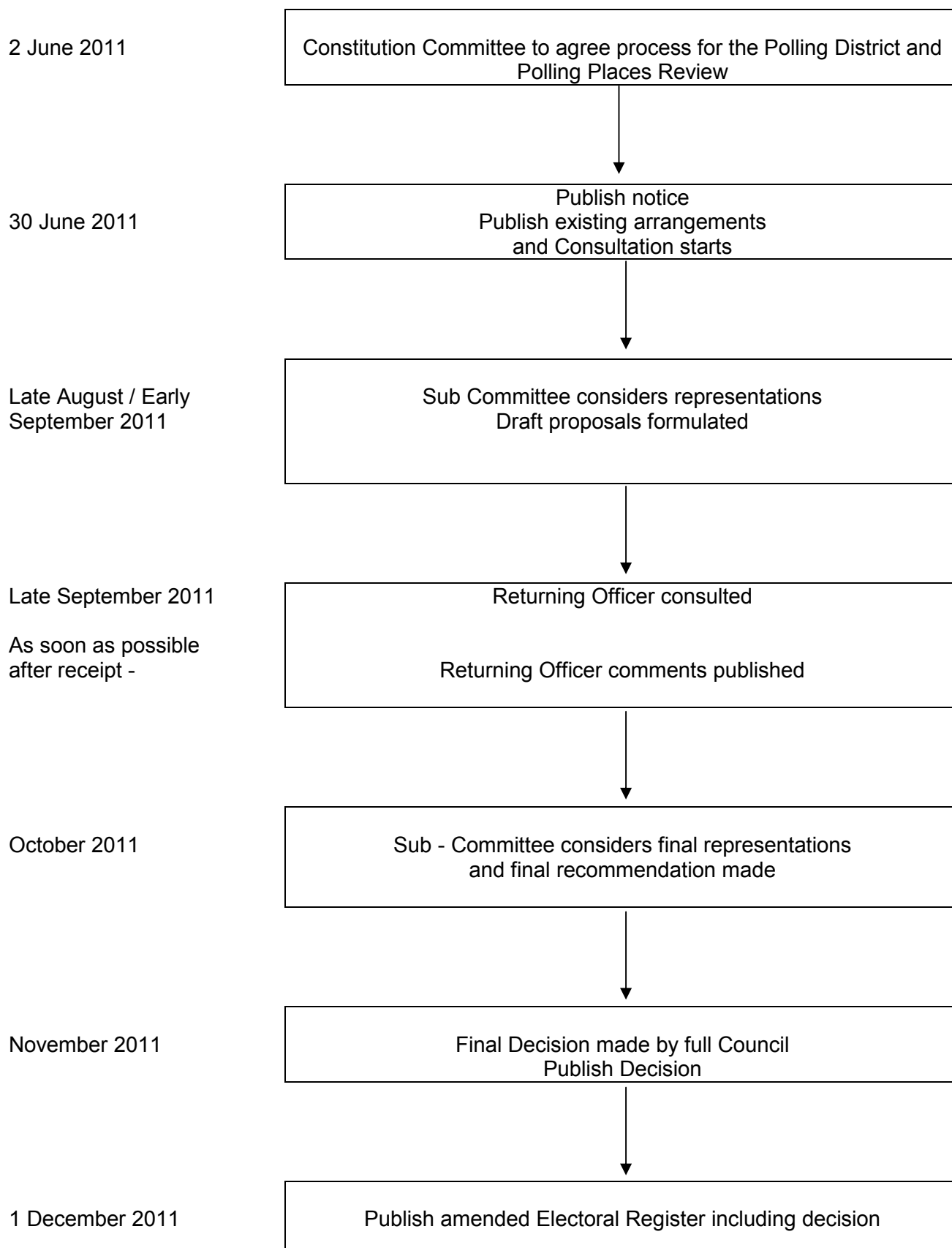
- 9.3 The **Polling Station** is the room or building where the poll takes place which is chosen by the Returning Officer for the election.
- 9.4 The Review is being conducted in three stages. The Preliminary Stage involves giving notice of the Review which was published at the end of June 2011. During the Proposal Stage the Authority must devise a proposal for the new Polling District and Polling Place arrangements. In making a decision on the proposals, the two key factors which must be addressed are the reasonable requirements of the electors; and the accessibility for disabled persons to the probable Polling Stations within the Polling Place. During the Consultation Stage representations and comments will be invited on the local authority proposals for Polling Districts and Places. This will involve a compulsory submission from the Returning Officer and submissions from other persons and bodies.
- 9.5 Following the consultation stage, the Authority must make its final decisions on the review, taking into account all the representations received.
- 9.6 The function of carrying out this statutory review rests with full Council under the current Constitution. The function is not one which the Cabinet may carry out.

10.0 Access to Information

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

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Email: lindsey.parton@cheshireeast.gov.uk

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POLLING DISTRICT AND POLLING PLACES REVIEW

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 URGENT DECISION-MAKING**

The Committee considered proposed changes to the Council's arrangements for making urgent decisions.

The Council's existing arrangements empowered the Chief Executive or her nominee to make urgent executive and non-executive decisions in circumstances where such decisions were required before the next meeting of the relevant decision-making body. It was suggested that consideration should be given to securing Member involvement in making urgent decisions, with appropriate officer advice and involvement.

Appendix B to the report contained proposed urgency provisions which, if agreed, would need to be incorporated into the Constitution; there would also be a need for some consequential amendments.

RESOLVED

That Council be recommended

(1) that subject to the following amendments, the revised arrangements for making urgent decisions as set out in Appendix B to the report be approved and adopted:

with regard to urgent executive decisions:

- the relevant scrutiny chairmen be notified of the matter *and invited to make representations*;
- *all* Opposition Group leaders be notified of the matter and invited to make representations.

(2) that the Borough Solicitor and Monitoring Officer be authorised to make such additions and amendments to the Constitution as she considers are necessary to give effect to the wishes of Council.

[Note: a revised version of Appendix B incorporating the amendments agreed at the Committee's meeting is attached.]

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Urgent Decision-Making

1.0 Report Summary

- 1.1 This report examines the Council's current arrangements for decision-making in urgent circumstances and makes recommendations for alternative arrangements to be introduced.

2.0 Recommendation

- 2.1 That the Committee recommend to Council
- (1) the adoption of the provisions set out in Appendix B to this report; and
 - (2) that the Borough Solicitor and Monitoring Officer be authorised to make such additions and amendments to the Constitution as she considers are necessary to give effect to the wishes of Council.

3.0 Reasons for Recommendations

- 3.1 In order for Members and Officers to understand clearly the Council's arrangements for determining urgent items of business.

4.0 Wards Affected

- 4.1 All Wards are affected.

5.0 Local Ward Members

- 5.1 All local ward Members are affected.

6.0 Policy Implications

- 6.1 The Council's agreed arrangements should be reflected in the Constitution.

7.0 Financial Implications

- 7.1 There are no direct implications, although it is of critical importance for the Council to have arrangements in place for urgent decisions to be made. The

responsiveness of local authorities to circumstances of urgency can often have financial implications.

8.0 Legal Implications

- 8.1 Once agreed, any changes to existing Constitutional provisions will need to be agreed by Council, following a recommendation from the Committee.

9.0 Risk Management

- 9.1 No risks would appear to arise from the proposals contained in this report.

10.0 Background

- 10.1 The Council's existing arrangements empower the Chief Executive or her nominee to make urgent executive and non-executive decisions in circumstances where such decisions are required before the next meeting of the relevant decision-making body. Appendix A to this report contains the existing constitutional provisions.
- 10.2 The Committee may wish to review the existing arrangements to establish whether they are in need of revision. Consideration should be given to securing Member involvement in making urgent decisions, with appropriate Officer advice and involvement.
- 10.3 Appendix B contains proposed urgency provisions which are recommended to the Committee for recommendation to Council. If agreed, these would need to form new provisions in the Constitution, and there would be the need for some consequential amendments.

11.0 Access to Information

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

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Designation: Democratic and Registration Service Manager

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APPENDIX A

PROCEDURE RULES 18 AND 25 - URGENT BUSINESS

Non-Executive Functions

1 Approval of Urgent Business

Where any matter is urgent and cannot await the next meeting, the Chief Executive or her nominee may take the necessary action, provided that he/she has first consulted the relevant Chairman (or Vice-Chairman if he/she is not available).

2 Consultation

A copy of the consultation document shall be sent to the appropriate Cabinet Member, the Chairman and Spokespersons of the appropriate Scrutiny Committee, the party group leaders and the local Member.

3 Written Approval

Any such approval shall be in writing, consideration being given after consultation with the Chief Finance Officer and the Monitoring Officer.

4 Obligations of the Monitoring Officer

The Monitoring Officer shall forthwith supply a copy of any approval requiring a report to a Committee or Sub-Committee which has been given by him/her to the Chief Executive and the Chief Finance Officer.

5 Report to Committee

A report of any action under paragraphs 1 to 4 above shall be made available by electronic means to all Members of the Council.

Executive Functions

6 Consultation

Where any matter is urgent and cannot await the next meeting of Cabinet, the Chief Executive or her nominee shall have sole discretion to decide the matter, having first taken into account any views of Members consulted under this procedure. A copy of the consultation document under this Procedure Rule shall also be sent to the Chairman and Spokespersons of the appropriate Scrutiny Committee, the appropriate Cabinet Member and the local Member.

7 Written Approval

Any such approval shall be in writing, and shall only be given after consultation with the Chief Finance Officer and the Monitoring Officer.

8 Obligations of the Monitoring Officer

A copy of any approval which has been obtained under paragraphs 6 to 8 above shall be supplied forthwith to the Monitoring Officer and Chief Finance Officer.

9 Report to Cabinet

A report of any decision under paragraphs 6 to 8 above shall be made available by electronic means to all Council Members.

10 Access to Information

In processing and deciding any matter under paragraphs 6 to 10 above, the relevant requirements of the Access to Information Procedure Rules will apply, as set out in this Constitution.

PROPOSED URGENCY PROVISIONS

When a decision cannot await the next ordinary decision-making meeting, the following procedures apply:

Chairman's power to add an item to the agenda

The Chairman of the Council, the Cabinet, a Portfolio Holder, a committee, or sub-committee have the power to agree to take urgent items of business, at the meeting in question, which have not been included on the agenda of that meeting.

The discretion to do so rests entirely with the Chairman of the body in question or, where appropriate, the portfolio Holder, who alone needs to be satisfied as to the reasons for urgency. These reasons will be minuted.

In the case of executive decisions the following provisions shall also apply:-

- Rule 15 of the Access to Information Rules (Forward Plan and special urgency)
- Rule 44 of the Executive Procedure Rules (Forward Plan and key decisions)
- Rule 13 of the Scrutiny Procedure rules (Call-In and Urgency)

A special meeting may be called

Council Procedure Rules provide for special meetings of the relevant decision-making body to be called.

When the urgency of the decision dictates that a special meeting of the decision-making body is impracticable, the urgency provisions set out below shall apply, subject to the following requirements being met:

Urgent Decisions: Regulatory / Non-Executive matters

The Chairman and Vice Chairman (or, in their absence, their nominees) of the relevant committee or sub-committee, in consultation with the appropriate Director or Head of Service, have delegated authority to take any non- executive decision subject to the following requirements being met:-

- The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or urgently convened meeting;
- The decision is reported for information to the next available meeting of the decision-making body;
- The provisions of legislation are complied with;
- Advice has been taken from the Council's Borough Solicitor and Monitoring Officer and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

Urgent Decisions: Council

If a decision would normally be required to be made by full Council the decision may be made by an Urgency sub-committee which shall comprise 5 Members of the Council (ratio 3:1:1) and the Mayor (or in his absence the Deputy Mayor) subject to the following requirements being met:-

- The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting ;
- The decision is reported for information to the next available meeting of the Council;
- The provisions of legislation are complied with;
- Advice has been taken from the Chief Executive, Council's Borough Solicitor and Monitoring Officer and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

Urgent Decisions: Cabinet / Executive Matters

The Leader of the Council, the Deputy Leader of the Council and the relevant portfolio holder (or, in their absence, their nominees), have delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met:-

- The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Cabinet, or an urgently convened Cabinet meeting;
- The decision is reported for information to the next available meeting of the Cabinet;
- The provisions of legislation are complied with;
- The relevant Scrutiny Committee Chairman has been notified of the matter;
- The Leader of the main opposition Group has been invited to make representations on the proposed decision;
- Advice has been taken from the Council's Borough Solicitor and Monitoring Officer and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

In addition the following provisions shall apply:-

- Rules 13, 14 and 15 of Access to Information Procedure Rules shall be adhered to, relating to the content of the Forward Plan, general exceptions to the requirement to list decisions on the Forward Plan, and circumstances of special urgency
- Rule 44 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions

- Scrutiny Procedure Rules in relation to Call-in (Rule12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).

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Appendix B (revised)

PROPOSED URGENCY PROVISIONS

When a decision cannot await the next ordinary decision-making meeting, the following procedures apply:

Chairman's power to add an item to the agenda

The Chairman of the Council, the Cabinet, a Portfolio Holder, a committee, or sub-committee have the power to agree to take urgent items of business, at the meeting in question, which have not been included on the agenda of that meeting.

The discretion to do so rests entirely with the Chairman of the body in question or, where appropriate, the portfolio Holder, who alone needs to be satisfied as to the reasons for urgency. These reasons will be minuted.

In the case of executive decisions the following provisions shall also apply:-

- Rule 15 of the Access to Information Rules (Forward Plan and special urgency)
- Rule 44 of the Executive Procedure Rules (Forward Plan and key decisions)
- Rule 13 of the Scrutiny Procedure rules (Call-In and Urgency)

A special meeting may be called

Council Procedure Rules provide for special meetings of the relevant decision-making body to be called.

When the urgency of the decision dictates that a special meeting of the decision-making body is impracticable, the urgency provisions set out below shall apply, subject to the following requirements being met:

Urgent Decisions: Regulatory / Non-Executive matters

The Chairman and Vice Chairman (or, in their absence, their nominees) of the relevant committee or sub-committee, in consultation with the appropriate Director or Head of Service, have delegated authority to take any non- executive decision subject to the following requirements being met:-

- The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or urgently convened meeting;
- The decision is reported for information to the next available meeting of the decision-making body;
- The provisions of legislation are complied with;
- Advice has been taken from the Council's Borough Solicitor and Monitoring Officer and Section 151 Officer;

- All Members of the Council are notified of the decision taken by electronic means.

Urgent Decisions: Council

If a decision would normally be required to be made by full Council the decision may be made by an Urgency sub-committee which shall comprise 5 Members of the Council (ratio 3:1:1) and the Mayor (or in his absence the Deputy Mayor) subject to the following requirements being met:-

- The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting ;
- The decision is reported for information to the next available meeting of the Council;
- The provisions of legislation are complied with;
- Advice has been taken from the Chief Executive, Council's Borough Solicitor and Monitoring Officer and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

Urgent Decisions: Cabinet / Executive Matters

The Leader of the Council, the Deputy Leader of the Council and the relevant portfolio holder (or, in their absence, their nominees), have delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met:-

- The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Cabinet, or an urgently convened Cabinet meeting;
- The decision is reported for information to the next available meeting of the Cabinet;
- The provisions of legislation are complied with;
- The relevant Scrutiny Committee Chairman has been notified of the matter and has been invited to make representations;
- The Leaders of all Opposition Groups have been notified of the matter and have been invited to make representations;
- Advice has been taken from the Council's Borough Solicitor and Monitoring Officer and Section 151 Officer;
- All Members of the Council are notified of the decision taken by electronic means.

In addition the following provisions shall apply:-

- Rules 13, 14 and 15 of Access to Information Procedure Rules shall be adhered to, relating to the content of the Forward Plan, general exceptions to

the requirement to list decisions on the Forward Plan, and circumstances of special urgency

- Rule 44 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions
- Scrutiny Procedure Rules in relation to Call-in (Rule12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 QUESTIONS AT COUNCIL MEETINGS**

The Committee considered proposed changes to the arrangements for questions at Council meetings.

Officers had received a number of comments from Members about the current arrangements for questions at Council meetings:

- question time took too long;
- too many questions were being asked as part of question time;
- there was no reason why questions should not be asked of Officers or Portfolio Holders, thereby removing the need for these to be asked at meetings of Council where other pressing business needed to be dealt with;
- primary questions were sometimes asked which contained a number of subsidiary questions;
- there was need for clarity around rules relating to supplementary questions where a number of questions were asked as part of one primary question;
- some submitted questions were inappropriate.

Generally speaking, the existing rules appeared to be fit for purpose but the Committee was asked to consider whether any amendments should be proposed to Council.

A number of potential amendments to the question time provisions had been circulated for the Committee's consideration as set out in Appendix B to the report.

The views of the scrutiny chairmen on the proposals were reported at the meeting.

RESOLVED

That Council be recommended that

(1) subject to the following amendments, the revised arrangements for questions at Council meetings as set out in Appendix B to the report be approved and adopted:

- a maximum period of 30 minutes be allocated for Members' questions at Council;
- questions be selected by the Mayor in accordance with the criteria as amended;

- those Members submitting more than one question may indicate the priority of importance of each question;
- criterion 2(a) be deleted;
- criterion 2(e) be amended to include reference to executive business;
- paragraphs 3, 5 and 10 be deleted;
- written answers to accepted questions which cannot be dealt with at the meeting be copied to all Members of the Council and not just the questioner;
- the current deadline of 3 clear working days for the submission of questions be retained.

(2) the Borough Solicitor and Monitoring Officer be authorised to make such additions and amendments to the Constitution as she considers are necessary to give effect to the wishes of Council; and

(3) the arrangements be reviewed after 12 months.

[Note: a revised version of Appendix B incorporating the amendments agreed at the Committee's meeting is attached.]

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Questions at Council Meetings

1.0 Report Summary

- 1.1 This report invites the Committee to consider the existing and potential future arrangements for questions at Council meetings.

2.0 Recommendations

- 2.1 That the Committee decide whether changes are needed to the existing Constitutional arrangements for questions at Council meetings and, if so, what changes should take place.
- 2.2 Where changes are proposed, that these be recommended to the next Meeting of Council and that Council be asked to authorise the Borough Solicitor and Monitoring Officer to make such changes and additions to the Council's Constitution to give effect to the wishes of Council.

3.0 Reasons for Recommendations

- 3.1 In order for Members and Officers to clearly understand the Council's approach.

4.0 Wards Affected

- 4.1 All Wards are affected.

5.0 Local Ward Members

- 5.1 All local Ward Members are affected.

6.0 Policy Implications

- 6.1 The Council's agreed arrangements must be clearly documented in the Constitution.

7.0 Financial Implications

- 7.1 No such implications arise from the proposals contained in this report.

8.0 Legal Implications

- 8.1 Once agreed, the arrangements will be included in the Constitution which can be amended by Council following a recommendation of the Committee.

9.0 Risk Management

- 9.1 No risks would appear to arise from the proposals contained in this report.

10.0 Background

- 10.1 Following comments made by the Mayor at the Annual Council meeting, and further discussions with officers, the Chairman of the Constitution Committee agreed that a report should be considered at the first meeting of the Committee of the new Municipal Year. At that meeting, the Committee asked for this matter to be listed on its work programme. This report therefore comes to the Committee in accordance with the timing of that programme.

11.0 Information

- 11.1 A number of views have been expressed about the Council's current arrangements for questions at Council meetings. Whilst some Members are no doubt content with the arrangements, comments have been made that:
- question time takes too long;
 - too many questions are being asked as part of question time;
 - there is no reason why questions should not be asked of Officers or Portfolio Holders, thereby removing the need for these to be asked at meetings of Council where other pressing business needs to be dealt with;
 - primary questions are sometimes asked which contain a number of subsidiary questions;
 - there is need for clarity around rules relating to supplementary questions where a number of questions are asked as part of one primary question;
 - some submitted questions are inappropriate.
- 11.2 The Council's existing arrangements for questions at Council meetings are set out in Appendix A to this report. Generally speaking, the existing rules would appear to be fit for purpose but the Committee is encouraged to consider whether any of the further provisions listed in Appendix B, or any other provisions, should be adopted by Council in addition to the existing provisions.

12.0 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 Manager

Tel No: 01270 686670

Email: brian.reed@cheshireeast.gov.uk

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Appendix A

Public speaking and questions at Council meetings

- 11.1 A Member of the Council may ask the Mayor, the appropriate Cabinet Member or the Chairman of a Committee any question about a matter which the Council, the Cabinet or the Committee has powers, duties or responsibilities.
- 11.2 A Member may ask the nominated/designated representative of the Cheshire Fire Authority or the Cheshire Police Authority any question about the responsibilities of his/her respective Authority.
- 11.3 Questions must be sent in writing to the Monitoring Officer at least three clear working days before the meeting.
- 11.4 The Mayor may agree to take urgent questions where he considers that it has not been possible for a Member to give the required notice, provided that a copy of the question is given to the Monitoring Officer before the meeting starts.
- 11.5 Questions will be asked and answered without discussion. In replying, the Member responding will use their reasonable endeavours to address the matters raised in the question. The Member responding may decline to answer any question or may: reply direct, reply by reference to a publication, or reply by written answer with a copy to such other Members of the Council as the Council agrees, or refer the question to an appropriate committee or to the Cabinet.
- 11.6 Following the answer to each question, the questioner may ask a concise and focussed supplementary question which relates to the subject matter of the initial question and answer. The Mayor may choose to disallow a supplementary question if, in his opinion, it is inappropriate or unduly lengthy. The Member answering the supplementary question will decide whether or not to reply.
- 11.7 Where a question submitted under this Procedure Rule relates to a matter that appears on the agenda for that meeting, the question shall be put and answered in accordance with this Procedure Rule, at the start of the consideration of that matter.
- 11.8 A public speaking time and public question facility will apply to Council meetings, as detailed in Appendix 7.

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Appendix B

Potential additional question-time provisions

1. A maximum question time period of X minutes.
2. Questions will be dealt with by the Mayor according to the following criteria:
 - a. Questions will be rejected if they could reasonably have been asked and properly answered before the Council meeting.
 - b. Where time permits, questions relating to Council policy may be accepted.
 - c. Where time permits, questions which are highly relevant to Council business may be accepted.
 - d. Where time permits, questions which are of a topical nature may be accepted.
 - e. Where time permits, questions which relate to existing business of a scrutiny committee may be accepted.
3. The total time allowed for the question, answer and supplementary question shall be 5 minutes.
4. Any questions which are accepted, but which cannot be dealt with during the allotted period will be answered in writing.
5. No more than X question(s) shall be asked by any one Member at a meeting of Council and no subsidiary questions shall be permitted.
6. Questions will not be read out at Council meetings.
7. Questions will be brief, clear and focussed.
8. No inappropriate, frivolous, derogatory or vexatious questions will be allowed.
9. No questions will be allowed which repeat, or are substantially the same as, questions submitted to a meeting of Council during the preceding 3 months.
10. No questions will be allowed which do not relate to an area of Council policy or procedure.
11. Where any question might be disallowed under the agreed provisions, the Mayor, as Chairman of Council, will have absolute discretion to determine whether or not to do so.
12. Questions shall be submitted no later than 5 clear working days before the Council meeting in question.
13. The Mayor may choose to allow such questions as he deems to be urgent, even when the above rules relating to deadlines for submission have not been met.

Provided that in respect of those questions posed as part of the Council question-time, the existing provisions of the Constitution shall apply in respect of supplementary questions.

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Appendix B (revised)

Potential additional question-time provisions

1. A maximum question time period of 30 minutes.
2. Questions will be selected by the Mayor. The following criteria will be used by the Mayor in making his selection:
 - a. Where time permits, questions relating to Council policy may be accepted.
 - b. Where time permits, questions which are highly relevant to Council business may be accepted.
 - c. Where time permits, questions which are of a topical nature may be accepted.
 - d. Where time permits, questions which relate to existing business of a scrutiny committee, or to existing executive business, may be accepted.
3. those Members submitting more than one question may indicate the priority of importance of each question;
4. Any questions which are accepted, but which cannot be dealt with during the allotted period, will be answered in writing and such answer will be copied electronically to all Members.
5. Questions will not be read out at Council meetings.
6. Questions will be brief, clear and focussed.
7. No inappropriate, frivolous, derogatory or vexatious questions will be allowed.
8. No questions will be allowed which repeat, or are substantially the same as, questions submitted to a meeting of Council during the preceding 3 months.
9. Where any question might be disallowed under the agreed provisions, the Mayor, as Chairman of Council, will have absolute discretion to determine whether or not to do so.
10. Questions shall be submitted no later than 3 clear working days before the Council meeting in question.
11. The Mayor may choose to allow such questions as he deems to be urgent, even when the above rules relating to deadlines for submission have not been met.

Provided that in respect of those questions posed as part of the Council question-time, the existing provisions of the Constitution shall apply in respect of supplementary questions.

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 MEMBER ACCESS TO PART 2 AND CONFIDENTIAL REPORTS**

The Committee considered proposed changes to the Council's policy on providing access for Members to Part 2 and confidential reports.

Most reports which were presented to the Council's decision-making and other bodies were freely available and open to inspection by Members and members of the public. However, certain reports, which officers believed contained "exempt information" or confidential information, could be held back from public circulation, for example, because the contents appeared to involve the financial or business affairs of an individual, or information about a proposed prosecution.

Members of the body in question were generally entitled to receive copies of Part 2 or confidential reports. However, where a Member was not a member of that body, there was no automatic right of access. Where this was the case, the Member had to demonstrate a "need to know" such information in order to properly carry out their duties as a Councillor. There was currently no formally agreed mechanism in place which provided for a judgement to be made as to whether or not a legitimate "need to know" existed, when this was claimed to be the case by a Member. In the absence of a formally agreed mechanism, therefore, the judgement had to be made by Officers. In practice, this could put Officers in a difficult position, requiring them to make a decision as to whether or not legal criteria had been met, potentially against a backdrop of strong views expressed by the Member in question.

The Council had previously reviewed the arrangements for access to Part 2 papers and had extended a right to receive such papers to

- Group Leaders
- Ward Members affected, in accordance with the Ward Member Protocol.
- Relevant scrutiny committee Chairmen and Vice-Chairmen.
- Members visiting the meeting in question, who would receive the papers upon arrival.

However, while this approach appeared to have addressed the needs of most Members wishing to see Part 2 reports, it could be argued that the approach was not entirely logical. It was therefore proposed that the arrangements for access to Part 2 and confidential papers be reviewed to address the perceived problems with the current arrangements. In this respect, it was suggested that all Part 2 and confidential reports could be released to Members upon request, except for reports containing the following sensitive categories, which would be excluded from automatic release:

- Staffing information, where the identity of Officers would be revealed; and

- Information relating to vulnerable children or adults

Even in respect of reports containing the above categories of information, it was quite possible that a Member might still claim to have a “need to know”. In order to provide for these circumstances it was suggested that a revised ‘need to know’ procedure as set out at Appendix B to the report could be adopted.

It was recommended that the arrangements be introduced initially for a six month trial period, after which they would be reviewed.

RESOLVED

That Council be recommended that

- (1) the proposed approach to access to Part 2 and confidential papers, including the revised ‘need to know’ procedure set out in Appendix B to the report, be approved subject to the category relating to staffing information being amended to refer to the identity of *individual* Officers;
- (2) the Borough Solicitor be authorised to make such changes and additions to the Constitution as she considers are necessary in order to give effect to the wishes of Council, and that
- (3) the arrangements be put in place for a trial period of 6 months, after which they be reviewed.

[Note: a revised version of Appendix B incorporating the amendments agreed at the Committee’s meeting is attached.]

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Member Access to Part 2 and Confidential Reports

1.0 Report Summary

- 1.1 This report provides information upon the Council's existing approach in terms of access for Members to Part 2 and confidential reports, and sets out potential options for the future.

2.0 Recommendations

- 2.1 That
- (1) Members consider whether Council should adopt the approach set out in paragraph 10.10 and Appendix B of this report and, if so
 - (2) authorisation be given to the Borough Solicitor to make such changes and additions to the Constitution as she considers are necessary in order to give effect to the wishes of Council, and that
 - (3) the above arrangements be put in place for a trial period of 6 months, after which they will be reviewed.

3.0 Reasons for Recommendations

- 3.1 In order for Members and Officers to understand clearly the Council's approach to the availability to Members of Part 2 and confidential reports.

4.0 Wards Affected

- 4.1 All Wards are affected.

5.0 Local Ward Members

- 5.1 All local Ward Members are affected.

6.0 Policy Implications

- 6.1 The Council's agreed arrangements should be reflected in the Constitution which clearly sets these out.

7.0 Financial Implications

- 7.1 There are no such implications.

8.0 Legal Implications

- 8.1 The legal implications are contained within the main body of this report.

9.0 Risk Management

- 9.1 By clearly setting out in the Constitution the way in which the Council deals with Member rights of access to Part 2 and confidential reports, risk is minimised. Members will be clear as to their own rights and officers will be clear upon how the Council's arrangements should apply to Members.
- 9.2 However, extending the rights of access to Part 2 and confidential reports to Members gives Members rights over and above those which are afforded by the law. Members would be relied upon to deal with the information in question appropriately.

10.0 Background

- 10.1 Most reports which are presented to the Council's decision-making and other bodies are freely available and open to inspection by Members and members of the public. However, certain reports, which officers believe contain "exempt information" or confidential information, may be held back from public circulation because the contents appear to meet certain statutory criteria eg they contain information about the financial or business affairs of an individual, or information about a proposed prosecution. Those categories of information which are exempt are referred to in the Access to Information Procedure Rules within the Constitution. They are set out in Appendix A to this report.
- 10.2 The final decision on whether such reports will be dealt with by the decision-making body in private is made by the body itself when it considers the standard agenda item: "Exclusion of the Public and Press". If this is moved, seconded and agreed by the body in question, the report will be dealt with in private and the report will remain unavailable to the public and press.
- 10.3 The situation in respect of access to such reports by Members of the Council is, however, different. Over many years, court cases have established clear principles relating to the rights of Members to Part 2 and confidential reports. These principles are summarised in the following paragraphs.
- 10.4 Members of the body in question are generally entitled to receive copies of Part 2 or confidential reports. However, where a Member is not a member of that body, there is no automatic right of access. Where this is the case, the Member must demonstrate a "need to know" such information in order to properly carry out duties as a Councillor.

- 10.5 If this thinking is followed in each case, a judgement has to be made when a request is made by a non-member of the decision-making body in question: does the Member requesting access to the report have a “need to know”, in order to properly carry out their duties as a Councillor? The decision on whether there is a “need to know” is for the Council to make and the courts are reluctant to interfere.
- 10.6 There is currently no formally agreed mechanism in place which provides for a judgement to be made as to whether or not a legitimate “need to know” exists, when this is claimed to be the case by a Member. In the absence of a formally agreed mechanism, therefore, the judgement must be made by Officers. In practice, this can put Officers in a difficult position, requiring them to make a decision as to whether or not legal criteria have been met, potentially against a backdrop of strong views expressed by the Member in question.
- 10.7 The Council’s existing practice is to widen the categories of cases where Members automatically receive Part 2 Cabinet reports. In addition to the Cabinet members, reports in hard copy are made available to:
- Group Leaders
 - Ward Members affected, in accordance with the Ward Member Protocol.
 - Relevant scrutiny committee Chairmen and Vice-Chairmen.
 - Members visiting the meeting in question, who would receive the papers upon arrival.

However, whilst this approach appears to have been effective in appropriately addressing the needs of most Members wishing to see Part 2 reports, and the categories of Members listed above are more likely than others to have a “need to know”, this is not based on a judgement in each case of a request against “need to know” principles. It could be argued that the approach is not entirely logical.

It is not proposed to remove the existing arrangements as set out above.

- 10.8 There are no similar arrangements for regulatory committees.
- 10.9 Looking at the picture nationally, there is widely varying practice in respect of Member access to Part II and confidential reports. Even when consideration is given to the practices of the demised authorities, it is understood that different approaches were followed. Some authorities allow completely unrestricted access to Members to all Part 2 and confidential reports. This removes the need for any Officer judgement to be exercised when Members ask for copy reports, but the approach carries with it an acknowledgement that Members might be afforded access to the most sensitive information, eg staffing, disciplinary, Code of Conduct and child care information. The practices of these authorities therefore rely on trust.
- 10.10 Alternatively, all Part 2 and confidential reports could be released to Members upon request, except for certain very sensitive categories, which would be

excluded from automatic release. These arrangements could be trialled for 6 months in order to establish how they settle down. Such suggested categories of report could be those which contain the following information:

- Staffing information, where the identity of Officers would be revealed; and
- Information relating to vulnerable children or adults

Even in respect of reports containing the above categories of information, it is quite possible that a Member might still claim to have a “need to know”. In order to provide for these circumstances it is suggested that a procedure such as that which is set out at Appendix B could be adopted.

10.11 Consideration should now be given to whether the Council’s existing approach should be varied. This approach should be documented and acknowledged in the Constitution.

11.0 Access to Information

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

Name: Brian Reed
Designation: Democratic Registration Services Manager
Tel No: 01270 686670
Email: Brian.reed@cheshireeast.gov.uk

Appendix A

Categories of exempt Part II information

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

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

EXCEPT THAT

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

The following will also be exempt information for some meetings of the Standards Committee or a Sub-Committee of it.¹

Category	Condition
7A. Information which is subject to any obligation of confidentiality.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

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

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

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Proposed procedure for demonstrating a “need to know”

There is a general presumption that in the interests of transparency and open government, the majority of reports should, whenever reasonably possible, be considered in the open part of the agenda of meetings.

In general all reports to decision-making bodies of the Council are made available to Members upon request. It is understood that Members will take care not to publicise or share information from those reports to which they have access and which contain Part II “exempt” or confidential information.

Reports to Cabinet which contain Part II or confidential information shall be provided to the Leaders of each political group, to scrutiny committee chairmen and scrutiny committee vice chairmen in advance of the meeting in question, and to any Member of the Council attending the Cabinet meeting, upon their arrival at the meeting.

Any Member can ask for a copy of any Part II or confidential report of any decision-making body, but they will not be automatically entitled to receive a copy of those reports containing the following categories of information, in respect of which they will be expected to demonstrate a “need to know”:

- Staffing information, where the identity of officers would be revealed
- Information relating to vulnerable children and adults

In instances where such a Member claims to have a “need to know” about such a report, the following process will apply:

- The Member will submit to the Borough Solicitor and Monitoring Officer, or to the Democratic and Registration Services Manager in writing, information in support of their claim to have a “need to know”.
- The claim will be submitted to the relevant Chairman (or Vice Chairman, in his/her absence) of the non-executive committee or sub committee in question, or to the Portfolio Holder (or the Leader, in his/her absence), in respect of an executive decision, for determination.
- The determination as to whether or not a “need to know” has been demonstrated will be based on officer advice and will include legal advice.
- Once a determination has been made, this will be communicated to the Member who has made the claim.

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- Staffing information, where the identity of individual officers would be revealed
- Information relating to vulnerable children and adults

In instances where such a Member claims to have a “need to know” about such a report, the following process will apply:

- The Member will submit to the Borough Solicitor and Monitoring Officer, or to the Democratic and Registration Services Manager in writing, information in support of their claim to have a “need to know”.
- The claim will be submitted to the relevant Chairman (or Vice Chairman, in his/her absence) of the non-executive committee or sub committee in question, or to the Portfolio Holder (or the Leader, in his/her absence), in respect of an executive decision, for determination.
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COUNCIL MEETING – 13TH OCTOBER 2011

Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011

23 PROPOSED AMENDMENTS TO THE COUNCIL'S CONTRACT PROCEDURE RULES

The Committee considered proposed amendments to the Council's Contract Procedure Rules.

At its meeting on 14th July 2011, the Committee deferred consideration of a report on revised Contract Procedure Rules to enable further work to be carried out. Council at its meeting on 21st July noted the Committee's decision and resolved that in the interim, and in no way fettering the Constitution Committee, the financial threshold at which the Rules require a formal tendering procedure be increased from £50,000 to £75,000.

The Borough Solicitor had also met the Vice-Chairman of the Committee to consider issues arising from the debate at the last meeting of the Committee, and as a result of that meeting further amendments to the Rules had been made as set out in the report.

Since Vesting Day, the Council had approved a number of amendments to the Constitution. As new legislation came into force, and as the Council found better ways of doing things, building upon experience and best practice, the Constitution would continue to need to be amended. The proposed amendments to the Contract Procedure Rules reflected this approach.

The proposed amendments to the Contract Procedure Rules were outlined in the report and highlighted in the Appendix to the report. These included making permanent the change to the financial threshold for tendering.

RESOLVED

That the amendments to the Contract Procedure Rules (as set out in the Appendix to the report) be recommended to the Council for approval and the Constitution be amended accordingly.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Borough Solicitor
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 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 the amendments to the 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.

3.0 Reasons for Recommendations

- 3.1 The Council's Contract Procedure Rules form part E of the Council's Constitution.
- 3.2 The amendments have been proposed to reflect best practice 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 Council's ability to receive electronic tenders, as well as to clarify and remove parts of the Contract Procedure Rules which are no longer applicable. There is also a proposal to increase the financial threshold at which the Contract Procedure 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 At the last meeting of the Committee Council was asked to defer consideration of the report to a future meeting to enable further work to be carried out and that a report be brought to a future meeting reviewing and amending the Finance element of the Finance and Contract Procedure Rules.

- 10.2 At its meeting held on 21st July 2011 the Council resolved

- 1 That Council note that the Constitution Committee has deferred consideration of the report to a future meeting to enable further work to be carried out.
- 2 That a report be brought to a future meeting of the Constitution Committee, reviewing and amending the Finance element of the Finance and Contract Procedure Rules.
- 3 That in the interim, and in no way fettering the Constitution Committee, the financial threshold at which the Rules require a formal tendering procedure be increased from £50,000 to £75,000.

- 10.3 The Borough Solicitor also met with the Vice-Chairman of the Committee to consider issues arising from the debate at the last meeting of the Committee, as a result of that meeting further amendments to the Rules were made, namely:

1. A robust statement added at the start of the Rules emphasising the obligation of officers comply.
2. Clarification on the circumstances where it is appropriate to request a Delegated Decision to waive competition.
3. An explanation of how the total value of a contract is to be calculated.
4. Additional wording on procedure that is required at relevant thresholds.
5. A statement that the Council can procure through a consortia framework if legally entitled or as a member of a consortium.
6. Guidance that it is the procuring officer's responsibility to maintain written quotes for audit purposes.
7. Clear demarcation of the process for submitting hard copy and electronic tenders.

8. A requirement that a procuring officer takes advice from the Borough Solicitor should he not wish to exclude on the basis of a tenderer being insolvent, being convicted of a criminal offense relating to running a business, grave misconduct in running a business or failure to pay taxes or social security contributions.
9. Explanation that in some circumstances a quote can be selected on the basis of the most economically advantageous quote.

10.4 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.

10.5 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.

10.6 Knowledge Map

It is recommended that the Contract Procedure 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.

10.7 Increase to Thresholds

10.7.1 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.

10.7.2 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.

10.7.3 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.

10.7.4 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.

- 10.7.5 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.

10.8 Informal Tenders below £10,000

- 10.8.1 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.

- 10.8.2 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.

10.9 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.

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
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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

INDEX

		<u>Page</u>
<u>E.1 – E.5</u>	<u>Introduction</u>	<u>X</u>
<u>E.6 – E.12</u>	<u>Compliance and Officer Responsibilities</u>	<u>X</u>
<u>E.13</u>	<u>Appointment of Consultants</u>	<u>X</u>
<u>E.14 – E.17</u>	<u>Pre Contract Requirements</u>	<u>X</u>
<u>E.18</u>	<u>General Requirements</u>	<u>X</u>
<u>E.19</u>	<u>Contract Procedures</u>	<u>X</u>
<u>E.20 – E.22</u>	<u>Exceptions to Requirements of Competition Framework Agreements</u>	<u>X</u>
<u>E.23 – E.26</u>	<u>Other Exceptions To Requirements of Competition</u>	<u>X</u>
<u>E.27 – E.30</u>	<u>Variations and Contract Extensions</u>	<u>X</u>
<u>E.31</u>	<u>Advertising of Procurement Opportunities</u>	<u>X</u>
<u>E.32</u>	<u>Competition Requirements below £10,000</u>	<u>X</u>
<u>E.33 – E.34</u>	<u>Competition Requirements between £10,000 and £75,000</u>	<u>X</u>
<u>E.35 – E.36</u>	<u>Competition Requirements for Procurements over £75,000 but below the EU Procurement threshold</u>	<u>X</u>
<u>E.37</u>	<u>Negotiated and Competitive Dialogue Tendering Procedure</u>	<u>X</u>
<u>E.38 – E.43</u>	<u>General Procedure</u>	<u>X</u>
<u>E.44 – E.49</u>	<u>Open Tendering Procedure</u>	<u>X</u>
<u>E.50 – E.53</u>	<u>The Restricted Procedure</u>	<u>X</u>
<u>E.54</u>	<u>Despatch of Tenders</u>	<u>X</u>
<u>E.55 – E.62</u>	<u>Submission and Receipt of Tenders</u>	<u>X</u>
<u>E.63- E.66</u>	<u>Opening and Registration of Hard Copy Tenders / Quotations</u>	<u>X</u>

<u>E.67 – E.68</u>	<u>Errors In Tenders</u>	<u>X</u>
<u>E.69</u>	<u>Exclusions Of Tenders</u>	<u>X</u>
<u>E.70 – E.71</u>	<u>Evaluation of Tenders and criteria for selecting a supplier</u>	<u>X</u>
<u>E.72 – E.73</u>	<u>Acceptance of Tenders / Quotations</u>	<u>X</u>
<u>E.74 – E.76</u>	<u>Criteria for Awarding the Contract</u>	<u>X</u>
<u>E.77 – E.79</u>	<u>Specifications</u>	<u>X</u>
<u>E.80 – E.82</u>	<u>Post Tender Negotiations (Open and Restricted Procedure)</u>	<u>X</u>
<u>E.83</u>	<u>Best Offer</u>	<u>X</u>
<u>E.84</u>	<u>Procedure For Notification of Contract Award for EU Contracts</u>	<u>X</u>
<u>E.85 – E.86</u>	<u>Challenging the award of a Contract</u>	<u>X</u>
<u>E.87 – E.88</u>	<u>Keeping Written Records</u>	<u>X</u>
<u>E.89</u>	<u>Contracts Register</u>	<u>X</u>
<u>E.90</u>	<u>Changes To Contracts</u>	<u>X</u>
<u>E.91</u>	<u>Storing Documents</u>	<u>X</u>
<u>E.92</u>	<u>Requests for Information under The Freedom of Information Act</u>	<u>X</u>
<u>E.93</u>	<u>Contracts where the Council is the supplier</u>	<u>X</u>
<u>E.94 – E.96</u>	<u>Collaborative and Partnership working</u>	<u>X</u>
<u>E.97</u>	<u>E Procurement</u>	<u>X</u>
<u>E.98</u>	<u>Written Contracts and Signing of Contracts</u>	<u>X</u>
<u>E.99 – E.100</u>	<u>Content of Contracts</u>	<u>X</u>
<u>E.101 – E.111</u>	<u>Contract Terms and Conditions</u>	<u>X</u>
<u>E.112</u>	<u>Parent Company Guarantees and Performance Bonds</u>	<u>X</u>
<u>E.113 – E.114</u>	<u>Performance Monitoring</u>	<u>X</u>

Introduction

- E.1 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. Any breaches should be reported to the relevant Chief Officer. Failure to comply with these Rules or the associated detailed guidance may be 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.

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. The aim is 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 £75,000 and tenders (formal procurement over £75,000)

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 Director of Finance and Business Services.
- 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 Director of Finance and Business Services. 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 Rules and the associated detailed guidance on the Knowledge Map.

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 may be 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 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 (DD) to be prepared

DD's are not available if the proposed exception will breach national or EU legal requirements. A DD can only waive the Council's internal rules.

The main areas where it may be appropriate to request a DD are set out within Sections E.23 to E.26. Before a DD is prepared the Chief Officer or his delegated representative must seek authorisation to proceed from the Procurement Service. The draft DD must then be signed off by Procurement, Legal and Finance before being considered by the Borough Solicitor and the Director of Finance and Business Services.

All attempts to waive the rules will be subject to very close scrutiny and may be reviewed by the Corporate Management Team. The DD must

clearly set out the exemption or the exception from the Rules which is being relied upon.

Reason to update Constitution is to provide clearer guidance on the appropriate use of DD's.

- E.9 All such exceptions should be recorded in the delegated decisions register and be available for inspection as required.
- E.10 National and European Union legislation overrides the 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 Director of Finance and Business Services 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 Director of Finance and Business Services 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 £75,000 the appropriate officer should seek advice from The Director of Finance and Business Services 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 Director of Finance and Business Services;
 - Assess the risks associated with the purchase and how to manage them;
 - Prepare a procurement plan where the value of the purchase exceeds £75,000 or where the purchase poses a significant risk to the Council and send a copy to the Director of Finance and Business Services;
 - If the procurement is subject to European Procurement Rules, advice should be sought from the Director of Finance and Business Services.
 - Ensure that all bid evaluation criteria have been determined in advance; and
 - Ensure that these Rules and 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 determined by considering the annual cost of the goods/services and multiplying by the number of years that the contract is required for including any optional extensions.

	Total Value	Procedure to follow where no
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		Contract exists
Informal	Below £10,000	Compare at least 3 quotes received by advertisement on the <u>Chest</u> , by e mail or by telephone with a written record See E 32
	Above £10,000 but below £75,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders received by advertising on the Chest. See E33
Formal	Above £75,000 but below the EU threshold* for goods, services and works.	Formal tender process from at least 3 suppliers See E35.
	Above the EU threshold* for goods, services and works. <u>See Procurement Knowledge Map for up to date current thresholds.</u> <u>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 E38

Exceptions to Requirements of Competition

Framework Agreements

- E.20 Only Central Government, Local Government, consortia and other legally procured Framework Agreements may be used for the procurement of goods or services. 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 Director of Finance and Business Services.

Reason to make it clear that framework agreements created by Consortia can be used by the Council

- E.21 Examples of Central Government Frameworks appear on 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. Advice on the process should be sought from the Director of Finance and Business Services.

- 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 Director of Finance and Business Services.

Other Exceptions to Requirements of Competition

- E.23 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 having a DD signed by the Borough Solicitor and the Director of Finance and Business Services, 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 Director of Finance and Business Services 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 Director of Finance and Business Services, it is considered the 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 Director of Finance and Business Services 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 Director of Finance and Business Services and the Borough Solicitor.

- E.25 In those circumstances where only 3 quotations or tenders are required, and these 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 Director of Finance and Business Services.
- 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 Director of Finance and Business Services 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 Director of Finance and Business Services 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 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 Director of Finance and Business Services 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 Officer or his authorised officer should identify the most appropriate method of advertisement including but not restricted to local press, relevant trade journals, council websites and other websites. The Director of Finance and Business Services 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 guidance in the Knowledge Map and 'Ordering and paying for work, goods and services' (D.19 – D.43). It is the responsibility of the officer to retain written notice of all the quotes for audit purposes (See E19)

Competition Requirements for Procurements between £10,000 and £75,000

- 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 that the value of the goods or services would if not split would breach the European Procurement Rules threshold. At least three written quotes must be obtained by advertising on the Chest.
- E.34 Records required to be kept under Rules E.20 – E.26 and E.32 – E.53 shall be in a format to be determined by the Director of Finance and Business Services.

Competition Requirements for Procurements over £75,000 but below the EU Procurement threshold

- E.35 Where contracts have an aggregate value over the life of the contract estimated at £75,000 or more, a formal tendering procedure must be undertaken in a format to be approved by the Director of Finance and Business Services. 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 Director of Finance and Business Services.

Competition Requirements under European Procurement Rules (currently applicable for Contracts valued as follows, until 31st December 2011)

Services	Goods	Works
£156,442(€193,000)	£156,442 (€193,000)	£3,927,260(€4,485,000)

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 Director of Finance and Business Services 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 Director of Finance and Business Services 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 Director of Finance and Business Services and;

- Stage 2 – Tender

This stage involves the preparation of a detailed tender specification and instructions which explain 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 Director of Finance and Business Services.

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 Director of Finance and Business Services 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 Director of Finance and Business Services 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 Director of Finance and Business Services.

- 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 £75,000 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 Director of Finance and Business Services 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.64 – E.66 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 Director of Finance and Business Services. Such tenders will be opened and returned to the tenderer if they are not to be considered.

Opening of Electronic Tenders

- E.63 The majority of tenders are now submitted via the Due North System. These electronic tenders are verified by The Borough Solicitor or her delegate and released to the Procurement Department.

Opening and Registration of Hard CopyTenders/Quotations

- E.64 Hard copy tenders shall be opened at one time by the Borough Solicitor or

her authorised officer, in the presence of the purchasing Chief Officer or his designated representative and Director of Finance and Business Services or his designated representative.

E.65 The authorised officer must at the time non electronic 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.66 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.

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. 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.

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 Director of Finance and Business Services.

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 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. Advice should sought from the Borough Solicitor in the event that you do not wish to exclude on this basis.
 - Businesses can be excluded if they have not paid all their taxes or social security contributions. Advice should sought from the Borough Solicitor in the event that you do not wish to exclude on this basis.
 - 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 Director of Finance and Business Services 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. Usually quotes will be selected for the lowest price however they can be selected on the basis of the most economically advantageous quote if this is made clear in the request for quote and sufficient detail is submitted to enable an evaluation. 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 Director of Finance and Business Services and the Borough Solicitor have given written approval of the procedure(s) to be adopted in any negotiation. The Director of Finance and Business Services 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 Director of Finance and Business Services as to whether the “best offer” approach is appropriate in the circumstances.

Disclosure of Tender information and debriefing Tenderers

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.
- A contract award notice must be published in OJEU within 48 days of 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 30 days 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 setting aside of the contract and the award of 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 and the limitation period for bringing a claim has been reduced to 30 days*

E.86 Advice as to the extent and detail necessary for debriefing tenderers should be sought from the Director of Finance and Business Services.

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 Director of Finance and Business Services details of all contracts it has awarded with a total value of £75 000 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 Director of Finance and Business Services and the Borough Solicitor.

Contracts where the Council is the supplier

- E.93 Any Service, 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.

Collaborative, Consortia and Partnership working

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

- E.95 Collaborative, consortium 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.

Reason to make it clear that the Council can procure as part of a consortium

- E.96 Further guidance can be obtained from the Director of Finance and Business Services 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.
<u>Above £75,000</u>	Formal contract executed under seal and attested by the Borough Solicitor or her authorised signatory.

Content of Contracts

- E.99 The appropriate Chief Officer or 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 £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 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 contracting party 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 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 authorised officer (following consultation with the Borough Solicitor and the Director of Finance and Business Services);
- 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** 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 Director of Finance and Business Services in advance of any contract being entered into.

Parent Company Guarantees and Performance Bonds

- E.112 Advice of the Director of Finance and Business Services 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 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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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 PROPOSED INTERIM AMENDMENTS TO THE OFFICER DELEGATION SCHEME**

The Committee considered proposed interim amendments to the Council's Officer Delegation Scheme.

The officer delegation scheme had been revised to reflect the most recent changes to the senior management structure.

Advice was regularly sought from the Borough Solicitor on what further approvals if any were required when implementing elected member decisions. This was particularly relevant when dealing with processes that required statutory procedures to be followed or consultation exercises to be undertaken. The Officer Delegation Scheme had therefore been revised at paragraph 5.2 to empower officers to deal with statutory procedures or undertake consultation exercises on the basis that in doing so they must consult appropriate members.

A separate exercise had been undertaken by the Assets Team in consultation with relevant Portfolio holders to clarify responsibility for the control and management of the Council's Assets so that day-to-day operational decisions were delegated in future to the Strategic Director (Places and Organisational Capacity).

Only interim changes shown underlined were being proposed to reflect the fact that the Officer Delegation Scheme would need to be consistent with the provisions in the Finance and Contract Procedure Rules and any changes arising from the management review of the third, fourth and fifth tiers being undertaken by the Chief Executive. Accordingly, a further report on the Officer Delegation Scheme would be needed to align the Scheme to any revisions to the Finance and Contract Procedure Rules and the outcome of the next phase of the senior management structure review.

The Officer Scheme of Delegation, showing proposed amendments highlighted, was set out in the Appendix to the report.

In considering the revised management responsibilities, Members asked where responsibility now lay for Crime Reduction, which had previously been a responsibility of the Chief Executive. Officers undertook to seek clarification and advise Members accordingly.

In considering the proposed delegation of asset management functions to Officers, Members asked about the implications for the operational management of premises by Services and whether specific service level agreements would need to be entered into with relevant service managers.

RESOLVED

That

- (1) the interim amendments to the Officer Delegation Scheme (as set out in the Appendix to the report) be recommended to Council for approval, subject to the amendment of paragraph 5.2 to refer to 'non-statutory *statistically valid* consultations', and the Constitution be amended accordingly;
- (2) a presentation on the Corporate Landlord Function should be made to the Corporate Scrutiny Committee; and
- (3) a further report on the Officer Delegation Scheme be submitted to a future meeting of the Committee when the senior management review has been completed.

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Borough Solicitor
Subject/Title: Proposed Interim Amendments to the Officer Delegation Scheme

1.0 Report Summary

- 1.1 The purpose of this report is to propose interim amendments to the Council's Officer Delegation Scheme and to seek the approval of the Committee and a recommendation from it to the Council that the interim amendments be made.

2.0 Recommendations

- 2.1 That

- (1) the interim amendments to the Officer Delegation Scheme (as set out in the Appendices to this report) be recommended to the Council for approval and the Constitution be amended accordingly; and
- (2) a further report on the Officer Delegation Scheme be submitted to a future meeting of this Committee when the senior management review has been completed.

3.0 Reasons for Recommendations

- 3.1 The Officer Delegation Scheme is contained within Part 3 of the Council's Constitution – Responsibility for Functions. The amendments are proposed to bring clarity to and avoid duplication between the role and responsibilities of Chief Officers and the Cabinet and review the management and control of assets.

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.

9.0 Risk Management

- 9.1 The Council has robust systems of internal control to ensure that officers use their delegations in accordance with the requirements of the Constitution.

10.0 Background and Options

- 10.1 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.
- 10.2 The officer delegation scheme has been revised to reflect the most recent changes to the senior management structure.
- 10.3 Advice is regularly sought from the Borough Solicitor on what further approvals if any are required when implementing elected member decisions. This is particularly relevant when dealing with processes that require statutory procedures to be followed or consultation exercises to be undertaken. The Officer Delegation Scheme has therefore been revised at paragraph 5.2 to empower officers to deal with statutory procedures or undertake consultation exercises and that in doing so they must consult appropriate members.
- 10.4 A separate exercise has been undertaken by the Assets Team in consultation with relevant Portfolio holders to clarify responsibility for the control and management of the Council's Assets so that day-to-day operational decisions are delegated in future to the Strategic Director (Places and Organisational Capacity)
- 10.5 Only interim changes shown underlined are being proposed to reflect that the Officer Delegation Scheme will need to be consistent with the provisions in the Finance and Contract Procedure Rules and any changes arising from the management review of the third, fourth and fifth tiers being undertaken by the Chief Executive. Accordingly a further report on the Officer Delegation Scheme will be needed to align the Scheme to any

revisions to the Finance and Contract Procedure Rules and the outcome of the next phase of the senior management structure review.

11.0 Access to Information

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

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POWERS AND RESPONSIBILITIES OF OFFICERS
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INDEX

PAGE

An Introduction to the Roles and Responsibilities of Officers
and Elected Members

Executive Functions Defined

Officer Management Arrangements

Principles Underpinning the Officer Delegation Scheme

Powers to Impellent Decisions of the Council and Cabinet

General Financial Responsibilities

Bad Debts

Cash Imprests Accounts

Fees and Charges

Personnel

Changes to Staffing Structures

Management of Land, Premises, Vehicles, Equipment and Stores

Legal Authorisations and Compliance

Safeguarding Children

Powers and Duties of the Chief Executive

Powers and Duties of the Director of Public Health (pending)

Powers and Duties of Strategic Director (Places and
Organisational Capacity)

Highways, Traffic and Street Management

Waste

Housing

Assets

Powers and Duties of the Head of Health and Wellbeing

Libraries, archives and culture

Public Rights of Way

Sports and Leisure

Powers and Duties of the Head of Safer and Stronger Communities

- Trading standards and consumer protection
- Licensing functions
- Environmental health

Powers and Duties of the Head of Planning and Housing

- Local Land Charges
- Town and Country Planning and development control
- Building Control

Powers and Duties of the Assets Manager

Powers and Duties of the Head of Policy and Performance

Powers and Duties of the Strategic Director
(Children, Families and Adults)

- Children and Families
- Adult Services

Powers and Duties of the Director of Finance and Business Services

Powers and Duties of the Borough Solicitor

Powers and Duties of Solicitors, Barristers, Legal Executives
and Trainee Solicitors

Powers and Duties of Democratic and Registration
Services Manager

Powers and Duties of the Head of Human Resources
and Organisational Development

Officer Delegations in Respect of Council Functions

- Planning Functions
- Public Rights of Way
- Licensing Functions
- Environmental Health Functions
- Trading Standards

**APPENDIX 1 LIST OF STATUTORY PROVISIONS IN
RESPECT OF TRADING STANDARDS FUNCTIONS**

APPENDIX 2 List of legislation falling within the remit of the
Head of Safer and Stronger Communities by

Proper Officer Functions

1.0 AN INTRODUCTION TO THE ROLES AND RESPONSIBILITIES OF OFFICERS AND ELECTED MEMBERS

- 1.1 Elected Members set policy priorities and strategies to reflect local interests and needs and are also responsible for allocating funding between individual priority areas.
- 1.2 Officers of the Authority are responsible for implementing these strategies and policies by delivering services and major initiatives. It is Officers therefore, who have responsibility for managing the Authority's day to day operations, within a policy and budgetary framework laid down by Members.
- 1.3 As such, the Chief Executive, Corporate Management Team¹ and Heads of Service or their nominated representatives are entitled to be notified and represented at all meetings of the Council and Cabinet² and to be consulted in advance on all reports and items of business being submitted to Members.
- 1.4 Under laws introducing "executive arrangements" in the discharge of local authority functions, both the full Council and Cabinet have specific functions which can be delegated to committees or to Officers.
- 1.5 Where Council or Cabinet have established a committee to discharge their respective functions then subject to any limitations they impose, that committee can also delegate its functions to sub-committees or Officers.
- 1.6 This scheme of delegation captures a full range of executive and Council functions by service area. A definition of what constitutes an executive function is set out below.
- 1.7 The majority of the functions set out in this scheme of delegation are executive functions delegated to Officers by the Cabinet. Details of the functions that are delegated to Officers by full Council and its committees can be found in the sections of this Constitution that relate to Local Choice Functions and Non-Executive Functions.

2.0 EXECUTIVE FUNCTIONS DEFINED

- 2.1 Executive functions include those Local Choice Functions identified in this Constitution as being the responsibility of the Cabinet, and all the other functions of the Authority that are not specified in the section of this constitution that sets out Non-Executive Functions.

¹ Defined at paragraph 3.2 below

² "Council" and "Cabinet" shall include any committees, sub-committees, special committees, panels, boards or other similarly constituted bodies including briefing meetings and in respect of the Cabinet shall the Cabinet Members sitting *functus officio* whether individually or collectively.

- 2.2 However, in accordance with the functions Regulations³, the following are NOT functions of the Executive:
- 2.2.1 Imposing conditions, limitations or restrictions on approvals, licences, permissions or registrations on a non-executive function.
 - 2.2.2 Determining any terms that any such approval etc. is subject to.⁴
 - 2.2.3 determining whether and how to enforce any failure to comply with such approvals or any of the attached conditions etc.⁵
 - 2.2.4 Amending, modifying, varying or revoking any such approval.⁶
 - 2.2.5 Determining whether a charge should be made for such approvals or the amount of such charge.⁷
 - 2.2.6 Making, amending, revoking or replacing the Members Allowance Scheme or determining any amounts or rates in the scheme.⁸
 - 2.2.7 Electoral arrangements.⁹
 - 2.2.8 Governance arrangements.¹⁰
 - 2.2.9 Community governance reviews.¹¹
 - 2.2.10 Subject to any Regulations under S20 of the Local Government Act 2000, making arrangements for the joint exercise of functions under S101(5) of the Local Government Act 1972 and making appointments to committees/joint committees under S.102 of the 1972 Act.¹²
 - 2.2.11 Any functions reserved to full Council under legislation which pre-dates the Regulations.¹³

³ The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

⁴ Reg. 2(2)

⁵ Reg. 2(3)

⁶ Reg. 2(4)

⁷ Reg. 2(6)

⁸ Reg. 2(5) and 2 (6)

⁹ Reg 2(6A and B)

¹⁰ Reg2(6Ca) -c),Da) and b), and F)

¹¹ Reg2(6E)

¹² Reg. 2(8)

¹³ Reg. 2(11)

2.2.12 Amending, modifying, varying or revoking any plan or strategy unless it is required to give effect to the requirements of the Secretary of State or Minister submitted for approval or where full Council when approving the plan/strategy authorised the Executive to do so.¹⁴

2.2.13 The adoption/approval of a plan/strategy which is not in the policy framework, if full Council has determined that full Council should take the decision¹⁵ and where the decision is contrary to or not wholly in accordance with the Budget and Policy Framework.¹⁶

3.0 OFFICER MANAGEMENT ARRANGEMENTS

3.1 The Officer management arrangements for the Authority are overseen by a Corporate Management Team comprising the Chief Executive, the Strategic Director (Places and Organisational Capacity), the Strategic Director (Children, Families and Adults), the Head of HR & Organisational Development, the Director of Finance and Business Services, and the Borough Solicitor. The Corporate Management Team shall be chaired by the Chief Executive.

3.2 Each member of the Corporate Management Team ("CMT Member") is accountable to the Chief Executive for leading the Services within his or her area of responsibility and ensuring that the Services are managed in accordance with the objectives, plans, policies, programmes, budgets and processes of the Authority.

3.3 Within these arrangements powers are delegated to CMT Members who will establish, operate and keep under review schemes of internal delegation to cascade powers and responsibilities to Heads of Service and other subordinate Officers.

3.4 Heads of Service are accountable to the Chief Executive and the appropriate CMT Member for effectively and efficiently managing the Services for which he or she is responsible, in accordance with the objectives, plans, policies, programmes, budgets and processes of the Authority. This includes responsibility for the proper exercise of any delegated powers.

4.0 PRINCIPLES UNDERPINNING THE OFFICER SCHEME OF DELEGATION

4.1 In addition to the delegations set out in this scheme, the Council and Cabinet can arrange for bespoke delegations on specific matters.

¹⁴ Reg. 4

¹⁵ Reg. 5(1)

¹⁶ Reg. 5(1)

- 4.2 The fact that a function is delegated under these arrangements does not preclude the delegator from exercising the function directly by determining to reserve particular decisions for itself. In respect of Cabinet functions the power to reserve decisions is exercisable by the relevant portfolio holder or the leader of the Cabinet.
- 4.3 Officers with delegated powers under this scheme may, subject to any limitations imposed in the terms of the delegation to them, delegate further to other Officers. Every such sub-delegation shall be recorded in writing within the internal Service schemes of delegations. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- 4.4 Officers shall devolve responsibility for service delivery and management to the nearest practicable point to the service user.
- 4.5 In some circumstances, a delegatee (whether officer or committee/sub-committee) may consider a matter to be of such importance that their delegated authority should not be exercised. In these circumstances the delegatee may refer the matter back to the delegator for determination.
- 4.6 Any power delegated under this scheme can be exercised by the relevant CMT Member and in any case by the Chief Executive personally (which power shall not be capable of further delegation).
- 4.7 Each Officer with power to act under this section is authorised to do so only in relation to the budgets, resources and policies within their areas of responsibility.
- 4.8 Before taking decisions, Officers are under a duty to satisfy themselves that they have the duly delegated power to do so and that they have undertaken any appropriate consultation. Appropriate advice must be taken where the matter in question involves professional or technical considerations that are not within the Officer's sphere of competence.
- 4.9 Officers are under a duty to ensure that they take decisions in accordance with:-
- 4.9.1 Principles of natural justice.
 - 4.9.2 Professional standards.
 - 4.9.3 Statutory powers and requirements, guidance and Codes of Practice.
 - 4.9.4 This Constitution.

- 4.9.5 The approved budget and policy framework including contract and financial procedure rules.
- 4.9.6 Any other approved policies, procedures and practices.
- 4.10 The scheme of delegation does not delegate to Officers:-
 - 4.10.1 Any matter specifically reserved by law or by this Constitution to the Council or to any committee or sub-committee of the Council.
 - 4.10.2 Any matter in respect of which specific provision is made elsewhere in this constitution.
 - 4.10.3 Any matter which in law may not be delegated to an Officer.
 - 4.10.4 Any Key Decision other than those in respect of which specific provision has been made for delegation to Officers.
- 4.11 Any decision made under this scheme of delegation may be called-in in accordance with the appropriate decision making procedure rules from time to time in force.

5.0 POWERS TO IMPLEMENT DECISIONS OF THE COUNCIL AND CABINET

- 5.1 Once Cabinet and Council decisions come into effect, CMT Members (and Officers duly authorised by them to act on their behalf) have, in accordance with this scheme of delegation, the power to take all necessary actions (including the letting of contracts and incurring expenditure) to implement those decisions, without further reference to the Cabinet or Council, to ensure that all matters of day to day management and administration of the Authority's affairs are carried out effectively and efficiently.

5.2 In implementing Cabinet and Council decisions CMT Members are empowered to undertake statutory processes and carry out, consider and act upon the outcome of statutory and non statutory consultations on service provision in consultation with the relevant Portfolio holder(s) providing that this is consistent with the overall Policy and Budgetary Framework of the Council.

- 5.3** The powers and responsibilities in the following paragraphs are set out to assist clarity and are without prejudice to the generality of the power set out above.

5.35.4 The general delegation above and the delegations below include the power to do anything ancillary or incidental to, arising from, or necessary or desirable to give effect to or facilitate the exercise of the powers and functions delegated to Officers including, where not

specifically prohibited or available within the Authority, the engagement or retention of any external source of expertise to advise, represent or act for or on behalf of the Officer or Authority.

- 6.05.5** References to legislation include any amendments or re-enactments in addition to, where appropriate, any subordinate legislation, regulations, statutory codes of practice or guidance.

6.0 GENERAL FINANCIAL RESPONSIBILITIES

- 6.1 CMT Members are responsible for financial management within their Departments. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council
- 6.2 CMT Members shall establish, operate and keep under review schemes of internal financial delegation in consultation with the Director of Finance and Business Services to ensure that:-
- 6.2.1 The day to day financial management of Services within their Departments is carried out in a secure, efficient and effective manner and in accordance with Financial Procedure Rules and Codes of Practice on Financial Management.
- 6.2.2 Budgetary problems are contained wherever possible within the Department and if necessary specific in year approval for the transfer of resources between budgets is sought.
- 6.2.3 Reports are made to the appropriate bodies on the management of resources and performance against targets set out in the business plan.
- 6.2.4 Risks are appropriately assessed, reviewed and managed.
- 6.2.5 All members of staff are fully trained, aware and comply with the requirements of the Financial Procedure Rules, the Code of Practice on Financial Management and the Contract Procedure Rules.
- 6.2.6 All allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Director of Finance and Business Services and Borough Solicitor and that any local investigations are undertaken thoroughly, consistently and impartially.

7.0 BAD DEBTS

- 7.1 CMT Members shall decide whether to write off debts (other than local taxation) in accordance with Financial Procedure Rule.

8.0 CASH IMPRESTS ACCOUNTS

- 8.1 CMT Members shall authorise the establishment and administration of individual cash imprests accounts in accordance with the Financial Procedure Rules.

9.0 FEES AND CHARGES

- 9.1 CMT Members shall determine the level of fees or charges payable in respect of any chargeable goods or services supplied, work undertaken, or the loan or use of plant, equipment or machinery whether authorised by specific statutory provision or local authority powers at large.

10 PERSONNEL

- 10.1 CMT Members are authorised deal with the full range of employment and staff management issues including but not limited to appointments, terms and conditions, training, discipline, dismissal, performance, progression, promotion, shifts and working hours, grievance, grading, emoluments, expenses, allowances, sick pay, leave, equal opportunities and health and safety in accordance with the Authority's approved policies and procedures.

11.0 CHANGES TO STAFFING STRUCTURES

- 11.1 CMT Members are authorised, subject to the prior notification of the Head of Human Resources and Organisational Development and prior consultation with all appropriate parties affected by the decision including any Trade Union, to implement changes to staffing structures except where the restructure:

11.1.1 Involves the loss of one or more posts not currently vacant.

11.1.2 Involves the re-grading of posts or the grading of new posts.

11.1.3 Involves changes to existing National or Local Agreements and policies.

11.1.4 Cannot be achieved within delegated powers in respect of budgets.

- 11.2 Decisions in respect of restructures which do not fall within the preceding paragraph are delegated to the Head of Human Resources and Organisational Development.
- 11.3 Proposals which involve expenditure outside approved budgets or issues outside approved policy will be referred to the Council or appropriate committee.

12.0 MANAGEMENT OF LAND PREMISES VEHICLES EQUIPMENT AND STORES

- 12.1 CMT Members are authorised to manage all land, premises, vehicles, plant, equipment, machinery, stock, stores, supplies, materials, furniture, appliances, and uniforms necessary for the provision of services. For the avoidance of doubt this includes a power to make arrangements for the cleaning, maintenance, hire and letting of the same and authorising the write-off, loss or disposal of the same where obsolete or surplus to operational requirements.
- 12.2 The power in the preceding paragraph in respect of acquiring and disposing of interests in and rights over land or premises is only exercisable in respect of arrangements not exceeding 7 years in duration and on terms negotiated and recommended by the Assets Manager, subject to there being sufficient budgetary provision and in accordance with the Finance and Contract Procedure Rules.
- 12.3 CMT Members are authorised to make application for planning permission pursuant to the Town and Country Planning General Regulations 1992 and any other necessary applications for any other consent required for the development of land.

13.0 LEGAL AUTHORISATIONS AND COMPLIANCE

- 13.1 CMT Members shall implement and ensure compliance with the Authority's procedures relating to data protection, freedom of information, human rights, and surveillance activities.
- 13.2 CMT Members shall authorise¹⁷ Officers (and such other persons where permitted by law) possessing such qualifications as may be required by law, in accordance with the Authority's policy or where CMT Members are satisfied that appropriate training has been undertaken, to:-
- 13.2.1 Take samples, carry out inspections or surveys, enter land and premises and generally perform the functions of and/or act as a duly authorised or Proper Officer of the Authority (however described).
- 13.2.2 to issue any necessary certificates of authority or certify copies of documents.
- 13.2.3 To enforce the requirements of legislation including by way of fixed penalty notice.
- 13.3 CMT Members shall with the approval of the Borough Solicitor:-

¹⁷ which shall include a power to issue such letters or warrants of authorisation and/or identification as is considered necessary or appropriate

13.3.1 Authorise the issue and service of requisitions for information, any notice, order, or direction.

13.3.2 Approve or issue any licence or regulations which may be required or authorised by or under any legislation or byelaws.

13.3.3 authorise the institution of legal and quasi-legal proceedings and/or other action (including debt recovery) whether in respect of any default in compliance with anything so served or authorised, approved or issued or otherwise as is considered necessary to protect the interests of the Authority.

13.3.4 Sign certificates for contracts pursuant to the Local Government (Contracts) Act 1997.

14.0 SAFEGUARDING CHILDREN

14.1 CMT Members shall ensure that arrangements are in place to discharge the responsibilities of the Department in respect of the need to safeguard and promote the welfare of children as required under Section 11 of the Children Act 2004.

15.0 POWERS AND RESPONSIBILITIES OF THE CHIEF EXECUTIVE

15.1 The Chief Executive is the Head of the Authority's Paid Service.

15.2 The Chief Executive is responsible to the Council for:-

15.2.1 Being the Authority's principal Officer representative and point of contact and to promote its good image and reputation.

15.2.2 Exercising the powers and responsibilities of any CMT Member in his or her absence.

15.2.3 Leading and directing the strategic management of the Authority

15.2.4 Ensuring the effective pursuit and achievement of the Authority's objectives

15.2.5 Ensuring the Authority's activities are carried out with maximum effectiveness and efficiency

15.2.6 Ensuring the efficient and effective discharge of the decision making and scrutiny functions of the Authority

15.2.7 The general supervision of this scheme of delegation

- 15.2.8 Monitoring and reviewing the Authority's management and general sufficiency of staffing arrangements (including this Scheme of Delegation) and reporting periodically to the Council on the effectiveness of the arrangements and any need for change pursuant to his duty as Head of the Paid Service under the Local Government and Housing Act 1989.
- 15.2.9 Invoking disciplinary processes for CMT Members.
- 15.2.10 Discharging the Authority's responsibilities under its emergency planning and civil protection functions subject to any constraints/restrictions imposed by the Council.

DIRECTOR OF PUBLIC HEALTH (PENDING)

The Director has four key roles

Health Improvement

Health protection

Health care, Commissioning and service planning

Reduction of health inequalities

16.0 STRATEGIC DIRECTOR (PLACES AND ORGANISATIONAL CAPACITY)

The Strategic Director (Places and Organisational Capacity) is the nominated Deputy Chief Executive

Highways, Traffic and Street Management

- 16.1 The Strategic Director (Places and Organisational Capacity) shall be responsible for discharging the operational day to day functions of the Authority in respect of the maintenance and improvement of highways, traffic and street management including but not limited to:-
 - 16.1.1 Granting consents and imposing requirements in connection with works in highways or adjacent premises.
 - 16.1.1 Determining, subject to conditions, applications for the placing of plant, structures, trees and equipment in, over or under highways or highway land.
 - 16.1.2 Construction of carriageway crossings over footways and verges, erection of fences, boundary posts, cattle grids and the carrying out of works for the drainage of highways.
 - 16.1.3 Exercising the Authority's responsibilities under the New Road and Street Works Act 1991 and, where appropriate, waiving

charges under the provisions of Section 74 of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) Regulations 2001.

- 16.1.4 Authorising urgent repair of private streets under Section 230 of the Highways Act 1980 and the passing of exemption resolutions and the giving of exemption notices on behalf of the Street Works Authority under Section 219 of the Highways Act 1980.
- 16.1.5 Authorising minor improvements to roads including grass verges, street furniture etc not exceeding £30,000 for which provision has been made in the budget and capital programme.
- 16.1.6 Setting charges for work and maintenance carried out by the Authority for which the costs are to be met by third parties.
- 16.1.7 Authorising the installation of sound insulation.
- 16.1.8 Nominating safety supervisors.
- 16.1.9 Making observations on planning applications consultations.
- 16.1.10 Taking of traffic censuses.
- 16.1.11 On the advice of the Assets Manager or District Valuer, settling claims for borehole damage up to £1,500.
- 16.1.12 Approving routine traffic management orders, highway stopping-up and alley gating orders and variations to pedestrian crossing schemes under the Road Traffic Regulations Act 1984 and Highways Act 1980.
- 16.1.13 Accepting blight notices on properties affected by an approved scheme, where all the conditions on the establishment of blight are satisfied.
- 16.1.14 Determining, in appropriate cases, the manner in which the requirements of Schedule 14 to the Highways Act 1980 relating to the serving of notice of application shall be carried out.
- 16.1.15 Taking emergency measures to protect persons and property from escapes of water from reservoirs.
- 16.1.16 Granting licences under Sections 142, 176, 177 and 181 of the Highways Act 1980.

- 16.1.17 Exercising the Highway Authority's powers and duties under Part VIIA of the Highways Act 1980 – Provision of Amenities on certain highways.
 - 16.1.18 Exercising the Authority's powers and duties under the Traffic Management Act 2004 and in particular the appointment from time to time of a Traffic Manager to perform such tasks as are considered will assist the Authority to perform its Network Management duty under that Act.
 - 16.1.19 Accepting land for road improvements by dedication subject to the total consideration whether in works or otherwise not exceeding £30,000.
 - 16.1.20 Entering into agreements for the construction and adoption of estate roads.
 - 16.1.21 All other functions of the Authority as set out in the Schedule to the Local Government (Committees and Political Groups) Regulations 1990 (as amended) and in particular the functions conferred by the Countryside Act 1968, Local Government (Miscellaneous Provisions) Act 1976, Highways Act 1980, Cycle Tracks Act 1984, Road Traffic Regulation Act 1984 and Road Traffic Act 1988.
- 16.2 Without prejudice to the powers and responsibilities delegated in the preceding paragraph the Strategic Director (Places and Organisational Capacity) shall in consultation with the appropriate Cabinet Portfolio Holder undertake all necessary external consultation and advertisement associated with the exercise of powers to implement schemes of maintenance of and improvement to the highways infrastructure and in the discharge of the following functions:-
- 16.2.1 Traffic Management and Regulation Orders
 - 16.2.2 Stopping Up and Alley-gating Orders
 - 16.2.3 Street naming proposals
- 16.3 The Strategic Director (Places and Organisational Capacity) shall be responsible in consultation with the appropriate Cabinet Portfolio Holder for all matters appertaining to the strategic management of the highways network
- 16.4 The Strategic Director (Places and Organisational Capacity) shall maintain operational oversight in respect of the discharge of the following functions relating to transportation:-

- 16.4.1 Tendering, applications to Traffic Commissioners and other relevant functions under the provisions of the Transport Act 1985.
- 16.4.2 Negotiations in respect of terms with service operators in respect of concessionary fare/travel and dial-a-ride schemes.
- 16.4.3 The organisation of (special and non-special) school transport services, including the issue of scholars' passes, and Social Services transport services.
- 16.4.4 The issuing of minibus permits under the Public Passenger Vehicles Act 1981.
- 16.4.5 The administration of Car Contract Hire Schemes.
- 16.4.6 The Management of the client side of vehicle maintenance contracts under the Local Government Act 1988.
- 16.4.7 The Organisation of School Crossing Patrols.
- 16.4.8 The holding of Operators Licence(s) on behalf of the Authority and all associated functions and responsibilities.

Waste

- 16.5 The Strategic Director (Places and Organisational Capacity) shall be responsible for the discharge of the functions of the authority relating to waste, waste collection and waste disposal including but not limited to:-
 - 16.5.1 Taking any action under the Refuse Collection (Amenity) Act 1978 and the Removal and Disposal of Vehicle Regulations 1986 and to generally manage the refuse collection, disposal, and recycling system of the Authority.
 - 16.5.2 Functions relating to the provision of litter/dustbins and wheeled bins including functions relating to the recovery of charges, expenses and fines

Burial Grounds, Cemeteries and Crematoriums

- 16.6 The Strategic Director (Places and Organisational Capacity) shall be responsible for exercising functions in relation to the general management and operation of the Authority's burial grounds, cemeteries and crematoriums including but not limited to:-
 - 16.6.1 The grant of exclusive rights of burial under Section 2 of the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970.

- 16.6.2 Determine licence conditions and operating licensing arrangements of memorial stonemasons.

Housing

16.7 The Strategic Director (Places and Organisational Capacity) shall be responsible for discharging the following functions in relation to housing.

- 16.7.1 To enforce the functions of the 'local housing authority' within the meaning of the Housing Act 1985 and other housing legislation.
- 16.7.2 To authorise the awarding and payment of grants in accordance with the Authority's Private Sector Housing Renewal Policy.
- 16.7.3 To authorise designated Officers, signatories and administrators.
- 16.7.4 To exercise the powers and duties of the Authority in the development of strategies and policies for Assessment of housing need the provision of social housing private sector housing duties, including condition, improvement and enforcement private tenancy relations advice and assistance to enable people to stay in their own home.
- 16.7.5 Energy conservation advice to residents of the Borough Operational management to Head of Service and Section Manager.
- 16.7.6 To co-ordinate the preparation of the Authority's Housing Strategy Statement prior to its submission to the Government in connection with the annual Housing Investment Programme
- 16.7.7 To meet the Regional Controller of the Government Office and Housing Officials to review the annual Housing Investment Programme submission and resources allocation
- 16.7.8 To liaise with the Homes and Communities Agency as appropriate
- 16.7.9 To advise the Council on the Housing Needs of the Borough and to recommend how to fulfil those needs in accordance with a defined Housing Strategy
- 16.7.10 To work in partnership with other housing providers to meet the housing needs of the Borough and to recommend any

financial arrangements to be made between the Authority and other housing providers to carry this out.

- 16.7.11 To act as consultee on issues of acquisition and disposal of land (including interests in land) for the purposes of providing social housing in partnership with Registered Social Landlords
- 16.7.12 To liaise with Housing Associations on the Right to Buy sharing agreement.
- 16.7.13 To administer the Authority's responsibilities for the homeless including the provision of hostels, in accordance with the Housing Act 1996.
- 16.7.14 To administer the Authority's duty to make available accommodation for the homeless, in accordance with the Housing Act 1996.
- 16.7.15 To administer a Housing Advice Service
- 16.7.16 To administer the Authority's Housing and Social and Welfare Policies and initiatives such as Care and Repair
- 16.7.17 To maintain the Housing Waiting List and to make nominations to registered Social Landlords in accordance with the Authority's Allocation Policy.
- 16.7.18 To approve applications for all types of grants other than those specifically delegated to the Cabinet within the policies of the Council.

Assets

16.8 The Strategic Director (Places and Organisational Capacity) shall be responsible for exercising the following Assets functions

- 16.8.1 to produce and implement the Corporate Asset Management Plan for the Council's portfolio of land and buildings.**
- 16.8.2 To manage the Council's Estate in accordance with the Corporate Asset Management Plan and serve all notices, contractual or statutory as required.**
- 16.8.3 Subject to prior consultation with the relevant Portfolio Holder and in accordance with the Asset Management Plan**

to authorise and negotiate terms and complete the development and appropriation of land and buildings,

together with the granting or taking, assignment, surrender or termination of leases, tenancies, licences, easements, way leaves and variations of rent, in accordance with approved budgets

to authorise and complete the acquisition of land and buildings or any estate or interest in any land or buildings. in accordance with approved budgets

to authorise and complete the disposal of land and buildings or any estate or interest in any land or buildings subject to the requirements and consents of the Director of Finance and Business Services

16.8.4 To take such actions as are considered appropriate in relation to advance payments, blight notices, home loss payments under the Land Compensation Act 1973, notices to quit, purchase notices and other notices and to pay all necessary compensation and complete the necessary land acquisitions.

16.8.5 To seek planning permission for the development of land where such land is not required for the statutory functions of the Council.

16.8.6 To establish and maintain a corporate database of the Council's land and buildings, including details of liabilities, and to perform any responsibilities placed on the Council under the Local Government Planning and Land Act 1980.

16.8.7 To take appropriate action on behalf of the Council with regard to rating issues, including the conduct of appeals.

16.8.8 To fulfil the Corporate Landlord function and in doing so determine and issue general guidelines to Officers for the management of land resources and the maintenance of buildings.

16.8.9 To certify or make arrangements for the certification of authorisation and identity cards and passes for Officers and Members.

16.8.10 To let, licence and complete land and premises agreements and leases for not more than fifteen years in accordance with the Council's Asset Management Plan.

16.8.11 In accordance with the Council's Asset Management Plan to sell and complete the sale of land and buildings

surplus to requirements subject to prior consultation with the Monitoring Officer and relevant Portfolio Holder and consultation with relevant Ward Members and requirements and consents of the Director of Finance and Business Services.

- 16.8.12 To deal with and complete all matters in connection with the management and leasing/licensing of the Council's industrial land and retail, premises and the Council farm's estate in accordance with the Council's Asset Management Plan.
- 16.8.13 In consultation with the Monitoring Officer to deal with and complete all matters in connection with the Council entering into way leaves and easements.
- 16.8.14 In consultation with the Monitoring Officer and relevant Portfolio Holder to enter into and complete leases of land where the Council is to construct a public amenity or provide or reacquire the freehold of land.
- 16.8.15 In consultation with the Monitoring Officer and Ward Members to take decisions on applications by electricity, gas, water, telephone, broadcasting or cable companies to place any apparatus in, on, over or under any land or building owned by the Council.
- 16.8.16 To assess each application for release from restrictive covenants on its own merits and to negotiate and complete compensation payable to the Council where such release is requested in order to facilitate speculative development or some other profit making exercise.
- 16.8.17 To exercise the provisions of any authorised guarantee agreement, such provisions to always be enforced except where there are commercial or operational reasons not to do so.
- 16.8.18 To serve the required legal notice (Section 17 Notice) on original tenants where the tenant (Assignee) is in arrears in order to protect the Council's rights to pursue original tenants for the debt if it is considered viable.
- 16.8.19 To negotiate and complete the grant of way leaves for the purposes of Town Centre Enhancement Schemes, new developments or Closed Circuit Television Schemes.

- 16.8.20 To undertake and complete maintenance, repairs, alterations, demolitions and new developments in respect of the Council's operational and non-operational property.
- 16.8.21 In consultation with the Monitoring Officer and Ward Members to determine and complete licences to erect and site public notice boards and advertising hoardings throughout the Borough of Cheshire East..
- 16.8.22 To approve, complete and enter into property investments and joint venture property investments, management and development partnerships, including un/conditional contracts and complete such legal contracts as are necessary in accordance with the Asset Management Plan.
- 16.8.23 To authorise and complete the transfer of freehold land at nil value to Voluntary Aided, Voluntary Controlled and Trust Schools and 125 year leases to Academy Schools, where it is a statutory requirement to do so.
- 16.8.24 To authorise and complete all asset transfers, freehold or leasehold, under the Devolution Agenda or Localism or "Quirk" recommendations. In consultation with the Portfolio Holder, Monitoring Officer and Ward Members.
- 16.8.25 To authorise the Borough Solicitor to institute legal proceedings in cases of breach of covenant.
- 16.8.26 To manage the Cheshire East property portfolio in accordance with the maximum values and authorised transactions above for all matters in connection with the acquisition, disposal, leasing and licensing, statutory notices and permissions and any other matters and transactions in accordance with the above responsibilities and in accordance with the Council's Asset Management Plan.
- 16.8.27 To make planning applications where necessary to establish the potential of land or property or to facilitate the better management of land or property.
- 16.8.28 With the consent of the Director of Finance and Business Services to undertake urgent work to repair, replace or reinstate vehicles, buildings or equipment where the work is fully funded from insurance monies.

In exercising these delegations the Strategic Director (Places and Organisational Capacity) shall consult with and where appropriate gain the consent of the Director of Finance and Business Services and the Borough Solicitor in accordance with the requirements of the Constitution and the Finance Procedure Rules

HEAD OF HEALTH AND WELLBEING

- 17.1 The Head of Health and Wellbeing Shall be responsible for the following services relating to libraries, archives and culture:-
- 17.1.1 Opening and closing of library, information and archive service points including their hours of opening.
 - 17.1.2 Establishing and varying of mobile library schedules.
 - 17.1.3 Promoting cultural activities in libraries and other locations, subject to the cost not exceeding £1,000 for any one event in any one place.
 - 17.1.4 Maintaining the Register of Commons pursuant to the Commons Registration Act 1965.
 - 17.1.5 Acting as lead Officer on behalf of the Authority in relation to the Data Protection Act 1998 and Freedom of Information Act 2000.
- 17.2 The Head of Health and Wellbeing shall be responsible for making grants, under schemes and financial limits approved by or on behalf of the Authority and in accordance with Finance Procedure Rules:-
- 17.2.1 towards the cost of cultural projects and commissions
 - 17.2.2 for the provision of, and improvements to community recreation facilities
 - 17.2.3 for the improvement of the environment
 - 17.2.4 for the promotion of sport and recreation
 - 17.2.5 towards the cost of cultural projects and commissions
 - 17.2.6 towards the cost of voluntary adult sports projects

- 17.2.7 to other appropriate statutory or voluntary organisations
- 17.2.8 for archaeological excavations
- 17.3 The Head of Health and Well being shall discharge the following functions¹⁸ in relation to public rights of way¹⁹:-
 - 17.3.1 To keep a register of information with respect to maps, statements and declarations (S31A)
 - 17.3.2 To keep a register with respect to applications under sections 118ZA, 118C, 119ZA, and 119C of the Highways Act 1980 (S121B).
 - 17.3.3 To take all necessary action to assert and protect the rights of the public to the use and enjoyment of public paths (S130)
 - 17.3.4 To exercise all powers in relation to highways delegated to the Head of Environmental Services (in place of the same) where the highway in question is a public right of way.
 - 17.3.5 To serve notice of proposed action in respect of obstructions on public paths (S130A).
 - 17.3.6 To apply for the variation of orders issued under S130B of the Highways Act 1980 (S130B(7))
 - 17.3.7 To authorise the temporary disturbance of a public path (S135)
 - 17.3.8 To discharge functions in respect of the making good of damage and the removal of obstructions from public paths. (S135B HA)
 - 17.3.9 To discharge functions in respect of the removal of things so deposited on public paths so as to be a nuisance. (S149 HA)
 - 17.3.10 To keep a register of prescribed information with respect to applications under S53(5) of the Wildlife and Countryside Act 1981. (S53B Wildlife and Countryside Act 1981)
 - 17.3.11 Power to prepare a map and statement by way of consolidation of the definitive map and statement. (S57A of the Wildlife and Countryside Act 1981).

¹⁸ References to Section numbers in this paragraph are to Sections of the Highways Act 1980 unless otherwise stated.

¹⁹ Footpaths, Bridleways, Restricted Byways, and Byways Open to All Traffic and other such ways that are within the remit of the Head of Health and Wellbeing

- 17.3.12 To grant permission for provision of services, amenities, recreation and refreshment facilities on public paths. (S115A – S115K)
- 17.3.13 Authorising the use of footpaths and bridleways for motor vehicles and cycle trials. (S33 Road Traffic Regulation Act 1988)
- 17.3.14 Certifying extracts from the Definitive Map under the provisions of Section 56 of the Wildlife and Countryside Act 1981.
- 17.3.15 Making temporary diversion orders for footpaths and bridleways under the Highways Act 1980.
- 17.3.16 Serving notices to require the removal of obstructions from public rights of way, the restoration of public rights of way following ploughing, cropping or other disturbances and the maintenance of stiles, gates or other structures across public rights of way.
- 17.3.17 Granting permission to extend the period of restoration following disturbance of the surface of a right of way and the granting of orders that a right of way shall be subject to a condition that the surface may be disturbed by excavation or operations.
- 17.3.18 Issuing notices under the provisions of Schedule 12A of the Highways Act 1980.
- 17.3.19 Authorising the erection of stiles and gates across any public right of way.
- 17.3.20 The making of Traffic Regulation Orders in respect of any public right of way.
- 17.3.21 Managing Tatton Park in relation to the terms of the Lease from the National Trust.
- 17.4 The Head of Health and Wellbeing shall be responsible for the general management, hire and letting of sports and leisure facilities for public use, including (but not limited to) sports centres, athletics stadium, swimming pools, sauna suites, community centres, community halls, theatres, parks, lakes, waterways, playing fields, recreation grounds, caravan parks and allotments.

18 HEAD OF SAFER AND STRONGER COMMUNITIES

- 18.1 The Head of Safer and Stronger Communities shall discharge the following functions in respect of trading standards and consumer protection:-

- 18.1.1 To undertake or appoint to the role of the Authority's Chief Inspector of Weights and Measures under Section 72 of the Weights and Measures Act 1985.
- 18.1.2 To appoint and authorise Officers of the Authority to act as duly authorised persons, proper Officers, inspectors, or similar (howsoever statutorily described) to discharge the statutory functions devolving upon the Authority under the legislation²⁰ listed in the Appendix to this section including but not limited to the functions of registration, enforcement, inspection or any associated action or granting, amending, varying, refusing, revoking, suspending or transferring any licences, approvals or consents.
- 18.1.3 To enter into reciprocal arrangements for the authorisation and appointment of Officers for the purposes set out in the preceding paragraph to facilitate cross-border co-operation in the discharge of the said functions with any other local authority.
- 18.1.4 To Amend the functions listed in the Appendix to this section (and any associated Officer authorisations) in accordance with legislation from time to time in force:-
 - 18.1.4.1 without reference to elected Members in respect of functions which the authority is obliged by legislation to discharge (mandatory functions); or;
 - 18.1.4.2 Following approval from elected members in respect of functions which the authority has discretion to discharge (discretionary functions).
- 18.2 Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-
 - 18.2.1 Power to licence hackney carriages and private hire vehicles and suspend licences (including suspension pending inspection).
 - 18.2.2 Power to issue and suspend operators licences
 - 18.2.3 Power to licence and suspend hackney carriage and private hire drivers

²⁰ Which shall include any Statute extending or amending the same or incorporated therewith, or any re-enactment thereof, or any Statutory Instruments, Regulations, Byelaws or Orders made there under or continued in force thereby and also such other powers and duties under such other Statutes, Statutory Instruments, Regulations, Byelaws or Orders as may from time to time be conferred upon said officers by the Council.

- 18.2.4 Power to licence street and House to House collections
- 18.2.5 Power to renew or transfer licences for sex establishments where:-
 - 18.2.5.1 there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and
 - 18.2.5.2 no objections have been received, or those that have been received have been withdrawn.
- 18.2.6 Power to issue street trading consents
- 18.2.7 Power to licence performances of hypnotism
- 18.2.8 Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)
- 18.2.9 Sanctioning the use of buildings for the storage of celluloid
- 18.2.10 Licensing employment of children
- 18.3 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to the body set out below:-
 - 18.3.1 The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Authority's vehicle conditions or does not pass the vehicle inspection be referred to the General Licensing Sub-Committee.
 - 18.3.2 The determination of applications for operators licences where the Council's requirements are not met be referred to the General Licensing Sub-Committee.
 - 18.3.3 The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the General Licensing Sub-Committee.
 - 18.3.4 The determination of applications for the renewal or transfer of licences for establishments where objections have been received and have not been withdrawn shall be referred to the General Licensing Committee.

- 18.3.5 The determination of requests for waiver of the Authority's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the General Licensing Sub-Committee.
 - 18.3.6 The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the General Licensing Sub-Committee.
 - 18.3.7 The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the General Licensing Committee.
 - 18.3.8 The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex establishments and street trading shall be reserved to the General Licensing Committee.
- 18.4 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of Licensing Functions (Licensing Act 2003 and Gambling Act 2005) shall stand referred to body set out below.
- 18.4.1 Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e. the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act).
 - 18.4.2 With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003, the determination of an application under the Licensing Act 2003 or the Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Act Sub-Committee.
 - 18.4.3 The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.
 - 18.4.4 The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Act Sub-Committee.
 - 18.4.5 The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.

- 18.4.6 The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Act Sub-Committee.
- 18.4.7 The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Act Sub-Committee.
- 18.4.8 The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Act Sub-Committee.
- 18.4.9 The decision to give a counter notice to a temporary use notice (section 224 of the Gambling Act 2005) shall be referred to the Licensing Act Sub-Committee.
- 18.4.10 The decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises where representations have been made by the licensee shall be referred to the Licensing Act Sub-Committee.
- 18.4.11 The decision to revoke a personal licence where convictions come to light after grant or renewal (under section 124 of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.
- 18.4.12 The decision to set fees under the Gambling Act 2005 shall rest with the Licensing Committee.
- 18.4.13 The power to institute criminal proceedings under the Gambling Act lies with the Borough Solicitor.
- 18.5 The Head of Safer and Stronger Communities is authorised to discharge the following functions in relation to environmental health:-
 - 18.5.1 Power to issue licences authorising the use of land as a caravan site
 - 18.5.2 Power to licence the use of moveable dwellings and camping sites
 - 18.5.3 Power to license premises for acupuncture, tattooing, ear piercing and electrolysis
 - 18.5.4 Power to licence pleasure boats and pleasure vessels
 - 18.5.5 Power to licence scrap yards

- 18.5.6 To register motor salvage operators
- 18.5.7 To register and licence premises for the preparation of food
- 18.5.8 Power to licence premises for the breeding of dogs
- 18.5.9 Power to licence pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business
- 18.5.10 To register animal trainers and exhibitors
- 18.5.11 Power to licence zoos
- 18.5.12 To licence dangerous wild animals
- 18.5.13 To grant consent for the operation of a loudspeaker
- 18.5.14 To approve meat product premises
- 18.5.15 To approve premises for the production of minced meat or meat preparations
- 18.5.16 To approve dairy establishments
- 18.5.17 To approve fish products premises
- 18.5.18 To approve dispatch or purification centres
- 18.5.19 Power to register fishing vessels on board which shrimps or molluscs are cooked
- 18.5.20 Power to approve factory vessels and fishery product establishments
- 18.5.21 To register auction and wholesale market
- 18.5.22 To keep a register of food business premises
- 18.5.23 To enforce Chapter 1 (Health Act 2006) and regulations made under it
- 18.5.24 Power to authorise Officers
- 18.5.25 Functions relating to fixed penalty notices
- 18.5.26 Power to transfer enforcement functions to another enforcement authority

18.5.27 Functions relating to health and safety at work (to the extent that those functions are discharged otherwise than in the authority's capacity as an employer)

19 HEAD OF PLANNING AND HOUSING

- 19.1 Apart from the matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the Head of Planning & Policy.
- 19.2 Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use & development, enforcement, listed buildings and conservation areas.
- 19.3 The planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.
- 19.4 Where legislation is amended or replaced by new provisions or where new development control provisions are enacted, then the relevant authority delegated in this Scheme applies to those new provisions.
- 19.5 The Head of Planning and Housing is authorised to exercise all the powers and duties conferred on the Authority in relating to Building Control and without limitation upon those general matters, to be responsible for:-
- 19.5.1 The passing or rejection of plans of proposed work deposited in accordance with Building Regulations or passing them subject to conditions, under the provisions of Section 16 of the Building Act 1984, subject to any other section of this Act or any other Act that expressly requires or authorises the rejection of such plans in certain cases.
 - 19.5.2 The declaration by notice that the deposit of plans is of no effect under the provisions of Section 32 of the Building Act.
 - 19.5.3 The dispensation with the requirements of the Building Regulations in appropriate cases.

- 19.5.4 Dealing with applications for regularisation certificates in respect of unauthorised building work.
 - 19.5.5 The serving of notice to open up work in cases where a person carrying out building work neglects to notify the Authority of the stages of work referred to in Regulation 14 of the Building Regulations 1985.
 - 19.5.6 Dealing with dangerous structures by:- (i) Taking action under Section 77 of the Building Act 1984 to secure the removal of dangerous conditions in buildings or structures including application to Magistrates Court for an order to remove such dangerous conditions.
 - 19.5.7 Take emergency action under Section 78 of the Building Act in such cases where immediate action is necessary to remove danger.
 - 19.5.8 Dealing with ruinous and dilapidated buildings and neglected sites by taking action under Section 79 of the Building Act 1984.
 - 19.5.9 Dealing with private demolitions of the whole or part of a building or buildings by taking action under Section 81 of the Building Act 1984
 - 19.5.10 The taking of enforcement action in cases where the provisions of the Building Regulations and other related legislation have not been complied with, including instituting proceedings in the Magistrates Court for contraventions of the Building Regulations
 - 19.5.11 Supervision of Building Work etc Otherwise than by Local Authorities
 - 19.5.12 The receipt and acceptance or rejection, on prescribed grounds AND, where appropriate, of the various notices referred to in Part II of the Building Act 1984 and the Building (Approved Inspectors) Regulations 1985 in connection with the supervision of plans and work by approved inspectors
 - 19.5.13 Variation of the standard fee scales of the Local Government Association model scheme by plus or minus 10% (by a percentage greater than 10% - to portfolio holder)
- 19.6 The Head of Planning and Housing is authorised to exercise all the powers and duties conferred on the Authority relating to Local Land Charges and without limitation upon those general matters, to be responsible for:-

- 19.6.1 The maintenance of the Local Land Charges Register
- 19.6.2 The issuing of official searches of the Local Land Charges Register
- 19.6.3 The issuing of responses to Con 29 R and O Enquiries of a Local Authority

20 ASSETS MANAGER

- 20.1 The Assets Manager shall be responsible for oversight of the day to day control and management of land and buildings in the ownership of the Authority, to ensure compliance with all relevant statutory requirements (including the Health and Safety at Work Act 1974), fitness for purpose, service delivery, maximum asset value and in particular:-
 - 20.1.1 Corporate landlord management
 - 20.1.2 The provision of fixtures and fittings.
 - 20.1.3 Matters relating to energy conservation.
 - 20.1.4 Architecture, Estates, Building Maintenance and security services.
 - 20.1.5 Promotion of responsibilities relating to improved access and mobility within the built environment with particular reference to people with disabilities under relevant legislation and codes of practice.
 - 20.1.6 May maintain an Approved Select List of Building/Engineering Contractors and Suppliers to the Authority.
 - 20.1.7 Maintaining an up-to-date terrier of all land and buildings held by the Authority.
 - 20.1.8 Undertaking a periodic review of property owned by the Authority.
 - 20.1.9 Recommending policies for the acquisition, management and disposal of land and interests in land.
 - 20.1.10 Design, preparation and contract management (including Health and Safety issues) of building work (whether new build or restoration) of all corporate property and professional

services provided under the Local Authorities (Goods and Services) Act 1970.

20.1.11 Technical recommendations relating to derelict land.

20.1.12 Co-ordinating land management with economic development.

20.1.13 Accepting of title to existing open space land where there is a history of maintenance by the Authority.

20.1.14 Authorising of deeds of rectification with Housing Associations

20.2 The Assets Manager shall be responsible for managing the Farms estate including the service of all statutory notices and granting consent to farm estate tenants for:-

20.2.1 The provision of fixtures.

20.2.2 Ploughing out permanent pasture

20.2.3 Investment in improvements to farms up to a maximum value of £20,000

20.2.4 The acquisition and sale of Milk Quota.

20.2.5 Negotiating and approving tenant right settlements on changes to tenancy.

20.3 The Assets Manager is authorised to:-

20.3.1 Approve valuations of the Authority's property assets for all purposes

20.3.2 Negotiate and approve (including any subsequent modifications or renewals) the terms of all property transactions entered into by the Authority and to recommend such terms for approval at the appropriate level

20.3.3 Negotiate and approve, on the advice of the Borough Solicitor, the content and format of any documents to be entered into by the Authority to give effect to an approved property transaction

20.4 The Assets Manager shall be responsible for the general management of markets run or promoted by the Authority and in particular:-

20.4.1 The letting of market stalls consistent with maintaining a balanced mix of trades in accordance with the Authority's policy.

- 20.4.2 The determination of and application of the Market Rules and Regulations.
 - 20.4.3 The maintenance and letting of Community stalls on both markets.
 - 20.4.4 The fixing of market stall charges in accordance with the Authority's approved scale of charges.
 - 20.4.5 To grant leave of absence to regular market traders (of a minimum of two years standing) for medical reasons without financial penalty and without the loss of their regular status.
 - 20.4.6 To allocate market stalls to charities and local fund raising organisations without charge on up to 12 occasions annually, being no more than once per month.
 - 20.4.7 To determine future applications for concessionary waiver applications of market stall charges due to weather conditions up to a limit of £500 per occasion
- 20.5 The Assets Manager shall be responsible for the general management of the Authority's car parks including all signage, planting, maintenance, lay out, the giving of consent for alternative uses or events, the reservation of car parking spaces and the collection of fees and charges.
- 20.6 The Assets Manager shall be responsible for the management of the Authority's vehicle fleet for the acquisition and disposal of vehicles and for their maintenance.

21 HEAD OF POLICY AND PERFORMANCE

- 22.1 Shall be responsible for monitoring the performance of the Authority, for promoting business quality, public relations and for involving and developing the Authority's employees.
- 22.2 Shall promote the efficiency and effectiveness of the Authority, through the Business Quality Programme.
- 22.3 Shall oversee the Authority's response to "Best Value", including recommendation of targets/service standards, performance indicators and consultation.
- 22.4 Shall consider all formal service reviews and to make recommendations to individual Committees and Council.
- 22.5 Shall advise Council on service changes and to recommend an Annual Performance Plan.

- 22.6 Shall oversee the formal administration of the Authority's Quality System, Risk Management and EFQM.
- 22.7 Shall promote customer care and equality in service delivery and access.

23 STRATEGIC DIRECTOR (CHILDREN, FAMILIES AND ADULTS)

Children's and Family Services

- 23.1 The Strategic Director (Children, Families and Adults) will provide a professional focus and lead for children's and family services ensuring that the needs of children, young people and families are met in the locality.

The Strategic Director has three key roles in this regard:-

- 23.1.1 Professional accountability for the effectiveness, availability and value for money of all local authority children's services;
 - 23.1.2 A leadership role to secure any necessary changes to culture and practice, so that services are organised around children and young people's needs; and
 - 23.1.3 Building and leading effective partnerships with and between those local bodies who also provide children's services, in order to focus resources jointly on improving outcomes for children and young people.
- 23.2 The Strategic Director (Children, Families and Adults) is appointed to discharge Children's Services functions in four areas:
 - 23.3.1 Education services. The Authority's functions in its capacity as a local authority under the Education Acts, except those certain functions relating to further education, higher education and adult education.
 - 23.3.2 Children's social care. The authority's social services functions within the meaning of the Local Authorities Social Services Act 1970 insofar as they relate to children and young persons, and the local authority's functions for children and young people leaving care.

- 23.3.3 Health services. Any health related functions exercised on behalf of an NHS body, insofar as they relate to children.
- 23.3.4 Inter-agency co-operation. The new functions of Children's Services set out in the Children Act 2004, in particular building and leading the arrangements for inter-agency co-operation and safeguarding.
- 23.4 The Strategic Director (Children, Families and Adults) will in addition be responsible for new functions conferred on Children Services Authorities under the Children Act 2004 and by any subsequent legislation or Regulations.
- 23.5 The Strategic Director (Children, Families and Adults) or the duly nominated Officer in respect of Children's Services, is required to observe all policy decisions taken by the Council and its relevant bodies and shall exercise all functions of a Strategic Director (Children, Families and Adults) (DCS) specified in relevant legislation and Government Guidance.
- 23.6 The Strategic Director (Children, Families and Adults) shall:-
- 23.6.1 Bring forward strategic plans and policies and to develop partnership and commissioning arrangements to ensure the provision of children's services.
- 23.6.2 Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of the early years and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.
- 23.6.3 Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation, effectiveness and quality of post early years children's education and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.
- 23.6.4 In relation to persons under 19 years of age, to bring forward proposals and implement all necessary decisions, as appropriate, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of all the children services for which the Director is responsible and which are statutorily covered by Acts of Parliament and related Regulations.

- 23.6.5 Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of the children's social care and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.
- 23.6.6 Institute and defend proceedings in relation to the care of children, the exercise of parental responsibility, provision of secure accommodation and wardship proceedings and to intervene, where appropriate, in matrimonial, guardianship and special guardianship proceedings or any other proceedings pursuant to its functions relating to children and young persons, and to undertake the functions of the Authority as an adoption and fostering agency.
- 23.6.7 Ensure the provision and quality of statutory youth and related Services, and the development of associated strategic plans and partnership arrangements for youth and related services.
- 23.6.8 Jointly with the relevant members of Management Team and on behalf of the Authority to take leasehold interests in appropriate property in order to provide accommodation for the Surestart Partnership subject to prior confirmation from the Partnership that it will reimburse the Authority in respect of its liabilities in relation to any such property.

Adult Services

- 23.7 Except where specifically provided for elsewhere in this constitution or precluded by statute the Strategic Director (Children, Families and Adults) shall exercise of the powers and duties of the Authority under the enactments listed in Schedule 1 of the Local Authority Social Services Act 1970 (excluding Children and Young Persons).
- 23.8 The Strategic Director (Children, Families and Adults) shall:-
 - 23.8.1 Apply for orders of receivership under the legislation relating to mental health and for grants of representation in respect of the estates in cases of intestacy arising under the appropriate provisions of the National Assistance Act 1948, non-recoverable expenses to be defrayed by the Authority.
 - 23.8.2 Authorise the removal of parts of the body of a deceased resident in accordance with the wish expressed by the resident during his/her lifetime.
 - 23.8.3 On terms approved by the Director of Finance and Business Services and Borough Solicitor, authorise adaptations to property and the provision of assistance and aids in accordance

with the Chronically Sick and Disabled Persons' Act 1970, within the overall budget and policies set by the Authority.

23.8.4 Act as trustee or appointee for the assets of service users for whom the Authority has a statutory responsibility.

23.8.5 Exercise powers to purchase domiciliary, residential and nursing home services vested in the Authority under the National Assistance Act 1948 as amended by subsequent legislation.

23.8.6 Except where therein otherwise provided, exercise the powers and duties of the Social Services Authority under the legislative provisions relating to mental health, including those relating to Guardianship and the institution of Court proceedings.

24 DIRECTOR OF FINANCE AND BUSINESS SERVICES

24.3 The Director of Finance and Business Services is:-

24.3.1 The financial adviser to the Council, the Cabinet and Officers

24.3.2 The Authority's 'responsible financial Officer' under the Accounts and Audit Regulations

24.3.3 Responsible for the proper administration of the Authority's affairs as specified in, and undertake the duties required by, Section 151 of the Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, the Local Government and Housing Act 1989, the Local Government Act 2003, and all other relevant legislation.

24.4 The Director of Finance and Business Services will:-

24.4.1 Establish, keep under review and operate (including the reporting of any non-compliance) any such guidance and policy documents in relation to the administration of the Authority's financial affairs as is considered to be necessary or desirable to ensure the proper administration of the Authority's financial affairs so that resources are used in the most efficient and effective manner in order to meet the Authority's objectives.

24.4.2 For the avoidance of doubt the guidance and policy documents referred to in the preceding paragraph shall incorporate or apply any national requirements from time to time in force and

shall include but not be limited to Financial Procedure Rules, Financial Schemes of Delegation, and any other relevant codes of practice on financial Management.

- 24.4.3 To monitor the Authority's capital and revenue budgets, investments, and financial position generally and maintain an efficient and effective internal audit of the Authority's financial affairs.
- 24.4.4 Secure effective treasury management, including taking all action necessary in relation to all debts, payment of accounts, loans (including guarantees and indemnities), grants, advances, investments, financing and banking generally.
- 24.4.5 Take all action necessary to ensure the safeguarding of assets, the appraisal and management of risk generally, including the taking out and administration of appropriate insurances.
- 24.4.6 Agree the format of capital appraisals for schemes as required under the Finance Procedure Rules.
- 24.4.7 Exercise discretion to apply interest charges against service budgets, where avoidable cash flow losses have been incurred.
- 24.4.8 Agree specific ring-fencing of certain provisions as part of the annual budget setting process.
- 24.4.9 Give consent for urgent work to repair, replace or reinstate vehicles, buildings or equipment where the work is fully funded from insurance monies.
- 24.4.10 Agree in consultation with Corporate Management Team and the Chief Executive circumstances where normal procurement requirements and or requirements for quotations or tenders should be waived.
- 24.4.11 To take all necessary action in respect of the Authority's role in relation to the administration and operation of the Cheshire Pension Fund.
- 24.4.12 Administering the supply of goods and services to other public authorities and bodies under the Local Authorities (Goods and Services) Act 1970 and all other enabling legislation and setting of prices and collecting and recovering any charges made.
- 24.4.13 To make recommendations to the Council on Council Tax requirements, determine the Council tax base and to administer and manage generally all matters relating to

Council Tax, Non Domestic Rates, Community Charge and General Rates including the awarding of discounts, relief, and exemptions and the levying, collection, recovery, and disbursement of all sums due to the Authority in respect of the same in accordance with all governing Regulations.

24.4.14 To receive and determine applications for Housing Benefit including rent restrictions, rebates, allowances, backdating requests and overpayment recovery and otherwise exercising all powers and responsibilities of the Authority under legislation relating to Housing Benefit

24.4.15 To negotiate, enter into arrangements and act generally on behalf of the Authority in respect of continuing financial matters arising from arrangements and obligations existing between the former Cheshire County and six District Councils.

24.4.16 Take all action necessary to ensure the safeguarding of assets, the appraisal and management of risk generally, including the taking out and administration of appropriate insurances.

25 BOROUGH SOLICITOR AND MONITORING OFFICER

25.3 The Borough Solicitor is the Authority's Monitoring Officer pursuant to Section 5 and 5A of the Local Government and Housing Act 1989 (as amended) and is responsible for exercising the functions of that role.

25.4 After consulting with the Chief Executive and the Director of Finance and Business Services the Monitoring Officer will report to the full Council (or to the Executive in relation to an Executive function), if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

25.5 The Borough Solicitor shall be responsible for settling of actual or potential uninsured claims or Local Government Ombudsman cases as follows:-

25.5.1 Up to £20,000 the Borough Solicitor may authorise settlement

25.5.2 Above £20,000 and below £50,000 the Borough Solicitor and Director of Finance and Business Services may jointly authorise settlement

25.5.3 £50,000 and above - approval by Executive

25.6 The Borough Solicitor shall be responsible for:-

- 25.6.1 Conducting and appearing on behalf of the Authority any legal proceedings authorised by or on behalf of the Authority before any court or tribunal and similarly defending the Authority where any proceedings are instituted against it and taking all other action (within such proceedings or otherwise) considered by him or her to be necessary to protect and/or further the Authority's interests.
- 25.6.2 Save when specifically referred to in this Constitution, to act as the Authority's proper Officer for the purposes of Section 234 of the Local Government Act 1972 (Authorisation of Documents).
- 25.6.3 Lodging objections to any proposal affecting Borough interests.
- 25.6.4 To act as Proper Officer under the Access to Information Procedure Rules and in particular for the purposes of the Access to Information provisions of the Local Government Act 1972.
- 25.6.5 Determining applications for the display of the crest or logo of the Authority.
- 25.6.6 Determining applications for Certificates of Lawful Development or Interim Development Orders.
- 25.6.7 Taking all action including the completion of agreements, the service of notices, giving of directions, obtaining or issuing orders, authorising the execution of powers of entry, and the institution and defence of legal proceedings necessary or desirable to protect and advance the interests of or discharge the roles, functions and responsibilities of the Authority.
- 25.6.8 Making orders for the temporary closure of highways and regulation of traffic.
- 25.6.9 To make any Statutory and discretionary payments under Land Compensation Act 1973.
- 25.6.10 To be responsible for the overall monitoring of the operation of the Regulation of Investigatory Powers Act 2000.
- 25.6.11 To exercise such functions as are conferred on to the authority by agreements or instruments made pursuant to the provisions of the Registration Service Act 1953 (Registration Schemes)
- 25.6.12 To exercise such functions as are necessary to effectively discharge the Authority's duties in respect of the provision of a Coroners Service

- 25.6.13 To make minor and consequential amendments to the constitution on account of drafting anomalies and authorised revisions.

26 SOLICITORS, BARRISTERS, LEGAL EXECUTIVES AND TRAINEE SOLICITORS

26.3 Are authorised to:

- 26.3.1 appear in, and conduct legal proceedings in, any Court or Tribunal on behalf of the Authority; and

- 26.3.2 prove debts owed to the Authority in bankruptcy and liquidation proceedings.

27 DEMOCRATIC AND REGISTRATION SERVICES MANAGER

- 27.3 To act as Proper Officer in respect of functions conferred upon the Authority in respect of the registration of births, deaths, and marriages.

- 27.4 To act as Proper Officer in respect of functions conferred upon the Authority in respect of the overview and scrutiny function.

28 HEAD OF HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT

- 28.1 The Head of Human Resources and Organisational Development shall be responsible for discharging the following functions:-

- 28.1.1 To be responsible for the effective implementation and maintenance of Equal Opportunities in Employment Policy.

- 28.1.2 To apply, in consultation with the Director of Finance and Business Services the terms of the early retirement/redundancy scheme in those cases where the post is to be deleted.

- 28.1.3 To determine and pay honoraria in accordance with the NJC Scheme subject to a report to appropriate Members the next available meeting

- 28.1.4 In consultation with the portfolio holder and chair of the appropriate Scrutiny Committee and the Director of Finance and Business Services to determine annually the recruitment requirements for trainee positions at a level that can be met within budgetary provisions.

- 28.1.5 To approve the Management Structure of each Directorate below Head of Service level after undertaking appropriate consultations.
- 28.1.6 To approve Job Descriptions/Person Specifications for all employees other than members of Management Team.
- 28.1.7 To recommend to Council, the development of policies on the full range of Personnel issues, after appropriate consultation with Members.
- 28.1.8 To approve Codes of Conduct in support of Personnel policies as set out in the Authority's Performance Strategy.
- 28.1.9 To have regard to issues relating to the Local Government Pensions Scheme and the Authority's Early Retirement Scheme except where they are applied to individual employees.
- 28.1.10 To monitor staffing information reports.
- 28.1.11 To consider recommendations in respect of the use of the powers in Section 13(4) and 13(5) of the Local Government Act 2000 to place staff at the disposal of other local authorities to facilitate joint arrangements or joint working.
- 28.1.12 Take responsibility for the health and safety of the Authority's employees.

Officer Delegations in Respect of Council Functions

PLANNING FUNCTIONS – DELEGATION TO OFFICERS

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

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

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

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

PUBLIC RIGHTS OF WAY – DELEGATION TO OFFICERS

The following functions are delegated to the Head of Service²¹:-

- 1 To keep a register of information with respect to maps, statements and declarations (S31A)
- 2 To keep a register with respect to applications under sections 118ZA, 118C, 119ZA, and 119C of the Highways Act 1980 (S121B).
- 3 To take all necessary action to assert and protect the rights of the public to the use and enjoyment of public paths (S130)

²¹ Correct as at 16.1.09. Note: Section numbers in brackets refer to the Highways Act 1980 unless otherwise stated.

- 4 To exercise all powers in relation to highways delegated to the Head of Environmental Services (in place of the same) where the highway in question is a public right of way.
- 5 To serve notice of proposed action in respect of obstructions on public paths (S130A).
- 6 To apply for the variation of orders issued under S130B of the Highways Act 1980 (S130B(7))
- 7 To authorise the temporary disturbance of a public path (S135)
- 8 To discharge functions in respect of the making good of damage and the removal of obstructions from public paths. (S135B HA)
- 9 To discharge functions in respect of the removal of things so deposited on public paths so as to be a nuisance. (S149 HA)
- 10 Duty to keep a register of prescribed information with respect to applications under S53(5) OF THE Wildlife and Countryside Act 1981. (S53B Wildlife and Countryside Act 1981)
- 11 Power to prepare a map and statement by way of consolidation of the definitive map and statement. (S57A of the Wildlife and Countryside Act 1981).
- 12 To grant permission for provision of services, amenities, recreation and refreshment facilities on public paths. (S115A – S115K)
- 13 Authorising the use of footpaths and bridleways for motor vehicles and cycle trials. (S33 Road Traffic Regulation Act 1988)
- 14 Certifying extracts from the Definitive Map under the provisions of Section 56 of the Wildlife and Countryside Act 1981.
- 15 Making temporary diversion orders for footpaths and bridleways under the Highways Act 1980.
- 16 Serving notices to require the removal of obstructions from public rights of way, the restoration of public rights of way following ploughing, cropping or other disturbances and the maintenance of stiles, gates or other structures across public rights of way.
- 17 Granting permission to extend the period of restoration following disturbance of the surface of a right of way and the granting of orders that a right of way shall be subject to a condition that the surface may be disturbed by excavation or operations.

18 Issuing notices under the provisions of Schedule 12A of the Highways Act 1980.

19 Authorising the erection of stiles and gates across any public right of way.

20 The making of Traffic Regulation Orders in respect of any public right of way.

Note:- It is anticipated that other day to day functions will be delegated by virtue of a general powers of officers section in PT3 of the constitution to be cascaded further by an internal scheme of delegation where appropriate. For instance the power to institute legal proceedings and criminal prosecutions in respect of rights of way matters will be delegated as a general power of officers to the Head of Service. The delegations provided herein are for clarity and are without prejudice to the generality of the powers delegated to officers in the said PT3.

Note:- Checks and balances are built in to the general delegation scheme by reference to an approved policy and budget framework. Further checks and balances are to be built in to delegations relating to notices and enforcement etc where appropriate by requiring the approval of the Borough Solicitor to those types of functions.

LICENSING FUNCTIONS – DELEGATION TO OFFICERS

HEAD OF SAFER AND STRONGER COMMUNITIES

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

LICENSING FUNCTIONS

(a)	Power to licence hackney carriages and private hire vehicles	Hackney carriages: Town Police Clauses Act 1847; section 47, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976 Private Hire Vehicles: sections 48, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976
(b)	Power to suspend hackney carriage and private hire vehicle licences	Hackney carriages: Town Police Clauses Act 1847; section 58 & 60 Local Government (Miscellaneous Provision) Act 1976 Private Hire Vehicles: sections 58 & 60 Local Government (Miscellaneous Provision) Act 1976
(c)	Power to suspend hackney carriage and private hire vehicle licences pending inspection	Section 68 Local Government (Miscellaneous Provision) Act 1976
(d)	Power to licence operators licences	Sections 55 – 58 & 79 Local Government (Miscellaneous Provision) Act 1976
(e)	Power to suspend operators licences	Section 62 Local Government (Miscellaneous Provision) Act 1976
(f)	Power to licence hackney carriage and private hire drivers	Hackney carriages: Town Police Clauses Act 1847; section 53, 54, 57, 59, 61 & 79 Local Government (Miscellaneous Provision) Act 1976 Private Hire: sections 51, 53, 54, 61 & 79 Local Government (Miscellaneous Provision) Act 1976
(g)	Power to suspend hackney carriage and private hire drivers licences	Section 61 Local Government (Miscellaneous Provision) Act 1976
(h)	<i>Power to renew or transfer licences for sex establishments</i> <i>Where (i) there has been no</i>	Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.

	<i>material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received.</i>	
(i)	<i>Power to licence street collections</i>	Section 5 Police, Factories etc (Miscellaneous Provisions) Act 1916
(j)	<i>Power to licence House to House collections</i>	Section 2 House to House Collections Act 1939
(k)	<i>Power to issue street trading consents</i>	Section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982
(l)	<i>Power to licence performances of hypnotism</i>	Hypnotism Act 1952
(m)	<i>Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)</i>	Licensing Act 2003 and Gambling Act 2005
(n)	<i>Sanctioning the use of buildings for the storage of celluloid</i>	Section 1 of the Celluloid and Cinematograph Film Act 1922
(o)	<i>Licensing employment of children</i>	Part II of the Children and Young Persons Act 1933, byelaws made under that Part, and Part II of the Children and Young Persons Act 1963

Exceptions

Licensing Functions ('General')

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

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

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

(iv) The determination of applications for the renewal or transfer of licences for sex establishments where objections are received and have not been withdrawn shall be referred to the General Licensing Sub-Committee.

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

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

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

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

Licensing Functions (Licensing Act 2003 and Gambling Act 2005)

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

(ii) With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003, the determination of an application under the Licensing Act 2003 or the Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Act Sub-Committee.*

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

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

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

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

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

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

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

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

(xi) The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.*

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

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

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

ENVIRONMENTAL HEALTH FUNCTIONS DELEGATIONS TO OFFICERS

(a)	Power to issue licences authorising the use of land as a caravan site.	Section 3(3) of the Caravan Sites and Control of Development Act 1960
(b)	Power to licence the use of moveable dwellings and camping sites	Section 269(1) of the Public Health Act 1936
(c)	Power to license premises for acupuncture, tattooing, ear piercing and electrolysis	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982
(d)	Power to licence pleasure boats and pleasure vessels	Section 94 of the Public Health Acts Amendment Act 1907
(e)	Power to licence scrap yards	Section 1 Scrap Metal Dealers Act 1964
(f)	To register motor salvage operators	Part 1 of the Vehicles (Crime) Act 2001
(g)	To register and licence premises for the preparation of food	Section 19 of the Food Safety Act 1990
(h)	Power to licence premises for the breeding of dogs	Section 1 Breeding of Dogs Act 1973 and Section 1 of Breeding and Sale of Dogs (Welfare Act) 1999
(i)	Power to licence pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business	Section 1 of Pet Animals Act 1951, Section 1 Animal Boarding Establishments Act 1964 and 1970, Section 1 of Breeding of Dogs Act 1973 and Sections 1 & 8 of Breeding and Sale of Dogs Act (Welfare) Act 1999.
(j)	To register animal trainers and exhibitors	Section 1 of Performing Animals (Regulation) Act 1925.
(k)	Power to licence zoos	Section 1 of the Zoo Licensing Act 1981
(l)	To licence dangerous wild animals	Section 1 Dangerous Wild Animals Act 1976

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

TRADING STANDARDS – DELEGATION TO OFFICERS

1.0 The following powers and functions are delegated to the Head of Safer and Stronger Communities:-

1.1 The role of the Council's Chief Inspector of Weights and Measures under Section 72 of the Weights and Measures Act 1985.

1.2 To appoint and authorise officers of the Council to act as duly authorised persons, proper officers, inspectors, or similar (howsoever statutorily described) to discharge the statutory functions devolving upon the Council under the legislation²² listed in Part 2 to this Appendix including but not limited to the functions of registration, enforcement, inspection or any associated action or granting, amending, varying, refusing, revoking, suspending or transferring any licences, approvals or consents.

1.3 To enter into reciprocal arrangements for the authorisation and appointment of officers for the purposes set out in 1.2 above to facilitate cross-border co-operation in the discharge of the said functions with any other local authority.

1.4 To Amend the functions listed in Part 2 to this Appendix (and any associated officer authorisations issued pursuant to 1.2 and 1.3 above) in accordance with legislation from time to time in force:-

1.4.1 without reference to elected Members in respect of functions which the authority is obliged by legislation to discharge (mandatory functions); or;

1.4.2 following approval from elected members in respect of functions which the authority has discretion to discharge (discretionary functions).

2.0 The following powers and functions are delegated to the Borough Solicitor:-

2.1 To exercise such functions as are conferred on to the authority by agreements or instruments made pursuant to the provisions of the Registration Service Act 1953 (Registration Schemes)

²² Which shall include any Statute extending or amending the same or incorporated therewith, or any re-enactment thereof, or any Statutory Instruments, Regulations, Byelaws or Orders made there under or continued in force thereby and also such other powers and duties under such other Statutes, Statutory Instruments, Regulations, Byelaws or Orders as may from time to time be conferred upon said officers by the Council.

- 2.2** To exercise such functions as are necessary to effectively discharge the Council's duties in respect of the provision of a Coroners Service

APPENDIX 1

LIST OF STATUTORY PROVISIONS IN RESPECT OF TRADING STANDARDS FUNCTIONS

- 1) Accommodation Agencies Act 1953
- 2) Administration of Justice Act 1970
- 3) Agriculture Act 1970
- 4) Agriculture (Miscellaneous Provisions) Act 1968
- 5) Agricultural Produce Act 1928
- 6) Agricultural Produce Act 1931
- 7) Agricultural Produce (Grading and Marketing) Act 1928
- 8) Animal Health Act 1981
- 9) Animal Welfare Act 2006
- 10) Business Names Act 1985
- 11) Cancer Act 1939
- 12) Cattle Identification Regulations 1998
- 13) Children and Young Persons Act 1933
- 14) Children and Young Persons (Protection from Tobacco) Act 1991
- 15) Child Resistant Packaging (Safety)(Amendments) Regulations 1993
- 16) Civil Partnerships (Approved Premises) Regulations 2005
- 17) Classification, Packaging and Labelling of Dangerous Substances Regulations 1984
- 18) Clean Air Act 1993
- 19) Companies Act 1985
- 20) Consumer Credit Act 1974
- 21) Consumer Protection Act 1987
- 22) Control of Pollution Act 1974
- 23) Control of Pollution (Anti-Fouling Paints and Treatments) Regulations 1987
- 24) Copyright Designs & Patents Act 1988
- 25) Crime and Disorder Act 1998
- 26) Criminal Attempts Act 1981
- 27) Criminal Damage Act 1971
- 28) Criminal Justice Act 1988
- 29) Criminal Justice Act 1993
- 30) Criminal Law Act 1977
- 31) Crystal Glass (Descriptions) Regulations 1973
- 32) Development of Tourism Act 1969
- 33) Dogs Act 1906
- 34) Education Reform Act 1988
- 35) Eggs (Marking Standards) Regulations 1985
- 36) Electro Magnetic Compatibility Regulations 1992
- 37) Energy Act 1976
- 38) Energy Conservation Act 1981
- 39) Enterprise Act 2002
- 40) Estates Agents Act 1979
- 41) European Communities Act 1972

- 42) Explosives Act 1923
- 43) Fair Trading Act 1973
- 44) Farm and Garden Chemicals Act 1967
- 45) Fire Safety & Safety of Places of Sport Act 1987
- 46) Fireworks Act 2003
- 47) Food Act 1984
- 48) Food and Environment Protection Act 1985
- 49) Food Safety Act 1990
- 50) Forgery and Counterfeiting Act 1981
- 51) Fraud Act 2006
- 52) Hallmarking Act 1973
- 53) Health and Safety at Work Act 1974
- 54) Housing Act 2004
- 55) Insurance Brokers (Registration) Act 1977
- 56) Intoxicating Substances (Supply) Act 1985
- 57) Legislative and Regulatory Reform Act 2006
- 58) Licensing Act 1964
- 59) Licensing Act 2003
- 60) Lotteries and Amusements Act 1976
- 61) Malicious Communications Act 1988
- 62) Manufacture and Storage of Explosives Regulations 2005
- 63) Marriage Act 1949
- 64) Materials and Articles in Contact with Food Regulations 1985
- 65) Measuring Container Bottles (EEC Requirement Regulations) 1977
- 66) Medicines Act 1968
- 67) Mock Auctions Act 1961
- 68) Motor Cycle Noises Act 1987
- 69) National Lottery Act 1993
- 70) Natural Mineral Water Regulations 1985
- 71) Nurses Agencies Act 1957
- 72) Opticians Act 1989
- 73) Offensive Weapons Act 1996
- 74) Performing Animals (Regulation) Act 1925
- 75) Personal Protective Equipment (EC Directive) Regulations 1992
- 76) Petroleum (Consolidation) Act 1928
- 77) Petroleum (Transfer of Licences) Act 1936
- 78) Pigs (Records, Identification and Movement) Order 1995
- 79) Poisons Act 1933
- 80) Poisons Act 1972
- 81) Poultry (Water Content) Regulations 1984
- 82) Prices Acts 1974
- 83) Prices Act 1975
- 84) Proceeds of Crime Act 2002
- 85) Property Misdescriptions Act 1991
- 86) Protection of Animals Acts 1911
- 87) Registration Service Act 1953
- 88) Rent Act 1965
- 89) Rent Act 1977
- 90) Road Traffic Act 1972
- 91) Road Traffic Act 1974

- 92) Road Traffic Act 1988
- 93) Road Traffic (Foreign Vehicles) Act 1972
- 94) Road Traffic Regulation Act 1984
- 95) Road Traffic Offenders Act 1988
- 96) Safety of Sports Grounds Act 1975
- 97) Schedule Prices Act 1974
- 98) Scotch Whisky Act 1988
- 99) Solicitors Act 1974
- 100) Telecommunications Act 1984
- 101) Textile Products (Indication of Fibre Content) Regulations 1986
- 102) Theft Act 1968
- 103) Theft Act 1978
- 104) Timeshare Act 1992
- 105) Tobacco Advertising and Promotions Act 2002
- 106) Trade Descriptions Act 1968
- 107) Trade Marks Act 1994
- 108) Trade Representations Act 1972
- 109) Trading Representations (Disabled Persons) Act 1958
- 110) Trading Stamps Act 1964
- 111) Unsolicited Goods and Services Act 1971
- 112) Unsolicited Goods and Services Act 1975
- 113) Vehicles (Crime) Act 2001
- 114) Video Recordings Act 1984
- 115) Weights and Measures Act 1976
- 116) Weights and Measures Act 1985

APPENDIX 2

List of legislation falling within the remit of the Head of Safer and Stronger Communities by virtue of paragraph 25.1.2 of Part 3.

Administration of Justice Act 1985
Agriculture (Safety, Health and Welfare Provisions) Act 1956
Agriculture Act 1947
Animal Boarding Establishments Act 1963 and 1970
Animal Health Acts 1971/2002
Animal Health and Welfare Act 1984
Animal Welfare Act 2006
Anti-Social Behaviour Act 2003
Breeding of Dogs Act 1973/91
Breeding and Sale of Dogs (Welfare) Act 1999
Building Act 1984
Burials Act 1857
Caravan Sites Act 1968
Caravan Sites and Control of Development Act 1960
Cheques Act 1992
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Companies Consolidation (Consequential Provisions) Act 1985
Contracts (Rights of Third Parties) Act 1999
Control of Pollution (Amendment) Act 1989
Control of Pollution Act 1974
County Courts Act 1984
Courts and Legal Services Act 1990
Criminal Justice Act 1982/1988/ 1991,
Criminal Justice and Police Act 2001
Criminal Justice and Public Order Act 1994
Dangerous Dogs Act 1991
Dangerous Wild Animals Act 1976
Defective Premises Act 1972
Dogs (Amendment) Act 1928
Dogs (Fouling of Land) Act 1996
Dogs (Protection of Livestock) Act 1953
Environment Act 1995
Environment and Safety Information Act 1988
Environmental Damage (Prevention and Remediation) Regulations 2009
Environmental Protection Act 1990
European Communities Act 1972
Factories Act 1961
Farm and Garden Chemicals Act 1967
Farriers (Registration) Act 1975
Food Safety Act 1990
Guard Dogs Act 1975
Home Safety Act 1961
Indictable Offences Act 1848
Land Drainage Acts 1991

Law of Property (Miscellaneous Provisions) Act 1989
Legislative and Regulatory Reform Act 2006
Licensing Act 2003
Litter Act 1983
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Local Government Act 1972/1987
Local Government and Housing Act 1989
Misrepresentation Act 1967
Motor Vehicles (Safety Equipment for Children) Act 1991
National Assistance Act 1948
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Offices, Shops & Railway Premises Act 1963
Olympic Symbol etc (Protection) Act 1995
Patents, Designs and Marks Act 1986
Performing Animal (Regulation) Act 1925
Pesticides (Fees and Enforcement) Act 1989
Pesticides Act 1998
Pet Animals (Amendment) Act 1983
Pet Animals Act 1951
Pollution Prevention and Control Act 1999
Prevention of Damage by Pests Act 1949
Private Security Industry Act 2001
Private Water Supply Regulations 1991
Proceeds of Crime Act 1995
Property Mis-descriptions Act 1991
Prosecution of Offences Act 1985
Protection Against Cruel Tethering Act 1988
Protection from Harassment Act 1997
Protection of Children (Tobacco) Act 1986
Public Health (Control of Disease) Act 1984
Public Health (Infectious Disease) Regulations 1988
Public Health Acts 1936 and 1961
Refuse Disposal (Amenity) Act 1978
Registered Designs Act 1949
Regulation of Investigatory Powers Act 2000
Riding Establishments Act 1964/70
Rivers Prevention of Pollution Act 1961
Sale and Supply of Goods Act 1994
Sale of Goods (Amendment) Act 1994/1995
Sale of Goods Act 1979
Sunday Trading Act 1994
Supply of Goods and Services Act 1982
Tattooing of Minors Act 1969
Torts (Interference with Goods) Act 1977
Town Police Clauses Act 1847 / 89
Traffic Management Act 2004
Unfair Contract Terms Act 1977
Vagrancy Act 1824
Veterinary Surgeons Act 1966

Water Act 1989
Water Industry Act 1991
Water Supply (Water Quality Regulations 2000
Water Resources Act 1963
Weeds Act 1959
Wildlife and Countryside Act 1981
Zoo Licensing Act 1981

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COUNCIL MEETING – 13TH OCTOBER 2011**Extract from the Minutes of the Constitution Committee Meeting on 22nd September 2011****23 BOUNDARY COMMISSION FOR ENGLAND: A REVIEW OF PARLIAMENTARY CONSTITUENCY BOUNDARIES**

The Committee considered proposals by the Boundary Commission for England to review Parliamentary Constituency boundaries.

The Boundary Commission had published its initial proposals on 13th September 2011. This would be followed by a 12 week consultation period, ending on 5th December 2011. The Commission was required to submit its recommendations to Government by 1st October 2013.

Local authority wards were seen as the basic building blocks for designing constituencies. However, the legislation governing the review defined these as those which were in force as at 6th May 2010. The review would therefore be based on the former Borough Ward boundaries, rather than those introduced by the most recent boundary review.

The consultation on the review would be based on a combination of written representations, and oral representations at public hearings. The Commission would then publish a notice in each region indicating whether or not revisions had been made to its initial proposals for that region. Any revisions to the initial proposals would then be subject to further consultation, following which the Commission would make final decisions upon any further modifications before making a report to Government. This would then be followed by legislation.

The Council's response to the review would normally be agreed by Council. However, the tight timescale within which the Council's response had to be submitted would not make this possible unless a special meeting of Council were convened. It was therefore suggested that Council delegate full powers to the Constitution Committee to agree the Council's final response.

It was proposed that a sub-committee be appointed to manage the process.

Councillor Lesley Smetham attended the meeting and, at the invitation of the Chairman, spoke on this matter.

It was suggested that a briefing be arranged for all Members of the Council, at which they would have an opportunity to comment on the review. Any comments could then be reported to the review sub-committee.

RESOLVED

That

- (1) a sub-committee of 6 Members (4 Con: 1 Lab: 1 Ind) be appointed with full delegated powers to undertake the review;
- (2) Council at its meeting on 13th October 2011 be asked to consider whether it should determine the final response to the review or delegate to the Constitution Committee the power to do so;
- (3) the Council's formal response to the review be submitted in writing; and
- (4) a briefing on the Boundary Commission's review be arranged for all Members of the Council and any feedback from the briefing be reported to the review sub-committee.

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Boundary Commission for England: a Review of Parliamentary Constituency Boundaries

1.0 Report Summary

- 1.1 The Boundary Commission for England (BCE) has the task of periodically reviewing all Parliamentary constituencies in England. A review (“the review”) is currently being undertaken and is being conducted in accordance with new rules laid down by Parliament.
- 1.2 This report outlines the basis upon which the review will be conducted and makes recommendations about the Council’s involvement.

2.0 Recommendations

- 2.1 That
 - (1) a sub-committee of 6 Members (4 Con: 1 Lab: 1 Ind) be appointed with full delegated powers to undertake the review;
 - (2) Council at its meeting on 13th October 2011 be asked to consider whether it should determine the final response to the review or delegate to the Constitution Committee the power to do so; and
 - (3) the Council’s formal response to the review be provided in writing.

3.0 Wards Affected

- 3.1 All wards are affected.

4.0 Local Ward Members

- 4.1 All local ward Members are affected.

5.0 Policy Implications

- 5.1 The Council has no policy on the boundaries of Parliamentary Constituencies. However, the Council’s response to the review will define its policy and may influence the shape of Parliamentary Constituencies for the 2015 Parliamentary elections and beyond.

6.0 Financial Implications

- 6.1 There are no identifiable financial implications.

7.0 Legal Implications

- 7.1 The key legal implications of the review are contained in the body of this report. However, the Parliamentary Voting Systems and Constituencies Act 2011 imposes new requirements upon the way in which the review will operate. New rules apply, which are outlined in this report.
- 7.2 The legislative basis of Parliamentary Constituency Boundary reviews is found in the Parliamentary Constituencies Act 1986, as amended by the Boundary Commissions Act 1992.

8.0 Risk Management

- 8.1 No risks would appear to arise from the recommendations of this report.

9.0 Background

- 9.1 The rules which form the basis of the review presume a significant reduction in the number of Parliamentary Constituencies in England. These Constituencies will be required to comply with new parameters so far as the numbers of electors they contain.
- 9.2 The review will be heavily informed by public consultation.
- 9.3 The BCE must formally report to Government by 1st October 2013 and make recommendations on changes which it believes to be appropriate: in respect of the distribution, size, shape, name or designation of constituencies. These recommendations will then be converted into draft legislation, which will be implemented in time for the next Parliamentary Election after the date on which the legislation is passed.
- 9.4 The legislation provides that the electorate figures to be used for the 2013 review are the figures published on or before 1st December 2010.
- 9.5 With regard to the local government boundaries which are to be taken into account as part of the review, the legislation defines these as those which were in force as at 6th May 2010. This immediately creates an issue for Cheshire East Council, since the review will be based on the former Borough Ward boundaries, rather than those which were the product of the most recent boundary review. The BCE have been pressed to confirm this. It would appear to be an unusual approach for the future Parliamentary Constituency

boundaries to be based on previous Ward boundary information. The BCE indicate that this problem stems from legislation.

- 9.6 Legislation requires there to be 600 constituencies for the whole of the UK, of which there will be 68 in the North West: Blackburn, Blackpool, Bolton, Bury, Cheshire East, Cheshire West, Cumbria, Halton, Knowlsey, Lancashire, Liverpool, Manchester, Oldham, Rochdale, St Helens, Salford, Sefton, Stockport, Tameside, Trafford, Warrington, Wirral and Wigan.
- 9.7 The BCE, in developing its proposals, will allocate the specified number of constituencies within the relevant region, ensuring that each constituency is wholly contained within it. There would need to be compelling reasons to depart from this assumption.
- 9.8 Legislation stipulates that every constituency must have an electorate range of between 72,810-80,473 electors.
- 9.9 The BCE may take into account other considerations:
 - Geographical: size, shape and accessibility of constituencies
 - Local government boundaries as at 6.05.10 (see above)
 - Boundaries of existing constituencies
 - Local ties that would be broken by constituency changes
- 9.10 With regard to **local authority wards**, these are seen as the basic building block for designing constituencies. They are regarded as well-defined and well-understood units which are generally indicative of areas which have a broad community of interest. Any divisions of these units between constituencies is seen as being likely to break local ties, disrupt political party organisations and cause difficulties for Electoral Registration and Returning Officers. Therefore, in the absence of compelling and exceptional circumstances, the BCE's view is that it would not be appropriate to divide wards where it is possible to construct constituencies that meet the statutory electorate range without dividing them.
- 9.11 With regard to **existing constituencies** the BCE intends to have regard generally to these as far as possible. It feels it would be inappropriate to start from a "blank sheet of paper", although this does not mean that a constituency should be protected from change, simply because its electorate figure falls within the statutory range.
- 9.12 Where constituencies remain largely the same, the BCE policy is to retain the existing constituency name. There would, in these circumstances, need to be good reason to make changes.
- 9.13 In general, the policy is for constituencies to be named in a way which reflects the main population centres. However, where an alternative name commands greater local support than that proposed by the BCE, it will usually be prepared to recommend that as an alternative.

10.0 Initial proposals and consultation

- 10.1 The BCE intends to publish its initial proposals on 13th September 2011. This will be followed by a 12 week consultation period, ending on 5th December 2011.
- 10.2 The consultation will be based on a combination of written representations, and oral representations at public hearings. The BCE's policy is to afford the same weight to written representations as it does to oral representations.
- 10.3 In the light of this, it is proposed that the Council's views are made known to the BCE in writing.
- 10.4 Following the consultation, Assistant Commissioners will consider all representations made and prepare a report for the BCE on each region.
- 10.5 The BCE will then publish a notice in each region indicating whether or not revisions have been made to its initial proposals for that region. Any revisions to the initial proposals will be subject to further consultation.
- 10.6 Following consideration of any representations made at such further consultation, the BCE will make final decisions upon any further modifications before making a report to Government. This will then be followed by legislation.

11.0 The Council's response

- 11.1 The Council's response to the review would normally be agreed by Full Council. However, the tight timescale within which the Council's response must be submitted would not make this possible unless a special meeting of Council was to be convened.
- 11.2 This report therefore proposes that Council delegate full powers to the Constitution Committee to agree the Council's final response. It also recommends that a sub committee be appointed to drive forward the process. A small number of Members can most appropriately undertake this detailed work.
- 11.3 The sub committee could then meet as often as needed to progress the detailed work, reporting as and when necessary to the Constitution Committee, which may need to arrange special meetings.

12.0 Access to Information

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

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Designation: Democratic and Registration Services Manager

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**EXTRACT FROM THE MINUTES OF THE CABINET MEETING HELD ON
3 OCTOBER 2011**

MINUTE 66

DRAFT NATIONAL PLANNING POLICY FRAMEWORK

Consideration was given to a report on the draft National Planning Policy Framework which would replace all current Planning Policy Statements; the report outlined some of the issues it raised for planning in Cheshire East and suggested a response to be made by the Council to the current consultation.

The proposed response, detailed in Appendix 1 of the report, had been considered by the Strategic Planning Board at its meeting on 28 September 2011; it was reported that Board had supported the draft response but made the following additional comments:

- That the response should say more about the importance of agriculture – as a producer of food and as an important business – and that the role of agricultural land should be given greater prominence in the debate over the development of land.
- That wherever possible officers will suggest new wording to accompany our comments of concern. It is considered that comments will carry more weight if positive wording is put forward in some cases.

Cabinet agreed that these comments should be incorporated into the response and, in addition, that the section in the covering response entitled 'The Favourable Presumption and Plans under preparation' should be expanded to include:

- That local plans remain protected until such time as the new National Planning Policy Framework is in place, and
- That information be included on the number of plans currently approved and in the pipeline awaiting implementation.

RESOLVED

That Council be recommended to approve the consultation response detailed in Appendix 1 of the report, subject to the inclusion of the following comments made by the Strategic Planning Board at its meeting on 28 September, and by the Cabinet.

- That the response should say more about the importance of agriculture – as a producer of food and as an important business – and that the role of agricultural land should be given greater prominence in the debate over the development of land.

- That wherever possible officers will suggest new wording to accompany our comments of concern. It is considered that comments will carry more weight if positive wording is put forward in some cases.
- That local plans remain protected until such time as the new National Planning Policy Framework is in place.
- That information be included on the number of plans currently approved and in the pipeline awaiting implementation.

CHESHIRE EAST COUNCIL

CABINET

Date of Meeting: 3 October 2011
Report of: Strategic Director - Places
Subject/Title: Draft National Planning Policy Framework
Portfolio Holders: Cllr David Brown & Cllr Rachel Bailey

1.0 Report Summary

- 1.1 This report introduces the draft National Planning Policy Framework (NPPF), outlines some of the issues it raises for planning in Cheshire East and suggests a proposed response by the Council to the current consultation. The matter is scheduled to be considered by Full Council on 13 October.

2.0 Decision Requested

- 2.1 That the Cabinet consider the comments of Strategic Planning Board on the Draft National Planning Policy Framework.
- 2.2 That the Cabinet considers the report in the light of these comments and recommends that Council approves the consultation response detailed in Appendix 1 of the report.

3.0 Reasons for Recommendation(s)

- 3.1 To enable the Council to influence the development of the National Planning Policy Framework.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 The National Planning Policy Framework will replace the current suite of existing national Planning Policy Statements, Planning Policy Guidance notes and some Circulars with one single document. The Local Plan will need to be prepared in accordance with the policies in the NPPF to ensure that the future development of the Borough is planned in a sustainable

manner and supports sustainable economic growth. The policies in the NPPF will also apply to development management decisions.

7.0 Financial Implications

- 7.1 The NPPF refers to neighbourhood plans which are a new element to the planning system being introduced through the Localism Bill and to the need for the Council to undertake viability assessments for individual sites within its 5 year housing supply. These proposals will have resource implications for the Council.

8.0 Legal Implications

- 8.1 The provisions of the Planning and Compulsory Purchase Act 2004 already cover the status of national planning policy in plan preparation and decision making. Therefore, the NPPF will have the same legal status as current Government policy documents.

9.0 Risk Management Implications

- 9.1 Significant risk that the existing Local Plans are not found to be in conformity with the National Planning Policy Framework and that Development Management decisions would be reliant on the NPPF, rather than local planning policy, until a new Local Plan is adopted.

10.0 Background and Options

- 10.1 The Government considers that the amount of central direction within the planning system is too great, and with more than 1,000 pages of national planning policy, the system has become unwieldy and complex. It has recently published the draft National Planning Policy Framework for consultation until 17th October 2011, which streamlines national policy into a consolidated set of priorities to consider when planning for and deciding on new development. The draft NPPF is presented in one single document written in plain English with the view that it can be understood and used by everyone who has an interest in shaping the development of their area.
- 10.2 The draft Framework sets out the Government's requirements for the planning system 'only to the extent that it is relevant, proportionate and necessary to do so', and in the spirit of localism, leaves scope for local areas and neighbourhoods to develop their own policies and proposals in accordance with the general approach set out in the NPPF. In many areas, policy has been streamlined but the core approach and principles remain the same. However, there are some areas where a completely new approach is being introduced.
- 10.3 The draft NPPF does not cover planning for Travellers. A separate draft Planning Policy Statement on Travellers was published on 13th April 2011. Consultation on this document has now ended and it is intended that the final policy will be incorporated into the NPPF. It also does not cover

planning for waste. This will be incorporated into the National Waste Management Plan and until that plan is finalised, Planning Policy Statement 10: Planning for Sustainable Waste Management will remain in force.

- 10.4 Under the draft NPPF, the purpose of the planning system is “to contribute to the achievement of sustainable development” and the definition of sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. For the planning system, delivering sustainable development means planning for prosperity (an economic role), planning for people (a social role) and planning for places (an environmental role).
- 10.5 The Government is clear that the planning system should operate to encourage growth and not act as an impediment. The NPPF introduces a new presumption in favour of sustainable development where the default answer to development proposals is “yes”. Local planning authorities should plan positively for new development and approve all individual proposals wherever possible.
- 10.6 The plan-led system remains where Local Plans should be prepared on the basis that objectively assessed development needs should be met. Development proposals that accord with statutory plans should be approved without delay, and permission should also be granted where the plan is absent, silent, indeterminate or where relevant policies are out of date.
- 10.7 Although the draft NPPF is a consultation document and, therefore, subject to potential amendment, it does give a clear indication of the Government’s ‘direction of travel’ in planning policy. The draft document is capable of being a material consideration in the determination of planning applications, although the weight given to it is likely to be limited at present, and will be a matter for the decision maker’s planning judgement in each case.
- 10.8 **POTENTIAL ISSUES / IMPLICATIONS FOR CHESHIRE EAST:**
- 10.9 **Presumption in favour of sustainable development.** It is very difficult to define what does and what does not constitute sustainable development, and the draft NPPF’s definition that it is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” is open to interpretation. There is potential for a real lack of certainty in the planning system for many years to come as what is and what isn’t sustainable development is defined through case law and tested through planning appeals.
- 10.10 **Requirement to grant permission where the plan is absent, silent or where relevant policies are out of date.** Up-to-date Local Plans (i.e. plans that are consistent with the NPPF) should be in place as soon as practical, but in the absence of an up-to-date and consistent plan, planning

applications should be determined in accordance with the NPPF, including its presumption in favour of sustainable development.

- 10.11 It will be open to local planning authorities to seek a certificate of conformity with the Framework for their Local Plans. In the absence of further guidance on how this would work, it is considered unlikely that any of the existing Cheshire East Local Plans would be in overall conformity with the Framework, and would therefore be accorded very little weight in the planning process.
- 10.12 The planning system works best when there is certainty and consistency in the decisions that it delivers. The relative brevity of the draft NPPF which covers such a wide range of topics is not consistent with providing clarity and certainty in the planning system.
- 10.13 The NPPF has been drafted with the intention of providing “a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities”. The local element of policy should add locally-distinctive detail and clarity to the overall approach set out in the NPPF.
- 10.14 In the short term, prior to the adoption of an up-to-date plan that is in conformity with the NPPF, the Council would be almost entirely reliant on the simplified policies in the NPPF to make decisions on planning applications. The removal of the existing local tier of planning policy (although temporary) would lead to:
- inconsistent planning decisions;
 - no requirement for development in the most sustainable locations to come forward first;
 - planning by appeal rather than decision making through a plan led system; and
 - the potential imposition of unwanted development that does not reflect the needs and priorities of communities.

This is of particular concern due to the presumption in favour of sustainable development contained in the NPPF and the difficulty in defining what does and what does not constitute sustainable development.

- 10.15 It is suggested that the Council’s consultation response expresses concerns over the potential for a temporary absence of meaningful local planning policy and advocates the need for a transition period, whereby the presumption to approve development will be applied flexibly and local circumstances and evidence base will be taken into account, even if there is not a relevant or up-to-date local plan policy.
- 10.16 **Five-year supply of land for housing.** The draft NPPF continues the existing requirement for local planning authorities to identify a rolling supply of deliverable sites sufficient to provide five years supply of land for

housing. However, it also introduces a requirement to identify a further 20% in addition, to provide choice and competition in the market for land.

- 10.17 Cheshire East does not presently have a five year supply and has introduced an interim policy in an attempt to encourage applications in sustainable locations to increase the land supply. This is a response to the current situation, but is not a substitute for properly planned development coming forward through the development plan, which will ensure that new development enables the comprehensive provision of appropriate community and physical infrastructure.
- 10.18 It is suggested that the consultation response should note that the requirement of an additional 20% in the housing land supply could lead to more development coming forwards in an unplanned manner that may not be in the most sustainable locations and which may not deliver the required infrastructure arising from the cumulative impacts of development.
- 10.19 The draft Framework has also introduced a new definition for determining whether a site is 'deliverable' which will place a greater onus on local authorities to carry out expensive and time-consuming evidence base work. The definition will require councils to carry out a detailed viability assessment of each individual site within its 5 year housing land supply. This requirement could introduce greater uncertainty in the development process, with assessments being susceptible to challenge. Developers promoting their own less suitable sites for development could seek to undermine the Council's 5 year land supply by casting doubt on the viability assessments at appeal.
- 10.20 **Delivery of community facilities and local services.** The policy requirement to ensure that housing is developed in suitable locations which offer a range of community facilities and good access to key services and infrastructure is welcomed. However, it is considered that the subsequent wording (para 126) "where large scale development is proposed in less sustainable locations, local planning authorities should require investment to improve the sustainability of the site" does not adequately reflect the fact that development should only be approved in less sustainable locations as a last resort. The requirement to only 'improve' sustainability provides a degree of latitude which may not be helpful when negotiating with developers on the provision of essential infrastructure.
- 10.21 **Protection of employment land or floorspace** (para 75). The draft NPPF requires that "planning policies should avoid the long term protection of employment land or floorspace, and applications for alternative uses of designated land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses".
- 10.22 The requirement not to protect employment land or floorspace is supported where it is no longer able to fulfil a useful economic function. However, in areas of high demand for housing such as Cheshire East, there is a need

to protect good employment sites that fulfil a useful economic function from other competing, higher-value land uses. It is suggested that the Council's consultation response should indicate the need to reword this paragraph so that the protected designation afforded to employment land or floorspace be subject to regular reviews to ensure that the land or floorspace still performs a useful economic function.

- 10.23 **Removal of offices from town centres first policy.** The promotion of vital and viable town centres is welcomed, but there is concern over the removal of B1a office development from the 'town centres first' policy. It would no longer be necessary to demonstrate that there are no more central sites available for office development. Office workers make a valuable contribution to the vitality and viability of town centres, and town centre locations are usually the most accessible by sustainable transport modes. The lack of suitable in-centre sites should not preclude office development elsewhere but the complete removal of the sequential test for office development is likely to lead to less sustainable patterns of development and may damage the vitality and viability of existing centres. It is suggested that the Council's consultation response raises this issue as an area of concern.

11.0 Access to Information

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

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RESPONSE BY CHESHIRE EAST COUNCIL TO THE CONSULTATION DRAFT ON THE NATIONAL PLANNING POLICY FRAMEWORK

General Comments

Cheshire East Council welcomes the consolidation and simplification of the national planning policy and guidance. Over successive years the planning system has grown too cumbersome and we welcome the opportunity to redress this balance.

The Council also supports the presumption in favour of sustainable development – and the concept that development should be viewed as a positive, necessary and beneficial contributor to a successful society. In particular we are keen to dispel the creeping cultural aversion to development – and are pleased that the Framework adopts a pro-active approach to building and development.

However, the Council also has some concerns about the approach set out in the draft NPPF

Local Context

Cheshire East Council is a unitary authority established in April 2009. The Borough has a population of 360,000 and is located to the south west of Manchester. Since its inception the Council has worked closely with stakeholders to develop a new and very positive approach to the future planning of the Borough. We have adopted our Sustainable Community Strategy entitled “Ambition for All”. As its name suggests this sets out a clear vision and ambitious strategy for the future growth and improvement of the Borough.

We are now moving forward rapidly with the preparation of our local plan which is to be strongly focused on delivering the economic growth that the Borough needs and can offer. We have been mindful of the need for a comprehensive programme of community engagement to ensure that we fully appreciate the needs of each town and the opportunities and constraints available. This programme is currently underway through our Place Shaping consultation.

We are following this by working closely over the next three months with four of our market towns which have been awarded Neighbourhood Planning vanguard status in the preparation of plans for each of these towns to shape the vision, strategy and proposals to deliver their future growth. The town councils and partnerships of these towns have been very supportive of the new approach to work closely with the Borough Council to develop the plan to steer the future development of their towns.

All four of these towns are attractive locations for economic and housing growth, indeed many proposals have been put forward by potential developers for consideration within the local plan on sites within and around these towns. The Council has been working closely with developers and landowners to assess the potential sites and to bring together development options that would help to deliver the employment, housing, community and infrastructure requirements of each town.

It has to be recognised that the preparation of a new local plan by a new authority will take time, particularly as in the case of Cheshire East we are seeking to change from the former authorities' restricted approach to development to a more pro-active one. We are looking at how we can streamline our approach whilst ensuring that we comply with legal requirements so as to avoid any risk of failure at the examination or of a legal challenge.

So far, we have been working successfully through the process with the support of prospective developers. To help ensure that we have an adequate supply of housing land in the period until the local plan is adopted, Cheshire East Council has introduced interim measures to control the release of sufficient land to meet the housing needs of the Borough in the short term.

The Role of Existing plans

Our first concern relates to the role of existing plans and the way the presumption in favour of sustainable development is currently drafted. Currently we rely for the majority of planning decisions on Local Plans dating from the past decade. Whilst all have a formal lifetime which ended earlier this year many of their policies and provisions remain relevant to the Borough as it now is – and will be for some time to come.

The Council is, therefore, very concerned that the stance set out in the draft NPPF para 26 which states the local planning authorities should “***grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date***”, This risks leaving a ‘policy void’ which will undermine public confidence in the whole system. It is understood that the NPPF deliberately does not prescribe what is an ‘up to date’ Local Plan so as to allow for local circumstances and variations. However it would be helpful if it had more to say on this – and particularly made the point that ‘old’ local plans need not automatically be considered as out of date

The Favourable Presumption and Plans under preparation

Our second concern relates to the impact that the NPPF will have on plans under preparation. All agree that an up to date adopted Local Plan is highly beneficial. However there is a risk that the current wording of the NPPF is likely to de-rail the preparation of the local plan. Since the publication of the draft NPPF, many developers have indicated that they are considering whether to submit planning

applications for their proposals on a variety of sites outside current settlement boundaries in advance of the adoption of the local plan.

The current wording of the NPPF would leave the local planning authority or the planning inspectorate little option but to grant permission for many of these proposals, thus undermining our approach to plan making especially with regard to creating an effective development strategy and the coordination of much needed infrastructure.

Such an approach would without doubt raise significant local opposition at a time when we are endeavouring to build support from local communities to a plan led approach to determining the growth strategy for our towns. Furthermore, ad hoc planning decision making in this manner will prevent us from drawing up a properly considered approach to planning the infrastructure needs of community and threaten the development of our approach to the Community Infrastructure Levy.

As a Council we are eager to provide the development necessary to support economic prosperity – but this prosperity will only succeed if it comes forward at the right place and the right time. Perhaps incorrectly, the NPPF is being seen as a reason to grant permission more widely – and at almost any price.

We feel that this impression can be overcome if the NPPF strengthened and clarified its definition of sustainable development – and also if there was recognition for both the role of existing local plans, the work that may be ongoing to create a new Local Plan and any interim measures democratically approved which bridge the gap between the two.

Cheshire East Council therefore strongly opposes the approach that permission should be granted for development where the adopted plans are not in conformity with the NPPF. Account should be taken of any interim measures that local planning authorities have adopted to manage development and pay greater heed to existing plans.

Detailed comments on specific paragraphs are set out below:

NPPF para	Cheshire East Council Comment
9- 18	<p>Delivering Sustainable Development</p> <p>The underlying principle that the purpose of the planning system is to contribute to the achievement of sustainable development is supported. However, there are concerns that the very strong position taken in the NPPF within the presumption in favour of sustainable development will no doubt lead to arguments, appeals and legal challenges about the interpretation of the term “sustainable development” and whether a development is or is not considered to be sustainable.</p> <p>It is acknowledged that economic considerations have for too long been ignored and therefore merits much greater prominence. However the current wording risks over stating the economic case to the detriment of the social and environmental considerations. The balance can and should be restored - but we will simply repeat past mistakes if there is over emphasis of one consideration over the other two.</p> <p>There is a conflict between para 14 second bullet and section 70(2) of the Town and Country Planning Act which refers to decisions on planning applications “<i>having regard to the provisions of the development plan, so far as material to the application, and to any other material consideration</i>”. This enable normal consideration to be given to a wide range of guidance in making development management decisions.</p>
17	<p>Neighbourhood Planning</p> <p>Support stance on neighbourhood plans, in particular that they must promote and not restrict development</p>
19	<p>Core Planning Principles</p> <p>These are generally supported, however, the following points are of concern:</p> <p>The 2nd bullet point should be more focused on striking a balance between delivering development in the most suitable locations, ensuring that the necessary infrastructure is provided and that it is designed to be of a high standard so as to create places where people want to work and live and thereby be attractive to investment.</p> <p>The 5th bullet on protecting and enhancing environmental assets is considered to be too weak. Development should definitely be located in areas of poorer environmental quality; this is part of ‘sustainability’.</p> <p>The core planning principles fail to make any reference to planning to address climate change or moving to a low carbon economy.</p>
21	<p>Supplementary Planning Documents</p> <p>We oppose the limitation on SPD’s set out in this paragraph. SPD’s by definition must conform to the adopted Local Plan – and so cannot impose any additional burdens. However clear and well prepared SPD’s can do much to explain policies and clarify them – to the benefit of all concerned.</p>

	SPD's can also have a particular role in articulating a communities local vision for its area – most especially through village design statements and related documents
26	Conformity of Local Plans to the NPPF This is going to introduce more uncertainty and delays into the plan making process for those authorities who have recently adopted Local Development Frameworks and those in the process of preparing new plans.
39	Ensuring viability and deliverability The NPPF sets out a requirement to demonstrate that sites should be deliverable and that their viability is not threatened by planning obligations and policy burdens. It is considered that this requirement should be amended to make it clear that this should relate to “ <i>normal market conditions</i> ”.
73-75	Economic Development Support the approach to supporting economic development. However, there is conflict between paras 73 and 75. If land is not safeguarded it will be snapped up for other high value uses and there will be insufficient land available for business. There should be a proportionate safeguarding of land such that realistic provision is made for the future. Unless land and buildings are reserved for business development we will be unable to take advantage of investment opportunities when they arise.
76 - 80	Town Centres Support the stance on town centres. However, it is considered that paragraph 78 is too weak – there should be more unequivocal support for town centres
81	Rural Economy There should be a clearer and stronger stance to the protection of the countryside – it is the unspoilt attractiveness of the countryside that sustains the tourist industry. People visit rural areas outside of national parks and AONBs for their natural beauty and this should be recognised.
107 - 108	Housing Support overall objectives on housing; however, the NPPF should be clear that the release of major sites on green field land should only be through a plan-led allocation where the implications of the development for the local community and the infrastructure needed to support the development can be properly planned for.
109	Increase Housing Supply The Council recognises the importance of providing sufficient housing – to meet local needs and support economic growth. In that regard we support the policy to maintain a rolling 5 year supply of housing land. However the introduction of an additional allowance of at least 20% is

	<p>opposed as it unnecessarily complicates the position and makes it harder to explain land supply to the public at large – a task that is not always easy at the best of times. In our experience it is the availability of finance rather than lack of competition that constrains housing supply.</p> <p>There is also a risk that this provision may lead to local authorities seeking to plan for a lower housing requirement figure. The requirement that local plans should ensure that there is an adequate supply of developable sites for years 6-10 years should ensure that sufficient sites are allocated and are capable of being brought forward for development as and when required. Reference should be added to this paragraph about the need to monitor and manage the release of housing land to ensure that there is an adequate supply of deliverable sites.</p> <p>The current position on maintaining a supply of ‘deliverable’ sites is especially difficult in a recession and takes no account of current restrictions on finance. There needs to be more balanced in the approach to maintaining housing land supply. It needs to be recognised that current limits on the delivery of housing is not primarily due to a lack of deliverable sites, but rather the uncertainties of the financial markets.</p> <p>Consequently we would encourage a rewording of footnote 5 on page 30. For the most part this sensibly indicates that the five year supply has to be based on sites which reasonably can come forward in that time. The difficulty comes in the reference to ‘current values’. If these are severely depressed then in fact it may prove nigh on impossible to provide a 5 year supply. It would be preferable to rely instead on a sensible and proportionate judgement of likely values over the 5 year period.</p>
110	<p>Increase Housing Supply</p> <p>This paragraph should be redrafted to strike a better balance between delivering development in the most suitable locations, ensuring that the necessary infrastructure is provided and that it is designed to be of a high standard so as to create places where people want to work and live and thereby be attractive to investment.</p> <p>The NPPF should be clear that the release of major housing sites on green field land should only be through a plan-led allocation where the implications of the development for the local community and the infrastructure needed to support the development can be properly planned for.</p>
123	<p>Outdoor Advertising</p> <p>There needs to be stronger control on outdoor advertising outside of towns as they can result in significant impact on the appearance of the countryside. One of the cherished characteristics of the English countryside is the absence of hoardings and bill boards that sadly blight the periphery of towns and villages elsewhere. The current wording is too permissive; it could be strengthened without detriment to business activity.</p>
133 -	<p>Green Belts</p>

147	<p>We welcome the guidance on Green Belts within the NPPF. Whilst in some respects the length of the guidance is considerably longer than is devoted to other subjects, this is justified by the particular issues that green belt poses. Almost by definition these areas possess significant development pressures which often require complex judgements of impact to be made. Accordingly it is appropriate that the NPPF has detailed guidance on the topic.</p>
163-167	<p>Natural Environment</p> <p>This section is not comprehensive enough. The landscape section only refers to National Parks and AONBs. The vast majority of the English Countryside is neither green belt nor covered by one of these designations.</p> <p>There should be recognition of the need to protect the countryside for its environmental, cultural and economic value and to ensure that the landscaping and design of any development in the countryside respects the recognised landscape character.</p> <p>We acknowledge that in order to meet development needs that greenfield sites will need to be built on and that not all countryside can be protected. However the Framework does not say enough about the more profound rural areas in particular. Reference in paragraph 24 to areas of protection is too obscure. The Countryside contributes enormously to the attractiveness of our nation – both as a place to live - but also as a place to visit and invest in. The Countryside has economic as well as merely scenic value. We would therefore encourage a more positive statement within the NPPF about the role of Countryside – and this can be drafted so as not to be an obstruction to each and every Greenfield development.</p> <p>Whilst the reduction in the amount of prescriptive national planning policy guidance is welcomed, there are concerns about the loss of much valued guidance on the approach to planning to safeguard and enhance environmental and heritage assets. This guidance has ensured that local authorities apply a common approach to safeguarding and enhancing these assets of international and national importance. There is a concern that without this guidance, local authorities will have to develop their own local approaches which will mean that developers will have a plethora of differing approaches to take account of in preparing their proposals.</p> <p>As a constituent Authority of the Peak District National Park the Council is concerned to ensure that the special character of Peak District and other National Parks is adequately maintained. The normal favourable presumption may not be compatible with the statutory purposes of the National Parks – and requires at the very least strict clarification of what constitutes ‘sustainable development’ in the peculiar context of a National Park.</p>

176 - 191	<p>The Historic Environment</p> <p>The Recent Publication of PPS5 has already slimmed down guidance on the historic environment – and the NPPF has reduced it still further to the extent that strength of the previous advice is substantially enfeebled.</p> <p>The historic environment is a unique national asset– which once lost cannot be replaced. We submit that it deserves more attention than it is currently afforded within the NPPF</p>
	<p>Omissions</p> <p>There is no reference to:</p> <p>Monitoring the effectiveness of local plans</p> <p>Promoting the reuse of previously developed land and redeveloping older urban areas for new uses</p>

SPD's

CHESHIRE EAST COUNCIL REPORT TO: COUNCIL

Date of Meeting:	13 October 2011
Report of:	Head of Finance and Business Services
Subject/Title:	Alderley Edge By Pass - Supplementary Capital Estimate
Portfolio Holders:	Cllr Michael Jones

1.0 Report Summary

- 1.1 The Capital Programme includes a major scheme for the A34 Alderley Edge and Nether Alderley By Pass. Estimated costs of the scheme now exceed approvals by over £3m, largely as a result of forecast increased land and compensation claims, and consequently Council approval is sought to these additional costs. It is proposed that potential income arising from the sale of land and property holdings acquired for the scheme be used to finance these additional costs.

2.0 Decision Requested

- 2.1 Council is requested to approve a SCE request of £3,062,498 for Alderley Edge By Pass, as detailed in the Appendix to the report.

3.0 Reasons for Recommendations

- 3.1 Finance Procedure Rules set out the requirements for financial approvals by Members, and relevant recommendations are contained in this report.

4.0 Wards Affected

- 4.1 Alderley Edge

5.0 Local Ward Members

- 5.1 Cllr Frank Keegan

6.0 Policy Implications including - Climate change, Health

- 6.1 As contained in the report.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 As contained in the report.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 None

9.0 Risk Management

- 9.1 Financial risks are assessed and reported on a regular basis, and remedial action taken if and when required.

10.0 Background

- 10.1 In August, Cabinet received the final financial outturn report for the 2010-11 financial year. This included an update on the Capital Programme. Cabinet approved requests for Supplementary Capital Estimates (SCE) and Virements up to £1m. However in accordance with Finance Procedure Rules, Cabinet resolved to ask Council to approve an SCE relating to the Alderley Edge By Pass scheme, which is in excess of £1m.

11.0 Access to Information

- 11.1 The background papers relating to this report can be inspected by contacting:

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APPENDIX**REQUEST FOR SUPPLEMENTARY CAPITAL ESTIMATE****A34 Alderley Edge and Nether Alderley Bypass**

The scheme was given Full Approval by the Department of Transport (DfT) in mid 2008 and approved by Cheshire East Council at its meeting of 16th June 2008. At that time, the estimated cost was £51.648m, which was being funded by a DfT grant of £48.224m and £3.424m from the Council. At present, expenditure on the scheme stands at £42.9m. However the predicted outturn is now £54.7m which is predicted to be incurred over the years to 2016.

The construction phase is largely complete as the bypass was opened to traffic in November 2010. Whereas for this phase construction works have come in approximately £0.5m under budget, this has been offset by associated works by the services / statutory undertakers being approximately £1.2m over budget.

Future expenditure relates to costs to be incurred from the settlement of all land related and compensation claim issues which take a long period of time to be completed. Given the road opening in November 2010, the window for compensation claims will not close until 2017, which is the usual time scale for these claims. However these claims are predicted to overrun the budget by £2.4m.

The scheme is subject to variations in incurred costs which, given the long period of time involved with such a large project, are liable to occur for unforeseen reasons. The estimates used on commencement of the scheme were realistic and justifiable at that time and there was a significant cost risk allowance included within the figures in 2008. However, this has been exceeded by an increase in land related costs for several conspiring reasons that have occurred in the intervening years. They include, inter alia, an increase in land costs per acre; increases in the actual areas of land acquired on negotiation; increased disturbance, severance and injurious affection claims/payments; and increases in the estimated number of Part 1 compensation claims arising from an increase in the number of properties eligible to claim after further consideration upon completion of the scheme. The current estimate that now gives rise to the £3m SCE is based on a full knowledge of all these changes and it is expected that it will be possible to manage the outturn within this revised figure.

The Council owns a considerable portfolio of land/buildings in the area that were purchased several years ago during the development of the scheme. The process of selling off these holdings has commenced and it is proposed that the income arising from this (estimated to be £1.72m-£3.1m based on estimates prepared by Assets) could be used to offset these increased costs. If receipts were to come in at the bottom of the estimate then the Department would need to find the shortfall, if this could not be found elsewhere within the Places revenue and capital budgets and there was no available monies from the Capital Reserve then the only alternative would be to consider Prudential Borrowing.

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