

# CHESHIRE EAST COUNCIL

## REPORT TO: CABINET

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<b>Date of Meeting:</b>	5 <sup>th</sup> September 2011
<b>Report of:</b>	Vivienne Quayle – Head of Policy and Performance
<b>Subject/Title:</b>	Local Service Delivery – Transfer and Devolution to Town and Parish Councils
<b>Portfolio Holder:</b>	Cllr Rachel Bailey Cllr David Brown Cllr Jamie McCrae

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### 1.0 Report Summary

1.1 Cheshire East Council (CEC) is committed to delivering services tailored to its individual communities. In July 2010 the cabinet approved that further work and discussion would take place to progress the transfer of the following assets and services to Town and Parish Councils where that made sense to both parties.

Civic Halls

Community Halls

Allotments

Public Conveniences

Markets

Other services (hanging baskets, Christmas lights & Trees, Britain in bloom street furniture including benches and planters)

Possible “other assets” on a case by case basis (see Appendix B)

1.2 There were a number of other types of assets originally included for discussion and these are not being proposed for transfer at this stage. These are play areas, footpaths, parks, ponds and ditches.

1.3 During the last year CEC has been in negotiations with participating local councils about the potential transfers and on the implications for both parties. In consultation with all Town and Parish Councils it was established that the eight Town councils and eighteen of the larger parishes were ready to discuss potential transfers of assets or services. Working closely with Towns and Parishes is an on-going way of working not a one-off project and it should be emphasised that all parishes are welcome to discuss ideas for service delivery or transfer of assets as they arise. This report contains proposals to transfer assets where discussions around the implications are at an advanced stage. This does not preclude other activities being progressed nor new ideas coming forward.

- 1.4 A clear distinction is made between those services that are non statutory (transferred functions) and those that are statutory (devolved functions).
- 1.5 It is important that the special circumstances in the un-parished areas of Crewe and Macclesfield and the newly parished Wilmslow are considered. This is included in Section 10.8 – 10.10 of the report.
- 1.6 The report sets out the current proposals on the transfer of assets and services to be transferred starting from April 2012. It is recognised that a smooth transfer is desirable to all parties and it is therefore proposed that whilst April 2012 is the aspirational date for completion, that it might be some way into the financial year before the actual transfer takes place for more complex assets where this is agreed by both parties.
- 1.7 The report also covers the financial implications, risks, staffing issues and legal implications. In principle assets will be transferred at a nominal value or long term lease with responsibility for the on- going running costs (or surplus) being covered by the Town or Parish Council.
- 1.8 The extent of the transfers and functions means that the background information involved is necessarily detailed and complex. It is important though to continually focus on the overall benefit and driver for this initiative which is about local people choosing what services they pay for, each locality running services in the way that makes sense to that locality and ultimately continuing to build strong communities across Cheshire East with all forms of government working together, reducing duplication and working in partnership to make a difference in Cheshire East.

## **2.0 Decision Requested**

- 2.1 Cabinet are asked to give delegated authority to the Strategic Director (Places and Organisational Capacity), Section 151 officer and the Monitoring Officer to finalise agreed legal and financial terms for a package of transfers (or leases) of the assets and functions contained in Appendix A with a view to transfer taking place by April 2012 or as soon as possible following that date where that is agreed by both parties.

The legal terms will include those points listed in section 10.12. Both parties will be expected to complete negotiations in a reasonable timeframe. It is anticipated that Civic Halls and Community Centres would be by freehold transfer for disposal at a nominal value and that, in negotiation, both parties will agree on either a transfer or a lease arrangement for the Markets and Public Conveniences with allotments likely to be transferred by way of a long lease.

- 2.2 Cabinet are asked to note the contents of Appendix B. At this stage these assets are not approved for transfer but will be reviewed on a case by case basis as part of the overall package to transfer. Such decisions to be delegated to the relevant portfolio holder (s). An initial analysis of these assets indicates that a number of them will not be suitable for transfer.
- 2.3 Cabinet are asked to approve the transfer of “other services” as listed in section 10.4 of the report.
- 2.4 Cabinet are asked to note the potential overall financial implications of the implementation of this policy and also note that there will be a potential impact on precept levels and Cheshire East’s budget.
- 2.5 Cabinet are asked to note the new delivery model for Town Centre Management (10.7)
- 2.6 Cabinet are asked to note the position in the un-parished areas of Crewe and Macclesfield and the newly parished Wilmslow as detailed in section 10.8 – 10.10.
- 2.7 Cabinet are asked to note the position on additional support costs in property and legal services funded from the Ear Marked Reserve.
- 2.8 Cabinet are asked to note that the terms of transfer and implications will be discussed with both the District Valuer and the External Auditor to ensure their relevant feedback is reflected in the agreements.
- 2.9 Cabinet are asked to formally recognise and thank the joint officer/member working group for their work which has been instrumental in achieving the progress to date.

In line with recommendations within this report and the fact that the negotiations are at an advanced stage it is felt that the group should no longer continue in its current form and therefore be dissolved.

### **3.0 Reasons for Recommendations**

- 3.1 This is an ambitious programme of service and asset transfer designed to maximise the local focus of service delivery and to give each Town and Parish Council an increasingly important role in deciding what should be delivered in its locality and how this is best delivered. Further transfer and devolution will continue and be part of the way Services consider options for delivery moving forward.

### **4.0 Wards Affected**

- 4.1 All

## **5.0 Local Ward Members**

5.1 All

## **6.0 Policy Implications including – Carbon Reduction - Health**

6.1 This initiative aligns with the first priority of the Sustainable Community Strategy “nurturing strong communities” and is part of Cheshire East’s stated drive to ensure that working locally is at the heart of what we do.

6.2 National policy is designed to decentralise government and give communities power to make a difference in their area. This initiative clearly aligns with this national drive.

## **7.0 Financial Implications (Authorised by the Director of Finance)**

7.1 The financial implications are detailed, complex and uncertain as they are dependent on results of negotiations with Town and Parish Councils and the changing costs and implications over time.

7.2 The financial implication from an asset value perspective is that the assets being proposed for transfer amount to approximately £6m in total with a further £5m worth of assets being requested by Town and Parishes outside the categories of service delivery listed at section 1.1

The proposal is to transfer the Civic and Community Halls for a nominal value (£1) and either transfer for nominal value or agree a long term lease for other asset categories. This is subject to further discussion with the District Valuer and external auditors. Appropriate formal valuations will be necessary.

7.3 The overall on-going revenue implication of this initiative is a saving of up to £450k per annum. The savings assumptions have already been factored into the medium term financial plans of the authority given the in principle support for this project in July 2010. There will be additional support services cost savings arising out of the transfers once complete which can not be quantified until negotiations with Towns and Parishes are finalised.

7.4 In 2009/10 an ear marked reserve of £625k was set aside to support the localism agenda of Cheshire East. Consideration should be given to allocating a proportion of this to support the transfer of assets to Town and Parish Councils who are involved in the first phase of transfers.

The balance thereafter will then remain to support future transfer or devolution of services

- 7.5 It should be noted that transferring the package of services proposed will result in some Town Councils requiring an increase in their level of precept. However, part of the benefit of this initiative is that the Town Councils can focus on energising the services in their area, in consultation with local people, and can join up these services with their existing initiatives and either generate more income or tailor the services more effectively to bring an overall reduction in cost.
- 7.6 A great deal of work and discussion has taken place within Town Councils and with Cheshire East to understand the cost drivers and also look for ways of reducing the impact on local taxation. Clearly this is a matter for each individual Town or Parish Council and many have undertaken their own consultation to establish whether residents would be prepared to pay for the services that are being proposed to transfer.
- 7.7 In a number of cases the inclusion of the Market function as part of the overall package of assets to transfer will help to mitigate some of the costs associated with other transferred assets

Any debts associated with the function at the point of transfer will need to be discussed with the relevant parties and agreement reached as to how best to recover them.

Equally some Councils have asked for additional assets to transfer to help mitigate the financial effects. Initial analysis suggests that these will not all be appropriate for transfer. These are included at Appendix B and recommendation 2.2.

- 7.8 It should be noted that the impact of harmonisation of staff terms and conditions across Cheshire East may increase the cost of running some of the facilities being proposed for transfer. This relates to Civic and Community Halls where the current shift arrangements are not subject to enhancements whereas the new proposals may increase staffing costs at these venues. There are also potential residual costs for any staff where transfer under TUPE is not relevant but their post is no longer necessary as a result of the transfers.
- 7.9 A need for up to £200k was originally identified in the report to Cabinet in July 2010 for additional project management and legal resources to support this initiative. To date, the programme has been managed within existing resources. At this crucial stage and throughout the project additional resource will be required in property and legal services to ensure the appropriate controls and assistance are put in place to allow a smooth transfer. This will be funded from the earmarked reserve.
- 7.10 The issue of the condition of the asset on transfer has been raised by all the Town Councils taking part in this initiative. There may be some negotiation on the condition of assets at transfer that could result in a

capital cost to the council; A position will need to be reached that is acceptable to both parties.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 It is imperative that we get the legal process for transfer right. The legal basis for the transfer comes from our general well being powers. Details of Terms of transfer are contained in Section 10.12 of the report.

8.2 The Council can dispose of any land for less than the best consideration that can be obtained in reliance on the Local Government Act 1972 general disposal consent (England) 2003 if:

(a) it considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects of the whole or any part of its area, or all or any persons resident or present in its area:

- a. The promotion or improvement of economic well-being;
- b. The promotion or improvement of social well-being;
- c. The promotion or improvement of environmental well-being;

(b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2m; and all other conditions and requirements of the Consent are satisfied.

(c) All other conditions and requirements of the consent are satisfied

8.3 As more fully reported to cabinet on 19<sup>th</sup> July 2010:

(a) In transferring assets the Council must behave prudently to fulfil its fiduciary duty

(c) The Monitoring Officer will require to be satisfied that the councils to which services are wished to be devolved have the ability to assume the obligations on the Council's behalf lawfully and effectively. Publications such as "The Guidance note: service delegations to parish and town councils" written for the Commission of Rural Communities and National Association of Local Councils, will help all the parties to understand the benefits and challenges of transfer along with their respective responsibilities going forward.

8.4 The Council will also need to comply with any new requirements in the Localism Bill once it becomes an Act, and in particular new provisions dealing with Assets of Community Value (also known as the

Community Right to Buy). Under the current proposals Councils will be required to maintain a list of Assets of Community Value ie land and buildings considered to be of Local Community benefit. Local organisations will be able to nominate assets for inclusion in the list and any future disposals will need to follow a process designed to give the opportunity for Community groups to acquire the asset to safeguard its long term availability for community use.

8.5 It will be necessary to advertise the potential disposal of any open space within assets desired to be transferred.

8.6 If the council does retain the freehold of any land, then it will remain responsible for the condition of the land/buildings on it under the relevant statutes such as the Defective Premises act 1992.

## **9.0 Risk Management**

9.1 There are a number of significant risks arising from this project. The main risk is that a smooth transfer cannot be achieved and the service to the public is adversely affected. This can be mitigated by ensuring that appropriate support is put in place between the two parties, using short shadow periods where relevant; strong head of terms agreements in place at transfer; detailed negotiations and openness between both parties; detailed planning by individual Town and Parish Councils; on-going support from Cheshire East on key support functions that are unfamiliar to Towns and Parishes. It will not be possible to offer legal support services, however, as there is a potential conflict of interest. Other services could be offered on a chargeable basis.

9.2 There is a risk that Cheshire East will not have the capacity to support this project to the level required given the extensive detailed work involved in the next 6 months. This can be mitigated by extra resource from the Ear Marked reserve. (see 7.9).

9.3 There is a risk that individual Town and Parish councils do not have the capability and/or capacity to deliver the new functions and that this affects service delivery or safety. Cheshire East Council is supporting Town and Parishes to ensure that transfer is successful and this is a matter for each individual Council. However, many Councils have taken advice from external parties, examined examples of successful transfers in other Towns and have been working for some time on their business plans in relation to the transfers to mitigate this risk.

9.4 A further risk is that the financial savings are not achieved in the short or longer term. This can be mitigated by ensuring that the support services costs in Cheshire East, post transfer are included in efficiency reviews and the business planning process. Once the services are transferred the Towns and Parishes have an opportunity to make

further efficiencies and it will be for each Council to put arrangements in place. This is well understood by the Towns and Parishes.

- 9.5 There are HR risks in terms of the staff transferring and appropriate arrangements being put in place. These are being managed by the project manager and the HR team.
- 9.6 There are other risks around failure to fully capture all the detailed implications e.g. Cheshire East services remaining in transferred venues, Cheshire East's reduction in venues and possible additional costs arising, short term effect on the balance sheet and writing down the asset value. These are being raised as they arise and dealt with appropriately. Cross functional working within the authority is strong on this project and, the detailed heads of terms will cover significant areas.

## **10.0 Background and Options**

### **Overview and Benefits**

- 10.1 This initiative is part of a range of activities designed to strengthen local communities. It recognises that Towns and Parishes are the tier of government closest to the community and that Cheshire East respects and values the important role that local Councils already play in the Community.
- 10.2 There are a number of different aspects to this general philosophy:
- Firstly, there are those services where Cheshire East is minded to no longer fund and where the service is capable of being delivered by local Councils.
  - Secondly, there are those individual situations recognising the hugely diverse nature of Cheshire East where on a case by case basis it makes sense for local Councils to deliver services or hold assets.
  - Thirdly, there are some local services which Cheshire East has statutory responsibility to deliver but would be happy to see delivered by local Councils.
  - Fourthly, there will be circumstances linked to any of the first three items where Cheshire East no longer proposes to deliver a service or function and the local Council is unable or unwilling to deliver it. This provides opportunity for other community options to be considered as a potential solution. All of this strongly links to the localism ideology of central government and Cheshire East's commitment to implement a local way of working.
- 10.3 This report is concerned with a group of services falling into the first category above, possible services/assets within the second and briefly



commenting on the current devolution pilot relevant to the third point above.

## **Transferred Services**

10.4 The Services being proposed for transfer are:

Civic Halls

Community Halls

Allotments

Public Conveniences

Markets

Other services (hanging baskets, Christmas lights & Trees,, Britain in bloom street furniture including benches and planters)

The asset related services are listed by Local Council in Appendix A. There are also a number of other assets/services listed in Appendix B where local Councils have asked for transfer. Initial analysis of the assets in Appendix B suggest that a number of them will not be suitable for transfer.

The services in the list above and at Appendix A will be transferred to the local councils who will have full responsibility for the asset and service delivery. Relevant financial implications will be reflected in each council's precept . Local Councils have considered the implications and have indicated that they are in a position to formally negotiate the transfer. Their decisions are in principle and subject to final legal agreement.

10.5 Public Conveniences. In the majority of cases public conveniences can transfer to Towns and Parish Councils. Through legacy contracts, a range of automatic toilets with expensive buy-out terms are in place. These will need to be considered as part of a separate review.

10.6 Parks and Play Areas. A number of councils have expressed an interest in taking on the ownership and maintenance of parks and play areas. This is closely linked to devolving grounds and park maintenance services and it is felt more appropriate to include this in discussions on devolution. This timescale allows a phased approach which would seem sensible in any event.

10.7 Town Centre Management

The town centre management across Cheshire East provides a valuable service to local towns through supporting events, engaging with retailers and providing a co-ordination point into the Council for

local town and parish councils. It is anticipated that, in time, the function is transferred to local areas and parishes/town councils pick up both the activity and provide the funding through local precepts.

The new delivery model is to focus town centre management on our two principle towns, Macclesfield and Crewe to support the Macclesfield Economic Masterplan and All Change for Crewe initiatives. Operational from 1<sup>st</sup> April 2012, one of the two posts will be dedicated to each town to deliver specific programmes of events and activities linked to the local strategies. Support for Christmas events and Christmas lights will follow the model outlined above. 2011 will be the final year for providing dedicated support for Christmas lights and activities in all town centres apart from Crewe and Macclesfield.

The current model does not take account of the fact that some town councils already provide dedicated town centre management not funded through Cheshire East Council. There is a strategic case for dedicating scarce Cheshire East resources on our two largest town centres. The remaining towns and local areas will in some areas continue to deliver their own town centre management functions such as Congleton and Middlewich. In those areas where Cheshire East support is currently provided such as Poynton and Wilmslow, discussions will commence to build up local provision prior to 1<sup>st</sup> April 2012 and where necessary fund through local means.

The delivery model outlined above could also continue to deliver town centre management functions across the remaining towns and parishes if local areas wish to commission the Council to provide the service and fund through local means. Negotiations will commence in the Autumn to determine the level of interest in this option so the Council can align resources appropriately by 1<sup>st</sup> April 2012.

### **Un-parished and Newly Parished Areas**

- 10.8 The relevant assets and services including in this initiative in Crewe and Macclesfield (un-parished) and Wilmslow (newly parished) are not currently included in the proposed transfer as the un-parished areas have no power to run these services or obtain assets through the Charter Trustees. In Wilmslow, the Town Council is too new to take on these functions by April 2012.
- 10.9 In order to present a similar opportunity and approach in the un-parished areas, the Council has set up Local Delivery Committees who will recommend the local service levels for this suite of services and review the financial implications. An option is to raise a special expenses" levy through CEC to ensure that local people pay for the level of local services they receive. The committees have recently been constituted and will be able to meet during the Autumn in line with the business planning process to enable decisions to be taken. The

introduction of a special expense levy is unlikely to be necessary based on the current financial analysis. Once the figures have been discussed the cabinet may wish to set a de-minimus level so that a tax is not levied if the revenue to be generated is marginal.

- 10.10 One of the new Parish Councils, Wilmslow Town Council, formed in May 2011 has assets in its area that are relevant to this transfer. Clearly they have not had time to consider the opportunity afforded through this policy in the short time of their existence so it is proposed that negotiations are carried out with this council and transfers implemented where appropriate in April 2013. It is expected, however that the new parishes are treated consistently in April 2012 with regard to the more minor services e.g. Christmas lights, street furniture, hanging baskets.

### **Devolution of statutory services**

- 10.11 This report describes and requests decisions on transfer of assets and services. For some months a devolution pilot has been in place in the Congleton Town Council area. Early indications are that this pilot has led to successful ways of working and more local input into the service delivery in the locality. Decisions will soon be required on formally taking devolution forward, and consideration will need to be given to different types of delegation schemes, their set-up and the implications for the local councils and how the delegation is managed and monitored.

Devolution will be subject to a separate cabinet report.

### **Property Transfer - Legal Terms**

- 10.12 Every transfer will be effected by a legal agreement. These will be drawn up by the Borough Solicitor in conjunction with the Assets team. The following are the general principles/terms:
- There is a presumption that the transfer of assets will protect community use of the assets
  - There is a further presumption that no car parking will transfer unless it is essential to the on going operation of the facility
  - The transfer will take place for a nominal value (£1) and the Town or Parish Council will be wholly responsible for the service and the asset save insofar as the Council chooses to take back leases of accommodation within the asset or enter into joint use arrangements or

has residual legal responsibilities under contracts or legislative provisions.

- The agreement will secure an overage mechanism for the Council if there is a future planning permission which enhances the value of an asset or the Town or Parish Council sells the asset within a period of up to 25 years.
- Where Cheshire East services will remain in a transferred asset e.g. (libraries) it will only be responsible for general outgoings and repair and maintenance of the premises it occupies and may pay a service charge; no rental or occupancy charge will be due. Appropriate access and operational arrangements will be agreed.

### **HR Issues – Staff Transfer and TUPE**

10.13 The general principle of transfer will be that TUPE applies and that staff will transfer to the relevant Town or Parish Council. Provision TUPE lists have been provided to the local Councils and staff affected are aware of the proposals. Formal processes will need to be put in place to ensure a fair and smooth transfer. There are likely to be some individual instances where the transfer is subject to negotiation e.g. where a member of staff spans several relevant transferring assets but not a significant proportion at one particular asset. There may be residual costs arising where TUPE does not apply but a post is no longer required as a result of transfer. HR advice, good practice and negotiation will be used to resolve such issues.

### **Options for Assets and Services not transferred to Local Councils**

10.14 Where local councils decide not to take over the services proposed for transfer within this initiative, the future of such facilities needs to be determined. This will depend on the nature of the asset and the reason it has not been transferred. In some cases, this is because the facility is not well used and does not constitute value for money in which case it makes sense to cease it. In others it may be that the function is seen as important by the community but that a different delivery model will be required e.g. through the establishment of a social enterprise models where a number of local organisations would resource and run facilities. This is now under consideration and will form part of the usual budget and policy setting processes within the council. There should be few assets and functions in this position as Town and parish councils have, in the main, indicated a desire to take them over.

### ***Transitional Funding***

10.15 An ear marked reserve of £625k was set outside at the inception of Cheshire East to support local working. Part of this fund will be made available to those Towns and Parishes councils taking on major transfers based on the number, scale and complexity of the packages

of assets and functions they are taking on. Such allocations will be discussed on the basis that they can only be claimed based on evidence that the expenditure is specifically supporting the transition, and that the Councils can demonstrate that their own reserves cannot be applied to support the transfers.

- 10.16 It is also recommended that the remaining CEC fund is kept under review as further services and functions are considered for devolution and / or transfer. An additional allocation is also proposed for the two Parish Councils (Holmes Chapel and Prestbury) participating in minor transfers of public conveniences, based on the fact they have very little funding to refurbish facilities and would be unable to undertake them without this support which would part fund the total cost of renovation.

### **11.0 Next Steps**

- 11.1 There has been a tremendous amount of energy and commitment by the Town and Parish Councils into this initiative which is to be welcomed and supported. Clearly this is a challenging task for both Cheshire East and individual Towns and Parishes. The CEC Town and Parish Working Group which includes senior representatives across the Borough and two Cheshire East Councillors (who are also Town Councillors) has been instrumental in achieving huge progress and their contribution should be formally recognised.

Inline with recommendations within this report and due to the fact that the negotiations are at an advanced stage it is felt that the group should no longer continue in its current form and therefore be dissolved

- 11.2 There is vast potential to work with this critical layer of local government and develop their role as a key provider of local services in partnership with other third parties, as part of the Council's commitment to transforming services and ensuring they are delivered at the right level and in the most effective way. This goes beyond the running of local venues and may include the wider provision of preventive services and community wellbeing.
- 11.3 A number of Town and parish councils have already registered an interest in the delivery of further services in future years either independently or through the development of a Community Trust or Social Enterprise. These should be considered post implementation of this first phase of this project.
- 11.4 Once the decisions requested by cabinet are clear, a fully detailed project plan will be drawn up to ensure that the phasing of transfers and the necessary steps to transfer are explicit. Local councils need sufficient information to set a realistic budget for 2012/13 and raise the necessary precept and key milestone dates will form part of the plan.

### **12.0 Access to Information**

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

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