

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 26th April 2013
Report of: Head of Democratic Services and Governance
Subject/Title: New Outside Organisation – The Sandbach Traders and Retailers Association and Vacancy on Board of Governors for the King’s School, Macclesfield

1.0 Report Summary

- 1.1 This report informs the Constitution Committee of a new outside organisation, the Sandbach Traders and Retailers Association (STAR), which has asked to be added to the list of approved Outside Organisations, and of an appointment to be made to it.
- 1.2 An appointment also needs to be made to the King’s School, Macclesfield, to fill a vacancy arising following the recent resignation of Councillor David Neilson.

2.0 Recommendations

- 2.1 That
- (1) approval be given to the recommendation of the Outside Organisations Sub-Committee that Sandbach Traders and Retailers Association be added to the list of Category 2 Outside Organisations, and Councillor Barry Moran be appointed as this Council’s representative; and
- (2) consideration be given to nominations for appointment to the Board of Governors of the King’s School, Macclesfield, and an appointment be made to fill the current vacancy.

3.0 Reasons for a Recommendations

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

4.0 Wards Affected

- 4.1 Sandbach Elworth, Sandbach Ettiley Heath and Wheelock, Sandbach Heath and East, Sandbach Town, Macclesfield Central, Macclesfield East, Macclesfield Hurdsfield, Macclesfield South, Macclesfield Tytherington and Macclesfield West and Ivy.

5.0 Local Ward Members

5.1 Cllrs Gill Merry, Gail Wait, Sam Corcoran, Barry Moran, Ken Edwards, Janet Jackson, David Neilson, Damien Druce, Laura Jeuda, Brendan Murphy, Lloyd Roberts, Carolyn Andrew and Alift Harewood.

6.0 Policy Implications

6.1 None identified.

7.0 Financial Implications

7.1 None identified.

8.0 Legal Implications

8.1 Whilst membership of outside bodies carries with it the potential for personal liability for elected Members undertaking such roles as ancillary to their status as a Councillor, particularly in respect of trusteeships, Cheshire East Borough Council has already resolved to put in place for elected Members the maximum indemnity which is allowed by law.

8.2 Section 111 of the Local Government Act 1972 empowers local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions, and Section 2 of the Local Government Act 2000 empowers them to do anything they consider likely to achieve the object of the promotion of the economic, social or environmental well-being of their area. Pending the coming into force of the general power of competence in the Localism Act 2011, which will be on a date yet to be announced, either or both of these existing powers would normally be the authority for appointing Members to outside bodies and/or selecting the bodies to which they are to be appointed

9.0 Risk Management

No risks identified.

10.0 Background

10.1 The Constitution Committee is asked to approve the addition of the newly formed Sandbach Traders and Retailers Association (STAR) to the list of approved Outside Organisations to which it appoints, following consideration of the request by the Outside Organisations Sub-Committee.

- 10.2 STAR has been set up to represent the business and commercial viewpoint to regulatory and statutory bodies, and to ensure that local authorities pay proper regard to the consequences of decisions that affect the tourist industry, retailers, catering, industry and professionals. A full copy of the Constitution and rules of STAR are appended to this report for information.
- 10.3 In accordance with the procedure previously agreed by the Constitution Committee for the addition of new organisations to the approved list, the Outside Organisations Sub-Committee considered the request from STAR. The procedure and criteria taken into account are given in paragraphs 10.6 and 10.7 below. In summary it had to consider:
- (a) if the outside organisation should be added to the list of approved organisations;
 - (b) if “yes” to (a), to which category should it be added? (Category 1 – Cabinet appoints; Category 2 – the Constitution Committee appoints); and
 - (c) if it was recommended as a Category 2, the Sub-Committee could consider making nominations.
- 10.4 The Sub-Committee considered the request at its meeting on 20 March 2013 and was satisfied that the organisation fulfilled (c) and (e) of the criteria and that the Constitution Committee should be recommended to add it to the list of Category 2 Organisations. In addition it supported the request from STAR that Councillor Barry Moran should be the Councils representative. Councillor Moran has been attending meetings of STAR as a Ward Member on an informal basis and has he has indicated that he would be happy to be the Councils representative.
- 10.5 A vacancy has arisen on the Board of Governors of the King’s School following the recent resignation of Councillor David Neilson. In accordance with the established Casual Vacancy Procedure the Leader of the relevant political group, the Liberal Democrat Group, was asked to provide a replacement. As that Group did not, however, wish to provide a replacement at this time the remaining political groups have been consulted. To date the following nominations have been received and the Committee are requested to make an appointment.
- Conservative Group – Councillor Louise Brown
 - Independent Group – Councillor Brendan Murphy

10.6 **Procedure**

The following procedure for considering new requests was approved by the Constitution Committee on 24 March 2011.

- (i) All new requests for representation on an outside organisation are to be considered by the Sub-Committee which will apply the appointments criteria to decide whether the organisation should be added to the list of approved organisations.
- (ii) If the organisation is considered appropriate for inclusion, the Sub-Committee will then decide which category is the most appropriate, again by applying the approved criteria. (Category 1 comprises those organisations which are regarded as top level strategic bodies to which the Cabinet appoints and Category 2 comprises all other approved outside bodies to which the Constitution Committee appoints.)
- (iii) If the Sub-Committee determines that it should be a Category 1 organisation, the matter will be referred to the Cabinet which will (a) decide whether it wishes to add the organisation to the list of Category 1 organisations; (b) if so, determine the Council's representation on the organisation as appropriate; or (c) if not wishing to approve its inclusion, the matter will be referred back to the Constitution Committee to consider for inclusion as a Category 2, or for rejection.
- (iv) If the Sub-Committee determines that it should be a Category 2 organisation, the Sub-Committee will recommend the organisation's inclusion on the list of approved organisations and will submit nominations to the Constitution Committee.

10.7 Criteria

The following are the approved criteria for consideration when adding organisations to the approved list and when making appointments to those organisations.

i. Criteria for making an appointment

(a) The Appointment is a Statutory Requirement

There will be a limited number of bodies to which the Authority is required to appoint but "statutory requirement" should be included as a criterion. Examples include the Police Authority and Fire Authority.

(b) Appointment Allows the Authority to Influence Policy at National or Regional Level

This will apply to those organisations which give the Authority a voice at national or regional level and enables it to influence high-level policy decisions. Examples will include the Local Government Association and the North-West Employers Organisation.

(c) Appointment Assists the Authority to Deliver its Strategic Objectives and Priorities

This is a key part of any appointment system, where it can be demonstrated that the appointment will make a direct or significant contribution to the Authority's strategic objectives, in particular the Corporate Plan.

(d) Appointment is to an Organisation which Receives Major Funding from the Authority or Provides Key Public Services

Representation will ensure that the organisation uses its funding properly and develops in a way which the Authority considers appropriate.

Those organisations which provide key public services, for example Housing Trusts, are often created by a local authority which reserves the right to place Members on the organisation's Board.

(e) Where an approved organisation is ward-specific, the Member appointed should be an appropriate Ward Member.

In Wards where there is more than one Member, it will be for those Ward Members themselves to agree on the nomination. In the event of no agreement being reached, the Constitution Committee will make the decision.

ii. Criteria for declining to make Appointment

In rare cases, it may not be appropriate to appoint to an outside organisation; for example, where there are significant cost or resource implications for the Authority when balanced against the benefits. These will be determined as and when the situation arises.

iii. Issues for Consideration in Making Appointments

In addition to adopting the approved criteria, the following should be taken into account -

○ **Political Proportionality**

When making appointments to outside organisations, there is no requirement to adopt the rules of proportionality, but there are some organisations where it is appropriate for the leading political group to take the places. These will, for the most part, be those organisations identified as Category 1.

Political proportionality is used as a starting point only by the Outside Organisations Sub-Committee to enable a fair distribution of places.

○ **Continuity/Members' Interests**

Continuity of representation can be important to outside organisations. Even where the organisation's constitution stipulates a term of office of 12 months only, the representative can build up expertise and

experience which can be a loss to that organisation if a new representative is appointed after expiry of the term of office. For this reason, where possible, and provided the representative is willing to continue to serve, consideration should be given to re-appointing the same Member, if appropriate. This could depend on, for example, where elections may change the political balance or it may be appropriate to provide opportunities for newly-elected councillors to serve on organisations which reflect their interests.

Note: Following the elections in May 2011, all appointments are for the life of the Council.

○ **Potential Conflict**

Members will need to consider, when being appointed, that in taking up a formal position within an incorporated body - as director or trustee – the Member will be under a legal duty to act in the best interests of that outside body, notwithstanding the fact that he/she is there as a representative of the Authority. That duty will override a Member's duties to the Authority or the Council-tax payers it serves. It is also worth noting that where a matter is raised by the outside organisation relating to its relationship with the Authority, it is likely to give rise to a conflict of interest for the Member representative who will usually be required to absent him/herself from the meeting during the discussion. A dual-mandated role may therefore be problematic and out-weigh any perceived benefits for either the organisation or the Authority. In these circumstances, the Member may take the view that he/she should not take up the appointment. As this would apply to any councillor appointed in these circumstances, a review of representation, for that particular organisation, would need to be undertaken.

11.0 Access to Information

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

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