

Constitution Committee

Agenda

Date:	Thursday, 24th November, 2016
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

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

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

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

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

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

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

4. **Minutes of Previous meeting** (Pages 3 - 10)

To approve the minutes of the meeting held on 15th September 2016.

5. **Overview and Scrutiny Committees - Review of Structure** (Pages 11 - 22)

To consider proposals to reduce the number of Overview and Scrutiny Committees to better align committees to the Corporate and Cabinet structures.

6. **Calendar of Meetings for 2017-18** (Pages 23 - 28)

To consider the draft Calendar of Meetings for 2017/18.

7. **Nomination of Members to Committees** (Pages 29 - 32)

To consider a report which aims to simplify the process for the nomination of Members to the Council's committees.

8. **The Functions of the Public Rights of Way Committee** (Pages 33 - 38)

To consider a report on the functions of the Public Rights of Way Committee.

9. **The Openness of Local Government Bodies Regulations 2014** (Pages 39 - 48)

To consider a report which outlines the Openness of Local Government Bodies Regulations 2014 and related legislation in the context of contemporaneously recording, webcasting and offering social media commentary on the council's decision-making meetings. The report also highlights best practice developed by other authorities.

10. **Future Work Programme Items**

- Review of Delegations to Planning Committees and Planning Officers

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 15th September, 2016 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

Councillors M Beanland, B Burkhill, M Deakin (for Cllr Brooks) S Edgar,
H Gaddum, S Hogben, L Jeuda (For Cllr Newton) D Mahon, N Mannion,
R Menlove, L Smetham (for Cllr Baxendale) and G Wait

Councillors in attendance

Councillors D Bailey and S Pochin

Officers

Brian Reed, Head of Governance and Democratic Services
Bill Norman, Director of Legal Services
Paul Mountford, Governance and Democratic Services

Apologies

Councillors G Baxendale, E Brooks and D Newton

10 DECLARATIONS OF INTEREST

There were no declarations of interest.

11 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

12 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 15th July 2016 be approved as a correct record.

13 OVERVIEW AND SCRUTINY COMMITTEES - REVIEW OF STRUCTURE**RESOLVED**

That consideration of this matter be deferred to the next meeting.

14 SUBSTITUTE COMMITTEE MEMBERS AT PLANNING COMMITTEE MEETINGS

The Committee considered a report recommending that a pool of trained members be created to supplement existing arrangements for the provision of substitute committee members at planning committee meetings.

The current substitution arrangements provided that a substitute on a planning committee must have received appropriate training and must be a member of one of the other two planning committees. These requirements made it difficult on occasions for Group whips to find substitutes for planning meetings. It was therefore proposed that a limited pool of additional members with the required training be established and drawn from as required.

RESOLVED

That Council be recommended to approve that

1. a pool of 9 planning substitutes be established (5 Conservative: 2 Labour: 2 Independent);
2. the pool will supplement the existing Constitutional provisions which enable planning substitutes to be drawn from any of the Council's planning committees: Northern Planning, Southern Planning and Strategic Planning Board;
3. subject to the requirement that each member of the pool must have received appropriate and up-to-date planning training, the political groups may nominate their members to the pool as and when necessary; and
4. the Director of Legal Services, in consultation with the Chairman of the Constitution Committee, be given authority to make such changes to the Constitution as he considers are necessary to give effect to the wishes of Council.

15 AUDIO-RECORDING OF MEETINGS

The Committee considered a report seeking clarification and guidance on the arrangements for the audio-recording of decision-making meetings. The purpose of such recordings would be to resolve any disagreement as to the accuracy of the draft minutes.

The Committee took the view that the requirement to record should apply to the meetings of all decision-making bodies, including overview and scrutiny committees.

The Committee also considered whether the audio recordings should be published on the Council's website.

Councillor S Pochin attended the meeting and, at the invitation of the Chairman, spoke on this matter.

RESOLVED

That

1. Council be recommended to agree that, subject to the following principles, the audio recording of meetings shall take place:
 - (a) All decision-making meetings of the Council be subject to audio-recording, including overview and scrutiny committees (but not informal non-decision-making bodies such as working groups) unless the press and public have, by resolution, been excluded from the meeting;
 - (b) Any member who was a member of a decision-making body at a meeting of that body, including anyone attending as a substitute, may request that the audio recording of that meeting be reviewed in order to clarify the wording of a draft minute;
 - (c) Such a request for review of the audio recording must be made on a working day before the day of the meeting at which the draft minutes are to be submitted for approval; and
 - (d) The audio recordings be retained for a period of 6 months from the date of the meeting in question, unless a Freedom of Information request is made in respect of the recording, in which case the recording will be retained for such longer period as is required by law.
2. Council be asked to give authority to the Director of Legal Services, in consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Constitution as he considers necessary to give effect to the wishes of Council;
3. Council be asked to consider whether the audio recordings of meetings should be published on the Council's website and, if it is minded to agree, request and authorise the Constitution Committee to approve the detailed arrangements and the necessary changes to the Constitution; and
4. Council be asked to consider whether a report should be presented to the Constitution Committee which will explore the implications of the Openness and Local Government Bodies Regulations 2014.

16 URGENT DECISION PROCEDURES

The Committee considered a report on recommended changes to the procedures for taking urgent decisions. The current procedures, which were introduced in 2011, were considered deficient in certain respects as outlined in the report.

With regard to the proposed changes to the urgency provisions relating to executive decisions, the Leader of the Council had been consulted.

RESOLVED

That Council be recommended to approve the amended procedures for taking urgent decisions as set out below and to authorise the Director of Legal Services to amend the Constitution accordingly:

1. The procedure for taking urgent regulatory decisions under Committee Procedure Rule 25 be amended as follows:

“The Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with the Chairman and/or Vice-Chairman of the relevant committee or sub-committee have delegated authority to take any non-executive decision subject to the following requirements being met:

- *The decision-maker is satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or an 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 Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.”*

2. The procedure for taking urgent Council decisions under Council Procedure Rule 18 be amended as follows:

“If a decision would normally be required to be made by full Council the decision may be made by the Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with Group Leaders and the Mayor (or in his/her absence the Deputy Mayor) subject to the following requirements being met:

- *The decision-maker is 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 Director of Legal Services and Section 151 Officer;*
 - *All Members of the Council are notified of the decision taken by electronic means."*
3. The procedure for taking urgent executive decisions under Cabinet Procedure Rule 53 be amended as follows:

"The Leader of the Council, or in his/her absence the Deputy Leader of the Council, or in his/her absence the relevant portfolio holder has delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met:

- *The decision-maker is 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 overview and 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 Director of Legal Services 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 54 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions*
- *Overview and Scrutiny Procedure Rules in relation to Call-in (Rule 12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).*

- *Rule 4 of the Budget and Policy Framework Procedure Rules shall be adhered to in relation to urgent executive decisions taken under this procedure.*
- *Overview and scrutiny committees can review the reasons for the urgency of a decision and the process adopted.*

For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply.”

17 MEMBERS' USE OF THE COUNCIL'S EMAIL SYSTEM

The Committee considered a report on the existing guidance to members on using the Council's Internet and email services. The report sought to provide clarification of the phrase in the Members' Code of Conduct that 'Resources must not be used improperly for political purposes (including party political purposes)'.

Paragraph 6(b) to Part A of the Council's Member Code of Conduct placed restrictions on the use by Members of the Council's resources which included the following:

“Resources must not be used improperly for political purposes (including party political purposes)”

In the section in the Code of Practice on using Council equipment, the following guidance was provided in relation to email:

“Members should not use the ICT facilities improperly for political purposes such as the promotion of a political party, a candidate or group of candidates in an election or in connection with a party political campaign.”

The Code of Practice thus mirrored the Code of Conduct in prohibiting the use of the Council's ICT facilities 'improperly for political purposes', but it went on to provide some examples of improper use.

Neither the Code of Conduct nor the Code of Practice provided guidance as to when the use of Council resources for political purposes might not be 'improper.' However, as sending an email on the Council network had no identifiable cost to the public purse, there could be circumstances where an email about party political matters was harmless and not improper. Factors which could make it more likely that a 'political' email was acceptable included the following:

- The sender and recipient/s were both/all Councillors belonging to the same political group;
- The recipient was not a member of the public;

- The content of the email was administrative in nature;
- The email did not contain any politically controversial material;
- The email did not criticise other people, and/or another political party.

It was not possible to provide definitive guidance covering every possible set of facts. However, if a Member was unsure whether sending an email on the Council's system might be 'improper' they were urged to seek advice from the Monitoring Officer.

RESOLVED

That the clarification provided in the report be distributed to all members.

The meeting commenced at 2.00 pm and concluded at 3.44 pm

Councillor A Martin (Chairman)

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 24th November 2016
Report of: Director of Legal Services
Subject/Title: Overview and Scrutiny Committees – Review of Structure

1.0 Report Summary

- 1.1 The report makes recommendations to reduce the number of Overview and Scrutiny Committees to better align committees to the Corporate and Cabinet structures.

2.0 Recommendations

That it be recommended to Council that:-

- (1) Overview and Scrutiny Committee structure be reduced from six to four committees as follows:
- Corporate (12 Members) – (To include the Chairs and Vice -Chairs of the other three Overview and Scrutiny committees);
 - Environment and Regeneration (12 Members)
 - Children and Families (12 Members)
 - Health and Adult Social Care and Communities (15 Members)
- (2) The terms of reference for each committee as set out in Appendix 1 be approved;
- (3) Meetings will be held on an eight weekly cycle, subject to each Chair being given flexibility to convene additional meetings as and when required depending on workload;
- (4) Regular mid point meetings be disbanded;
- (5) That a date for implementation be agreed.

3.0 Reasons for Recommendations

- 3.1 The current Overview and Scrutiny Structure of six committees does not align with the new Corporate Structure of three directorates of Corporate, People and Places, nor does it align well with the existing Cabinet structure of 9 Portfolios. The new proposed structure provides clear links to the new corporate structure and ensures

that each portfolio holder will report to only one Overview and Scrutiny Committee each.

4.0 Wards Affected

4.1 All.

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications

6.1 No policy implications have been identified.

7.0 Financial Implications

7.1 There will be a reduction in the Members allowances scheme resulting from a reduction in the payment of two Special responsibility allowances.

8.0 Legal Implications

8.1 The review ensures that the Council's Overview and Scrutiny arrangements are in compliance with the Local Government Act 2000.

9.0 Risk Management

9.1 No risks have been identified.

10.0 Background and Options

10.1 Since the inception of Cheshire East in 2009, the Council's ambition for Overview and Scrutiny has been to ensure that it provides constructive challenge to Cabinet and partner organisations by focusing on the delivery of the Council's vision, strategic aims and objectives. In order to achieve this, Overview and Scrutiny has to be an integral part of the Council's decision making process, provide real opportunities for non-executive members to influence decision makers in a non-partisan environment; and ensure that the work of Overview and Scrutiny Committees always adds value to the work of the Council. This is accomplished by forging stronger links between Cabinet, Officers and Overview and Scrutiny.

10.2 All of the above sits comfortably with the well-established 'principles of good scrutiny', as set out in the Centre for Public Scrutiny's 'Good Scrutiny Guide' (CfPR 2004):

- to provide 'critical friend' challenge to executives, as well as external authorities and agencies (holding to account)
- to reflect the voice and concerns of the public and its communities (engaging the public as active citizens)
- to take the lead and own the scrutiny process on behalf of the public (facilitation of community leadership and effective representation)
- to make an impact on the delivery of public services (performance/quality assurance)

10.3 Overview and Scrutiny can steer portfolio holders in their policy work. Overview and Scrutiny committees exist to assist and challenge Cabinet in the process to achieve the Council's corporate objectives.

11.0 Alignment of the Structure

11.1 The Leader of the Council re-structured Cabinet in May 2016 reducing the number of portfolios to nine.

11.2 The current Overview and Scrutiny structure comprising six committees does not align with the new Cabinet well. The result is that most portfolio holders are required to report to more than one committee, and one portfolio holder has functions that are spread across four committees. This is not really sustainable.

11.3 A better alignment of the Overview and Scrutiny structure linked to the new portfolios will provide greater clarity for the organisation as a whole, and will give each portfolio holder a single point of contact as far as Overview and Scrutiny is concerned. This inevitably leads to a question about the number of committees that will be required to fulfil the Council's Overview and Scrutiny responsibilities.

11.4 Adopting that principle that the structure should recognise new the Corporate Structure involving three Directorates of Corporate, People and Places a draft structure has been created involving four committees. (See the chart below).

11.5 Each Portfolio holder in the new structure will report to one committee each. Where, portfolios have dual responsibility for a function it is implied that the Lead Portfolio holder will dictate which committee fulfils the scrutiny function. However, some officers may have to report to more than one Overview and Scrutiny committee.

11.6 The assumption is that Corporate Overview and Scrutiny Committee will retain its overarching responsibilities for the whole of the scrutiny function. Although not covered in the diagram, there is also an assumption that the Scrutiny Chairmen's Group will be resurrected, but this will meet informally, and has no direct impact on the structure.

- 11.7 There is a dedicated Health and Adult Social Care and Communities Committee. This is in recognition of the fact that Health and Adult Social Care is a particularly challenging area which requires a dedicated group of well-trained Members to carry out the Council's statutory health scrutiny duties.
- 11.8 Likewise, there is also a committee dedicated to Children and Families. The case for this committee is very similar to that for Health and Adult Social care. Although there is no specific statutory requirement to scrutinise this area of work, the work-load is already significant and getting bigger. This committee will continue to appoint co-opted faith representatives in accordance with the Local Government Act 2000.
- 11.9 The fourth committee brings together all of the ASDVs and technical areas such as Environment, Planning, Communities etc. This committee will fulfil the Council's statutory responsibilities in relation to flood risk management and community safety.

12.0 Future method of Working

- 12.1 Overview and Scrutiny has made the biggest impact through task and finish work. This is the policy development role outlined above. Task and Finish groups are time consuming for members and support officers. Reviews normally take between 6-9 months to reach completion. For this reason, the number of reviews that each committee can undertake is limited. In order to retain this discrete policy development role, Work programmes need to be succinct and manageable.
- 12.2 Committees will still need to fulfil their responsibility to hold Cabinet to account. This can be achieved by taking more opportunities to undertake intensive spotlight reviews along the lines of the recent health review of North West Ambulance Service (NWAS). Again, this requires a disciplined approach to work planning. However, flexibility is the key and Committees should make full use of the range of modes of operation available to them such as 'select committee' style meetings, task-and finish groups: spotlight reviews; public hearings etc. Formal committee settings should be used only when appropriate to the task, and 'items for information' should only be included when there is a demonstrable case for doing so.

13.0 Frequency of Meetings

- 13.1 The number of meetings in the current calendar requires a lot of support from service departments. Better work planning will remove the need for as many meetings and will free officers to provide dedicated intensive support to a small number of reviews. As Scrutiny should always add value, fewer, more intensive reviews, should ensure that is always the case. With the exception of Health Adult Social Care and Communities which will meet on a monthly basis, committees will meet formally on a bi-monthly basis, six times per year as they do now.

- 13.2 The use of mid-point meetings should be discontinued in favour of all Member briefings where this is considered appropriate. This will enable information on important matters to be disseminated to a wider group of Members. It is suggested above that each committee should meet formally six times per year on an eight weekly cycle. If additional meetings are needed for specific briefings, these can be arranged on an ad hoc basis.

14.0 The Way Forward

- 14.1 As outlined above, many believe that Overview and Scrutiny is most effective when undertaking task and finish reviews. Since the inception of the Council in 2009, there have been twenty two task and finish reviews, covering such diverse topics as Home to School Transport, Fostering Services, Car Park Management, Assistive technology, Domestic Violence and Apprenticeships.
- 14.2 This body of work has been well received and illustrates that Overview and Scrutiny Members have the necessary skills to deal with complex policy issues. The policy development role will become even more important as the Council strives to make efficiency savings over the coming years. Overview and Scrutiny can play an integral role in transforming service provision.

15.0 Allocation of Places and Political Representation

- 15.1 Currently, there are 55 places available across 6 committees. The new structure below produces 51 places across 4 committees. Three committees have 12 members each. The exception is Health and Adult Social Care and Communities which is proposed to have 15 Members. This is in recognition of the heavy workload of the committee and should provide greater opportunities for that committee to undertake more detailed work by drawing from a bigger pool of members.
- 15.2 As Members are aware, Overview and Scrutiny Committees are subject to proportionality rules. Therefore any change to the number of places available on Overview and Scrutiny Committees will inevitably lead to some adjustments having to be made Council's committee structure. The details of these changes will be covered by a separate report to Council.

15.3

Proposed Overview and Scrutiny Structure

<p>CORPORATE (RESOURCES) 12 Members</p> <p><i>Portfolios:</i> Leader Corporate Policy and Legal Services Finance and Assets</p>		
<p>ENVIRONMENT AND REGENERATION (PLACES) 12 Members</p> <p><i>Portfolios:</i> Housing and Planning Regeneration Highways and Infrastructure</p>	<p>CHILDREN AND FAMILIES (PEOPLE) 12 members</p> <p><i>Portfolio:</i> Children and Families</p>	<p>HEALTH AND ADULT SOCIAL CARE AND COMMUNITIES (PEOPLE) 15 Members</p> <p><i>Portfolios:</i> Communities and Health Adult Care and Integration</p>

16.0 Access to Information

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

Name: Mark Nedderman
 Designation: Scrutiny Manager Business Manager
 Tel No: 01270 686459 Email: mark.nedderman@cheshireeast.gov.uk

APPENDIX 1

OVERVIEW AND SCRUTINY COMMITTEE REMITS

Each Overview and Scrutiny Committee is responsible for the monitoring and review of each of the Cabinet responsibilities allocated to it in the lists below as well as the ASDVs assigned to it. Overview and Scrutiny Committees will liaise with those Portfolio Holders and Lead Officers assigned to them as indicated. Where there is uncertainty or a dispute over which Committee will consider a particular item, the Corporate Overview and Scrutiny Committee will determine which Committee should be responsible.

Corporate Overview and Scrutiny Committee (12 members)

Cabinet Portfolios: Leader, Finance and Assets, Corporate Policy and Legal Services

ASDVs: Lead for Governance of all ASDVs

Portfolio responsibilities:

- HS2, TfN and Northern Rail
- AGMA/Northern Gateway
- CCN/LGA
- Rural Affairs
- Internal Audit
- Corporate Risk Management /Performance
- Civil Protection and Emergency Planning
- Strategic Partnerships
- Sub-regional activity
- Government liaison
- Human Resources, Workforce and Organisational Development
- Corporate Health and Safety and Occupational Health
- Shared Services
- Business Improvement Programme
- Customer Complaints and Resources
- All matters relating to procurement, corporate contracts, contract monitoring
- EMB
- Governance of Alternative Service Delivery Vehicles
- Legal Services
- Monitoring compliance with the Council's decision-making processes
- Information governance and assurance (eg Senior Information Risk Owner and Caldicott Guardian)
- Equality and diversity

- The Financing of the Council and its Budget, and Corporate Business Planning
- Capital Programme and Strategy
- Reserves, Income and Funding Strategy
- Treasury and Business Management
- Insurance
- External Audit
- Pensions
- Revenues and Exchequer Functions, Including Benefits
- Democratic Services:
 - Electoral Functions
 - Civic Functions
 - Member Training and Development
- Births, Marriages and Deaths
- ICT
- Digital/Customer Access Service
- Comms & Media Relations

Health, Adult Social Care and Communities Overview and Scrutiny Committee (15 member)

Cabinet Portfolios: Communities and Health, Adult Care and Integration

ASDV: ESAR

Portfolio Responsibilities:

- Community and Health Strategy
- Voluntary, Community and Faith Sector, including Citizens' Advice Bureaux
- All aspects of safer communities: Wardens, ASB and CCTV.
- Regulatory Services: Trading Standards, Licensing, Environment Health including Air Quality matters, contaminated land and pest and vermin control.
- Gypsies and Travellers
- Libraries
- Car Parking
- Markets
- Public Conveniences
- Health (i) Health and Wellbeing Board (ii) Health & Social Care Integration (Better Care Fund/Sustainability & Transformation, Caring together/Connecting Care
- Joint Strategic Needs Assessment.
- NHS England/Acute Trusts
- Domestic Violence Services

- Equality and Diversity (Service Users)
- Everybody Sports and Recreation (ESAR)
- Playing Pitch Strategy
- Care Act 2014
- Adult Safeguarding: Board/CQC/CEC Quality Assurance Team
- Care and Carer Assessment (i) personalisation.
- Carer Services including: (ii) Respite Care and Short Breaks.
- Care Service Commissioning, including: (iii) Residential & Domicillary Care (iv) Disability & Sensory Impairment services (v) Mental Health & Substance (vi) Re-ablement Services (vii) Occupational Therapy and Community Equipment (viii) Assistive Technology.
- Equality in Service Access & Delivery
- Extra Care Housing
- Adult (19 plus) Mental Health Services and Health Promotion
- Health and Wellbeing Board

Environment and Regeneration Overview and Scrutiny Committee (12 members)

Cabinet Portfolios: Housing and Planning, Regeneration, Highways and Infrastructure.

ASDVs: Engine of the North, Ansa, Orbitas, Civicance, Tatton Park Enterprises, TSS

Portfolio Responsibilities:

- Economic Development
- Regeneration
- Employment and Skills
- Engine of the North
- Economic Twinning
- Assets: maintenance, purchase and sale
- Farms
- Energy Issues
- Carbon Reduction
- Waste and Recycling (ANSA)
- Environmental and Cleansing Services (ANSA)
- Street Scene (ANSA)
- Crematoriums and Burial Services (Orbitas)
- Planning Policy
- S106 & Community Infrastructure Levy
- Street naming & numbering

- Land charges
- Housing, Housing Associations, and Homelessness
- Development Management and Building Control
- Neighbourhood Planning
- Heritage
- Macclesfield Town Centre Scheme
- Planning Support Company (Civicanace)
- Highways and Transport strategy and operations, including public rights of way
- Local Transport Plan
- Transport Service Solutions (TSS)
- Improvement and Efficiency Social Enterprise (IEASE)
- Operational delivery of all cultural services, including: tourism and visitor economy, Tatton Park, Parks and Park Rangers and Arts and Culture.
- Leisure Strategy
- Leisure Services
- Tour of Britain

Children, Families Overview and Scrutiny Committee (12 members)

Cabinet Portfolio: Children and Families

Portfolio Responsibilities:

- Children's Act 2004
- All aspects of Education and Schools
- Youth Support and Offending
- Lifelong learning/Skills
- Prevention and Early Intervention Strategies
- Corporate Parenting Lead
- All aspects of Children's work, including:
 - Cared for children and care leavers
 - Fostering, Adoption and Residential Services
 - Children's Trust and Children's Board
 - Children's Safeguarding (including Children's Safeguarding Board)
 - Children and Young People up to 25 years old
- 0-19 Health and Health Promotion
- 0-19 Mental Health

Scrutiny of ASDVs

Each Overview and Scrutiny Committee will be responsible for monitoring the ASDVs which relate to their area of work. The Service Commissioning Portfolio Holder and the Commissioning Manager will report to each Overview and Scrutiny Committee on the following aspects of ASDVs:

- Budget and service delivery of ASDVs
- To report to Cabinet on all ASDV matters
- To review functions and departments of the Council which are seen as potential areas for ASDV operation;
- ASDV Communication and Marketing;
- ASDV Performance.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 24th November 2016
Report of: Head of Governance and Democratic Services
Subject/Title: Calendar of Meetings for 2017-18

1.0 Report Summary

- 1.1 This report includes a draft Calendar of Meetings for Cheshire East Council for 2017-18.
- 1.2 The Committee is invited to recommend the draft calendar to Council for approval.

2.0 Recommendation

- 2.1 That the draft Calendar of Public Meetings for Cheshire East Council 2017 - 2018 be recommended to Council for approval.

3.0 Reasons for Recommendations

- 3.1 The Council is required to give public notice of its meetings in order to fulfil its legal obligations under the Access to Information Rules set out in the Constitution and to meet its obligations under the Local Government Act 1972. The Calendar will assist the Council in meeting these requirements.

4.0 Wards Affected

- 4.1 All Wards

5.0 Local Ward Members

- 5.1 All Ward Members

6.0 Policy Implications

- 6.1 None identified.

7.0 Financial Implications

- 7.1 None identified.

8.0 Legal Implications

- 8.1 There are no specific legal implications other than those identified in the main body of the report.

9.0 Risk Management

- 9.1 A published calendar of meetings enables effective business planning and decision making procedures.

10.0 Background and Options

- 10.1 As set out in its Constitution (Part 4 – Council Procedure Rule 1) the Borough Council is required to decide when its meetings will take place and these will be contained in a calendar of meetings.

It is for full Council to approve the calendar.

- 10.2 Under Part 3 of the Constitution, the Constitution Committee is responsible for:

“overseeing, monitoring, co-ordinating and implementing the Council’s administrative and political business, including....administrative arrangements forthe Council and other meetings.”

10.3 Calendar

Attached at Appendix 1 is a timetable of meetings for 2017-18.

10.4 Scheduling of Meetings

The proposed scheduling of meetings for 2017-18 follows the pattern adopted in previous years. As far as possible only one Committee has been scheduled per day and meetings of each Committee have been scheduled on the same weekday were possible.

Scheduling of meetings has taken into account the business planning/performance reporting cycles.

Certain categories of meetings which do not form part of the formal decision-making process will be omitted from the public calendar but will be added to the Members’ diary for convenience. These include Member development sessions and meetings of the Cheshire Fire Authority and Cheshire Police and Crime Panel.

August has been retained for recess except for Planning Meetings.

No meetings have been scheduled on the dates of Cheshire Show (20-21 June 2017), RHS Tatton Flower Park Show (19-23 July 2017) and Nantwich Show (26 July 2017).

10.5 Consultation

The calendar of meetings has been circulated to the following:

- Corporate Leadership Team
- Cabinet
- Committee Chairmen
- Group Leaders
- Group Whips

Responses received from the consultees will be reported at the Constitution Committee meeting.

10.6 Council

Meetings of full Council have been scheduled to be held on 17 May 2017 (Annual Council), 27 July 2017, 19 October 2017, 14 December 2017 and 22 February 2018 (Budget Council), with start times of 11 am for Annual Council, December 2017 and February 2018 meetings and 2.00 pm in July and October 2017.

10.7 Overview and Scrutiny Committees

Meetings of Overview and Scrutiny Committees have been scheduled to meet on a bi-monthly basis. If there is a specific need for additional meetings, these can be dealt with under existing arrangements.

10.8 Cabinet Meetings:

Cabinet meetings have been scheduled monthly on a Tuesday at 2.00 pm and, unless there are exceptional circumstances, will take place in the Committee Suite at Westfields to enable the meetings to be webcast. Other venues often do not have the requisite ICT connectivity. No other meetings have been scheduled on the same day.

10.9 Portfolio Holder Meetings

Portfolio Holder meetings have not been scheduled into specific dates, but it has been the practice to hold them on Monday mornings, and rooms have been reserved at Westfields to allow them to take place. However, meetings will be arranged at the most appropriate venue, following consultation with Portfolio Holders.

10.10 Planning Committees

Strategic Planning Board, Northern Planning Committee and Southern Planning Committee are scheduled on a four weekly cycle of meetings on Wednesday where possible; with any site visits taking place the Friday before the meeting.

The Strategic Planning Board will commence at 10.30 am, with the Northern Planning Committee and Southern Planning Committee commencing at 10.00 am.

10.11 Committees

Audit and Governance Committee, Constitution Committee, Staffing Committee and Public Rights of Way Committee have been scheduled to take place quarterly, with the Licensing Committee to meet five times a year. Provision exists for additional meetings to be called if needed.

- 10.12 Subject to additional recommendations which Members may wish to make, the Committee is asked to refer the calendar to Council at its meeting to be held on 15 December 2016.

11.0 **Access to Information**

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

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Calendar of Meetings 2017-2018

COMMITTEE	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY
Council (Wed Annual Council/ Thursday)	17 (11 am)		27 (2 pm)			19 (2 pm)		14 (11 am)		22 (11 am)			16 (11 am)
Cabinet Bodies													
Cabinet (Tuesday 2 pm)		13	11		12	10	7	5	16	6	13	10	8
Portfolio Holders (Monday am)	Monday mornings have been identified as an option for Portfolio Holder meetings but notice will be given as and when these meetings are arranged												
Shared Services Joint (Friday, Winsford)	19		14		22		24		26		23		18
Corporate Bodies													
Constitution Committee (Thursday 2 pm)		22			21		23				22		
Audit and Governance Committee (Thursday 2 pm)		29			28			7			15		
Staffing Committee (Tue/Thu 2 pm)			4			26			25			26	
Appeals Sub Committee (Tue 2 pm)		6, 27		1	5	3, 31	21		9	13	6	3	1
Regulatory Bodies													
Licensing Committee (Monday 2 pm)		5			4		6		8		5		
General Licensing Sub Committee		30	18	24	19	24	9	12	23	27	20	12	
Public Rights of Way Committee (Monday 2 pm)		12			11			4			12		
Strategic Planning Board (Wednesday 10.30 am)	24	28		2, 30	27	25	22	20	31	28	28	25	

COMMITTEE	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY
Southern Planning (Wednesday 10 am)	31		5	9	6	4	1, 29		10	7	7	4	2
Northern Planning (Wednesday 10 am)		7	12	16	13	11	8	6	17	14	14	11	9

Overview and Scrutiny Bodies													
Corporate (Thu 2.00 pm)			6		7		2			1		5	
Health and Adults Social Care (Thursday 10 am)		8	6		7	5	2, 30		11	1	8	5	
Communities (Thursday 10 am)			13		14		16		18		15	19	
Environment (Thu 10.30 am/2 pm)			13 (2 pm)		21		23		25		22	26	
Children and Families (Mon 2 pm)			24		25		27		29		26	23	
Jobs, Regeneration and Assets (Mon 2 pm)			17		18		20		22		19	16	

Others													
Health and Wellbeing Board (Tuesday 2 pm)	30		25		26		28		30		27		
Local Authority School Governor Appointments Panel (Monday 2 pm)			3			16				5			

Cheshire East Council

Constitution Committee

Date of Meeting:	24 th November 2016
Report of:	Head of Governance and Democratic Services
Subject:	Nomination of Members to Committees

1. Report Summary

This report seeks a recommendation of the Committee which, if agreed by Council, will simplify the process for the nomination of Members to the Council's committees.

2. Recommendation

The Committee is asked to recommend to Council that:

2.1 Except for the Council's Cabinet and Cabinet Sub-Committees, nominations to the Council's committees, sub-committees and decision-making bodies, and changes to such nominations, shall be notified to the Council by the Council's political Group Leaders or Group Whips, in accordance with the relevant numerical allocations made by Full Council to the committee, sub-committee or decision-making body in question.

2.2 Such nominations or changes to nominations shall be made to the Head of Governance and Democratic Services in writing or by email, and shall thereafter be published on the Council's website.

2.3 Council note that the legislative requirements set out in the Legal Implications section of this report will not be affected by the recommendations of this report, and that the existing arrangements shall continue, by which the Council's Annual General Meeting agrees the political group or groups which will hold the chairmanships and vice chairmanships of the Council's Committees, Sub-Committees and decision-making bodies.

2.3 The Council's Director of Legal Services be authorised to make such changes to the Council's Constitution as he considers are necessary to give effect to the wishes of Council.

3. Background

- 3.1 Since the Council was created in 2009, its Constitution has stipulated that appointments of Members to the Council's committees must be made by Full Council. This stipulation goes beyond the requirements of Section 102(2) of the Local Government Act 1972, which (in general terms) only requires the size and term of office of committees to be agreed by Full Council.
- 3.2 At the meeting of Full Council on 18th October 2016, comment was made during debate that the Council's processes should be simplified so that, as is the case in a number of other local authorities, nominations of Members to Committees should be made to an officer of the Council. Indeed, Group Whips have indicated that the formalities and delays associated with the need to report to Full Council each time a change is required to be made to the membership of a committee, is unduly burdensome.
- 3.3 This report therefore seeks a recommendation to Council which, if agreed, will simplify the process: requiring only that the memberships of the Council's committees and sub-committees be established and changed, where required, by way of notification to the Head of Governance and Democratic Services by the Leader or Whip of the political group in question. This report proposes also that this will also include nominations to Chairmanships and Vice Chairmanships.
- 3.4 This approach will provide more flexibility for the political groups, their Leaders and Whips, and for the officers involved in administering the Council's decision-making arrangements, but will not dilute the fundamental legal requirement that the composition and term of office of each committee and sub-committee be agreed by Full Council.
- 3.5 The Council's Annual General Meeting (AGM) will continue to agree the numerical composition and term of office of each committee and sub-committee, and it is proposed that the AGM will also agree which political group will nominate the chairman and vice chairman of each such body. This will then enable the groups to separately submit the names of their members who will take the places allocated to the groups on each body.

4. Wards Affected and Local Ward Members

- 4.1. All wards are indirectly affected by the recommendations of this report.

5. Implications of Recommendation

5.1. Policy Implications

The recommendations of this report do not impact upon or detract from any of the Council's policies. The report's proposals will, if agreed, become the policy of the Council.

5.2. Legal Implications

The current constitutional requirements of the Council go beyond the requirements of legislation, as set out in section 102(2) of the Local Government Act 1972:

102 Appointment of committees.

(2) Subject to the provisions of this section, the number of members of a committee appointed under subsection (1) or (1A) above, their term of office, and the area (if restricted) within which the committee are to exercise their authority shall be fixed by the appointing authority or authorities or, in the case of a sub-committee, by the appointing committee.

5.3. Financial Implications

The recommendations of this report do not have any financial implications.

5.4. Human Resources Implications

The recommendations of this report do not have any human resources implications.

5.5. Equality Implications

The recommendations of this report have no equality implications.

5.6. Rural Community Implications

The recommendations of this report have no implications for rural communities.

5.7. Public Health Implications

The recommendations of this report have no public health implications.

6. Risk Management

The recommendations of this report, if agreed, will reduce risk. There will be a reduction in risk associated with the current requirement to rapidly agree committee and sub-committee places in the short time available before the Council's AGM, as well as risk arising from vacant committee and sub-committee positions in the run-up to Council meetings which is currently the only way in which committee and sub-committee changes can be made.

7. Background Papers

Whilst reference has been made to legislation and the Council's Constitution, no background documents have been referred to.

8. Contact Information

Contact details for this report are as follows:-

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Cheshire East Council

Constitution Committee

Date of Meeting: 24th November 2016

Report of: Head of Governance and Democratic Services

Subject: The Functions of the Public Rights of Way Committee

1. Report Summary

- 1.1. This report will enable Members to consider the allocation of functions to the Public Rights of Way Committee.

2. Recommendation

- 2.1. That the Constitution Committee considers the resolution of Council and resolves to make no recommendations for changes to the existing public rights of way decision-making arrangements.

3. Background

- 3.1. When the Independent Remuneration Panel (IRP) delivered its recommendations on the Council's Scheme of Member Allowances, a number of recommendations were made about Special Responsibility Allowances (SRAs).
- 3.2. Council, having considered the report of the IRP, and the recommendations of the Constitution Committee, resolved as follows:

"That Consideration of the question of any changes to the SRA allocated to the Chairman of the Public Rights of Way Committee be deferred pending a report to the Constitution Committee upon potential options to amalgamate the work of that Committee with that of another decision-making body".
- 3.3. In making its recommendations, the Panel concluded that it was not convinced that the responsibilities of the Public Rights of Way Committee had important and different functions which merited the Chairman's SRA. Comment was made that Cheshire East was the only Council in the CIPFA "family" which operated a Public Rights of Way Committee.

- 3.4. The Panel's view was that, whilst other authorities undoubtedly had rights of way issues to determine, these functions would have either been delegated to an officer, or would have been included within the responsibilities of another committee.
- 3.5. The Panel report commented that it did not feel it could justify recommending an SRA for the Chairman; indicating that the Chairman's role should be regarded as "one of the many minor positions of responsibility within the Council which do not qualify for an SRA".
- 3.6. From the examples seen of other CIPFA family decision-making structures, it would appear that a number of these do delegate Public Rights of Way functions to their planning committees. This could be seen as a natural destination for these regulatory functions if a decision was taken to amalgamate the functions of the Committee with those of another. Other authorities delegate public rights of way decision-making powers to officers.
- 3.7. With regard to a potential amalgamation of the Committee's functions with those of a planning committee, consideration should be given to the specialist nature of planning, and the need to ensure that this is not diluted by the addition of a further major and important decision making responsibility in respect of public rights of way. Members should also be mindful that the workload of the planning committees, and their meetings which often last for many hours.
- 3.8. Members will also wish to consider the comparison made by the Panel, using the CIPFA family of local authorities. Whilst this may have provided an appropriate comparison for some purposes, the comparison might not necessarily be good for an authority such as Cheshire East, with a large rural Borough, and with its profile of public rights of way.
- 3.9. The opportunities offered by the Borough's public rights of way network towards developing green infra-structure and contributing to the Quality of Place agenda are significant from a recreation, exercise and health and wellbeing perspective. This will generate considerable public rights of way-related work that will require an established and practiced system to process successfully.
- 3.10. With the potential of HS2, it is clear that there could be a significant upsurge in public rights of way-related work, over a concentrated and protracted period of time. Members should have this in mind when considering the appropriateness of any changes to current decision-making arrangements.
- 3.11. In addition, new legislation is expected to come into force in 2017 which will impose a new statutory framework around public rights of way matters. For the first time, deadlines will apply to the determination of public rights of way applications. Members should carefully consider how any change in the responsibilities of the Public Rights of Way Committee might impact

upon, and how the Council can respond to the demands of the new legislation.

3.12. Other than the amalgamation of public rights of way functions with licensing functions, it would seem that there is no other natural destination for those functions.

3.13. The Manager of the Public Rights of Way Unit has offered comments, which are appended to this paper.

4. Wards Affected and Local Ward Members

4.1. All Cheshire East Borough Wards are affected by the recommendations of this report.

5. Implications of Recommendation

5.1. Policy Implications

Whilst the recommendations of this report would appear only to have implications in terms of the Council's administrative business, consideration should be given to the Council's public rights of way and planning policies. The Council's planning committees have a very important and specialist role in applying planning policies to the decisions made. It could be reasonably argued that joining-in public rights of way considerations and policies to already heavily burdened planning committees, might lead to a dilution of the specialisms of the committees in question.

5.2. Legal Implications

5.2.1. There are no legal implications associated with the allocation of public rights of way functions to those of another committee, except that any committee responsible for new functions would need to ensure that its specialism was not diluted, and that its members were appropriately trained in the specialisms in question.

5.3. Financial Implications

5.3.1. The original rationale of the Panel suggesting that public rights of way functions should be allocated to another committee was that this would lead to a reduction in the number of SRAs under the Members' Scheme of Allowances. The Chairman of the Public Rights of Way Committee is entitled to receive £5,600 per year as an SRA.

5.4. Human Resources Implications

5.4.1. Amalgamation of the public rights of way function to those of another committee, such as a planning committee, would have implications in terms of training of the officers advising the committee.

5.5. Equality Implications

5.5.1. There would appear to be no direct equalities implications.

5.6. Rural Community Implications

5.6.1. Clearly, there could be significant implications of any changes to public rights of way responsibilities, for rural communities. The Borough has an extensive network of public rights of way, which must be protected. The Council, in considering any changes to the way in which public rights of way issues are administered, must ensure that appropriate safeguarding is placed around such administration.

5.7. Public Health Implications

5.7.1. There would appear to be no direct public health implications.

6. Risk Management

6.1. The risks associated with the proposals contained in this report are set out in the main body of the report.

7. Background Papers

The report of the IRP has been referred to in preparing this report.

8. Contact Information

Contact details for this report are as follows:-

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Comments from the Manager of the Public Rights of Way Unit

1. *A PROW committee ensures that decisions that can often be perceived as being contentious and often generate local political pressure are determined in an open and transparent way where the public can assure themselves of the objectivity of the process. Whilst decisions by delegated powers can be equally objective the lack of transparency generates significant workloads defending against criticism and accusations of bias and flawed decisions. That increased workload has a cost. Since 2009 I am aware of only one instance where officers have had to defend a decision of CEC PROW committee which had been formally challenged.*
2. *The PROW committee decision making process is of course quasi-judicial and the area of law within which it operates somewhat complex and highly detailed. As a consequence committee members are offered specialist training to enable them to develop specialist knowledge and skills uniquely required to operate in this field. It's unlikely that another, larger regulatory committee could easily acquire the necessary skills to operate in this field to the same level. Training a larger committee with frequent changes of members would have a cost in both officer time and to the budget as external specialist training is included.*
3. *Any cost savings should be weighed against the increased costs in staff time and reduction in efficiency of having to attend more frequently held committee meetings, perhaps for longer periods in order to secure decisions for reduced numbers of cases at each meeting.*
4. *Having looked at the CIPFA family of 15 authorities perhaps only 6 or 7 are comparable from a PROW perspective. That is, authorities that have large rural hinterlands and high network mileages of rural paths with small dispersed village and country town communities. Urban PROW networks, predominantly tarmacked urban snickets and passages simply do not generate the high level of interest and conflict that characterises a rural network, especially one like CEC's which is highly valued recreationally.*
5. *Of the more comparable rural authorities of the CIPFA family three do maintain PROW committees, although in two cases to determine contentious issues only. Many of the more comparable shire counties, not part of our CIPFA family operate with public rights of way committees.*
6. *It is also worth considering the performance of these comparator authorities from a PROW perspective. From statistics showing the availability of their network free of obstructions based on regular survey, half the authorities do not have the ability to undertake surveys to offer a statistic, of the rest only one performs better than CEC.* Thus they characterise lower performing authorities, South Gloucestershire, which performs marginally better operates with a dedicated PROW committee.*

**Institute of Public Rights of Way and Access annual survey and returns for 2016.*

7. *Currently planning applications and rights of way that are affected by planning consents are dealt with by separate processes which is more reassuring to the public I think than mixing the two which could suggest influence of one process on the other and vice versa. Keeping them completely separate eliminates any chance of a perception of bias.*

Cheshire East Council

Constitution Committee

Date of Meeting:	24 th November 2016
Report of:	Director of Legal Services
Title:	The Openness of Local Government Bodies Regulations 2014
Portfolio Holder:	Councillor Paul Findlow, Corporate Policy and Legal Services

1. Report Summary

1.1. This report:

- a) outlines the Openness of Local Government Bodies Regulations 2014 (“the Regulations”) and related legislation in the context of contemporaneously recording, webcasting and offering social media commentary on the council’s decision making meetings (“DMMs”).
- b) highlights the best practice that has developed around councils contemporaneously recording, webcasting and offering social media commentary in respect of their own DMMs.
- c) seeks the Committee’s views as to whether further work should be done to explore the implications and logistics of the Council contemporaneously recording, webcasting and offering social media commentary in respect of its own DMMs.

2. Recommendations

- 2.1. That the content and effect of the Openness of Local Government Bodies Regulations 2014, including the implications for councils contemporaneously recording, webcasting and delivering social media commentary in respect of their own decision making meetings be noted.
- 2.2. That the Committee indicate whether it wishes further work to be undertaken to identify and evaluate the financial and other logistical implications of recording, webcasting and providing social media commentary in respect of the Council’s decision making meetings with a view to generating an options appraisal report and a draft policy (to addresses the potential pitfalls that may arise from the audio recording/webcasting of and providing social media commentary on Council meetings) for the Committee to consider.

3. Reason for Recommendations

- 3.1. This report identifies a number of benefits and potential disbenefits associated with webcasting of and providing social media commentary on Council meetings.

4. Other Options Considered

- 4.1. None: at its meeting on 20 October 2016, Council resolved that a report be presented to this Committee to explore the implications of the Regulations.

5. Background

- 5.1. At its meeting on 20 October 2016, Council considered a report on the audio recording of meetings and resolved that:

1. Subject to the following principles, the audio recording of meetings shall take place:
 - (a) All decision-making meetings of the Council be subject to audio-recording, including overview and scrutiny committees (but not informal non-decision-making bodies such as working groups) unless the press and public have, by resolution, been excluded from the meeting;
 - (b) Any member who was a member of a decision-making body at a meeting of that body, including anyone attending as a substitute, may request that the audio recording of that meeting be reviewed in order to clarify the wording of a draft minute;
 - (c) Such a request for review of the audio recording must be made on a working day before the day of the meeting at which the draft minutes are to be submitted for approval; and
 - (d) The audio recordings be retained for a period of 6 months from the date of the meeting in question, unless a Freedom of Information request is made in respect of the recording, in which case the recording will be retained for such longer period as is required by law.
2. the Director of Legal Services be given authority, in consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Constitution as he considers necessary to give effect to the wishes of Council;
3. the audio recordings of meetings should be published on the Council's website and, if it is minded to agree, request and authorise the Constitution Committee to approve the detailed arrangements and the necessary changes to the Constitution; and

4. a report be presented to the Constitution Committee which will explore the implications of the Openness and Local Government Bodies Regulations 2014.

This report addresses the last of Council's decisions in relation to the report on the audio recording of meetings.

Legislative Context

- 5.2. The Regulations were made under section 40 of the Local Audit and Accountability Act 2014 and came into force on 6 August 2014. They were introduced to supplement existing legislation governing the reporting of public body meetings. An overview of the relevant legislation is as follows.
 - a) The Local Government Act 1972 ("LGA 1972") and, in respect of meetings of an authority's executive, the Local Government Act 2000 ("LGA 2000") allow members of the public and press to report on local authority meetings.
 - b) By virtue of those acts (and subordinate regulations) a local authority must provide any person (whether a member of the press or general public) attending a meeting for the purpose of reporting on the proceedings with reasonable facilities for reporting on those proceedings.
 - c) Where a local authority meeting is open to the public, any person attending is permitted to report on the proceedings. Any communicative method can be used to report on the proceedings, including the internet, to publish, post or share the results of the meeting. "Reporting" includes filming, photographing, making an audio recording and providing commentary on proceedings. There is no obligation to permit contemporaneous oral reporting or commentary from a meeting.
 - d) The Regulations introduced additional rights to permit those attending meetings to report on proceedings using social media applications. This was commonly referred to at the time as enabling "citizen journalism".
- 5.3. The purpose of the Regulations was to bring clarity, by answering in the affirmative, the question of whether the public, press and councillors could or should use social media to report on the proceedings of local authority meetings.
- 5.4. Through guidance (*Open and Accountable Local Government – a guide for the press and public on attending and reporting meetings of local government*) published by the Department for Communities and Local Government ("DCLG") on the day that the Regulations came in to force, the DCLG expressed the view that these additional rights would make councils

more transparent and accountable and enable members of the public to know how decisions are made.

Best Practice

- 5.5. Given advances in technology and the increasing ease and speed with which audio and visual “feeds” of local authority meetings can be captured and webcast by citizen and professional journalists, thereby generating instantaneous on-line debate through social media, many local authorities have decided to contemporaneously record, webcast and deliver social media commentary on their own DMMs. There are a number of reasons for this.
- 5.6. Firstly, it enables councils to exploit all available channels to raise public awareness of its work and to significantly maximise transparency, accountability and public engagement in the democratic process. There are, in particular, significant inclusion benefits for those otherwise unable to attend council meetings in person. The facility to observe or engage in the democratic process so readily has far reaching benefits in raising awareness of how and why decisions are taken, dispelling misconceptions around the democratic process.
- 5.7. For example, there are authorities who have a significant number of regular subscribers to meeting webcasts. Subscribers who might not otherwise be engaged in the democratic process are able to follow more closely the work of a committee at large, or the progress of a certain matter through the various stages of the democratic process.
- 5.8. There are also authorities who utilise the technology to take and respond to subscribers’ questions in real-time, further enhancing inclusion, understanding and engagement with the democratic process. Linking webcasts to digitally published agendas enables subscribers to engage with those materials as a debate progresses, and gives them the opportunity to become aware of and so engage in other matters arising from those materials that may not otherwise have had.
- 5.9. Contemporaneous webcasting and social media commentary also allows the council and its partners to adopt holistic and more effective marketing and communications enabling, for instance, subscribers to be made aware of and directed to debates or complimentary resources through web links and partner organisation “re-tweets”.
- 5.10. Secondly, there is the issue of offering choice to the significant and increasing number of people who want to engage with the democratic process and consume the information that it generates in contemporaneous and digital form.

- 5.11. The council does not currently offer a platform through which to deliver contemporaneous feeds and commentary to those who would prefer to receive that information in that format directly from the Council. A further consideration in that regard is that without such a platform, the council has no presence in contemporaneous digital debates surrounding its work. It is only able to engage in such debates some time after the fact, by which time the opportunity to have done so with any meaningful impact may well have passed.
- 5.12. Thirdly, contemporaneous webcasts and social media commentary further the national and local digital agenda not only to be more inclusive, but also to improve efficiency by delivering services digitally.
- 5.13. An example where significant efficiency improvements can be realised is in the processes that sit behind providing responses to queries or requests for clarification of matters arising from the proceedings of meetings. Such requests can generate a significant volume of work with, in respect of each such request, the content of responses having to be compiled from the notes or recollections of different officers or members, each of which will vary in quality and detail. The process of collating and interpreting that material can take a significant amount of time. There being a readily accessible contemporaneous recording of the meeting in question will in very many cases obviate the need for a query to be raised with the council at all (particularly if there is facility to ask and answer such questions digitally as the meeting is in progress). Where queries are raised, a readily accessible contemporaneous recording will significantly improve the ability to respond accurately and rapidly.
- 5.14. A further example where significant efficiency improvements can be realised is in the implementation of decisions made. Having easy access to a contemporaneous recording of a meeting can assist in making early progress to implementing a decision without the delays associated with time it can take to ratify minutes or seek out clarification from the notes of those present at the meeting in question.
- 5.15. For many authorities (for example, Chester and Cheshire West Council ('CWaC')) contemporaneously recording sight and sound and webcasting their DMMs is neither difficult nor excessively costly. However, CWaC have permanently installed webcasting equipment in their main meeting rooms and this can be activated easily and at modest cost to enable each meeting to be recorded. Cheshire East do not have this facility and there would be likely to be significant costs associated with webcasting every DMM. The current Webcasting of Cabinet meetings costs something in the region of £30,000 every year, or £3,000 per meeting. This is because an external company has to provide the equipment, together with a trained technician to operate the system. In contrast, webcasting meetings of the Police and

Crime Panel at CWaC premises costs under £250 per meeting. The Council has over 200 DMMs each year, and the costs of the various options for webcasting additional meetings will need to be established before a decision is taken to adopt such an approach.

Areas to be Mindful of – Freedom of Information Act 2000

- 5.16. Recordings of meetings become information held by the authority for the purpose of the act, and are therefore within the class of information that would need to be made available in the event of a request for the same. Where such recordings are of the public proceedings of a meeting there will be no exemption available to decline to provide either a copy of the recording or a transcript.
- 5.17. The issue to consider here is the resource implications of dealing with such requests which will inevitably be made, particularly where an interested party is of the view that a transcript of the meeting, for instance, may assist them in seeking out a basis to challenge or appeal a decision made. Equally, transcripts may provide the council with valuable evidence in seeking to rebut such claims.
- 5.18. If meetings are contemporaneously webcast and thereafter remain viewable on the council's website, there will be no resource implications associated with information requests as the information will be readily available as part of the council's publication scheme without the need to make a formal request. Those who do make requests can simply be directed to the relevant page of the Council's website.
- 5.19. Council policy should set out the period of time recordings will be kept.

Areas to be Mindful of – Data Protection Act 1998 and the Human Rights Act 1998

- 5.20. Sound and/or images captured at meetings will potentially rank as "personal information" and so be subject to the requirements of the Data Protection Act 1998. Similar considerations will apply in respect of the right to respect for private and family life protected by the European Convention on Human Rights (article 8) and the Human Rights Act 1998.
- 5.21. If sound and/or images are to be recorded at meetings, practical steps must be taken to make sure those present are aware that the meeting is being recorded and how the recordings are likely to be used so that they can, by remaining present at and/or contributing to the meeting, be considered to have consented to the capture and use of their personal information. Such practical steps include:
 - a) Putting notices on the order of business to make members of the public aware the meeting is to be recorded.

- b) Displaying signs inside and outside the meeting room stating that the proceedings are to be recorded.
 - c) The chair of the meeting making a formal announcement at the start of the meeting.
- 5.22. Council policy should set out requirements and expectations in this regard, and standard template documents should be amended accordingly.

Areas to be Mindful of - Defamation

- 5.23. Statements made by members at a local authority meeting are subject to the law of defamation. If a meeting is reported or recorded, any defamatory statement will be brought into the public domain more quickly and has the potential of being published to a much wider audience. For this reason members may need to be more mindful of the manner in which they contribute to a debate.
- 5.24. However, qualified privilege will attach to statements made by local authority members in meetings, provided that the person making the statement believed in the truth of what was said and was not motivated by malice. Other defences to an action for defamation include justification (that is, the defamatory statement is true), or the defamatory statement was made unintentionally. In the latter case public apologies to “correct the record” are routinely sought as an alternative to defamation proceedings seeking damages.
- 5.25. If a defamatory statement is made during a webcast it is often appropriate to immediately suspend the webcast. It may also be appropriate to do so in the event of disruptive or unruly behaviour at a meeting, for example if the meeting is used as a forum for public protest. Consideration should be given to authorising a specified officer to suspend webcasts. Similarly, if webcasts are to be automatically available to be replayed from the website, the same officer should be authorised to remove any offending webcast (or sections of it) from the website. In either case actions taken should be explained. It is also sensible to apply a 15 or 20 second delay to webcast transmission for these purposes.
- 5.26. Advice and procedures covering these matters should be set out in council policy.

Areas to be Mindful of – Copyright

- 5.27. A local authority wishing to assert copyright in any webcast or recording will need to publish terms and conditions for the use of any footage. This should include a statement that the webcast is the copyright of the local authority and should not be downloaded or reproduced without the local

authority's written permission. This too is a matter to be considered and addressed in council policy.

Areas to be Mindful of – The Primacy of Minutes

- 5.28. For very many decades, prior to the advent of recording technology, local authority meetings have relied upon the notes taken by committee clerks to generate the minutes of the meeting. Minutes are only intended to capture key areas of a discussion and the outcome of any decision made.
- 5.29. Whilst draft minutes are being prepared, or when offered up to the next meeting for ratification, they are often amended in the light of the recollection of those who were present at the meeting in question as to what the intention of the committee was. There are occasions when minutes are amended and ratified to align more closely with agreed intention of those present at the last meeting, as opposed to them being configured as a verbatim record of what was said.
- 5.30. In addition, ratified minutes are, from time to time, amended to correct omissions or errors. These two necessary operational expedients are commonly accepted practice known colloquially as the "slip rule".
- 5.31. Whilst not a basis upon which to make fundamental changes to a decision that has been taken, the preservation of the operation of the "slip rule" is an expedient crucial to ensuring the proper and efficient conduct of business. The ratified minutes of a meeting, having been approved as correct by a majority vote of those councillors present, constitute the legal record of the meeting and take primacy over any recording or transcript of the meeting itself.
- 5.32. It is essential when moving to a practice of recording meetings that this is commonly understood, accepted and dealt with in council policy lest resource be consumed and business efficacy be needlessly impacted through attempts to challenge the primacy of ratified minutes on the basis of recordings or transcripts of the meeting in question.
- 5.33. The process envisaged in terms of using recordings as a tool to improve the accuracy of draft minutes could still be used in a scenario where the Council has moved to webcasting instead.

Areas to be Mindful of – Reputation Generally

- 5.34. By their very nature, recordings can be watched repeatedly and so lend themselves more readily to an analysis of the minutia. Whilst there are a significant number of benefits to contemporaneous webcasting, experience provides examples of where such analysis highlighted behaviours that have given rise to unfortunate or embarrassing perceptions, particularly in scenarios where it was thought that behaviours in question were out of range of the recording devices.

- 5.35. Councillors or officers talking amongst themselves, passing notes, eating or passing around sweets, using mobile devices (including to tweet about matters subject to the meeting as it happens), leaving the room, injecting humorous observations or remarks, or displaying certain types of body language or gestures (for instance) are all ordinarily innocuous or benign human behaviours displayed throughout the course of long committee meetings. Councillors and officers need to remain mindful that when subject to analysis through a recording, and perhaps out of context, such behaviours can and have given rise to complaints or challenges to decision making in the basis of inattention.

6. Wards Affected and Local Ward Members

- 6.1. There are no direct implications for individual wards or local ward members.

7. Policy Implications

- 7.1. Areas where policy implications arise and where new or amended policies and practices would be required are highlighted above. The recommendation includes producing a draft policy for consideration to address these issues. Ultimately, changes to the constitution would be required to reflect and enable new operating practices.

8. Legal Implications

- 8.1. The key legal implications are set out in the body of this report. Further consideration can be given to discrete matters arising in the event that a proposal to move to contemporaneous webcasting and social media commentary proceeds.

9. Financial Implications

- 9.1. The recommendation recognises the need to identify and understand the financial implications associated with contemporaneous webcasting, etc.. It should, however, be noted that a number of other local authorities already adopt this practice.
- 9.2. The current Webcasting of Cabinet meetings costs something in the region of £30,000 every year. This is because an external company has to provide the equipment, together with a trained technician to operate the system. The Council has over 200 DMMs each year, and the cost of webcasting additional meetings will need to be established before a decision is taken to adopt such an approach.
- 9.3. In addition, whilst the initial outlay of a more holistic webcast/ web based approach would most likely be more expensive than the originally proposed audio only recording approach, there are likely to be significant additional costs with the audio only recording approach beyond initial set up costs

that must be properly factored into any decision if it is to be properly made. These include the ongoing costs of operating an audio only recording approach which are likely to be more resource intensive in the medium to longer term as the retention, storage, copying, transcribing, distribution and eventual destruction of recordings will be factors that will attract costs beyond those associated with a webcast/web based publishing approach.

10. Human Resources Implications

- 10.1. There are no direct human resource implications beyond the potential to save time dealing with queries arising from the proceedings at meetings which should not be overlooked.

11. Equality Implications

- 11.1 By improving accessibility and inclusion in the democratic process, there are direct advantages to the proposal for those with protected characteristics.

12. Rural Community Implications

- 12.1. By improving accessibility and inclusion in the democratic process, there are direct advantages to those people living and working in rural communities.

13. Public Health Implications

- 13.1. There are no direct public health implications

14. Risk Management

- 14.1. Identified risks have been set out in the body of the report. The recommendations include steps to be taken to identify and mitigate any further risk.

15. Background Papers

- 15.1. No background papers have been referred-to in the preparation of this report.

16. Contact Information

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