

Cheshire East Council – New Constitution

Explanatory note – List of Substantive Issues Part 2 (A) to (D) Responsibility for Functions

Structure of Part 2 (A) to (D)

Section	Title	Contents
A	Diagram of decision making structure and introduction to decision making	The Introduction sets out principles of good decision making previously in Part 2 but with hyperlinks to aid navigation of the document
B	Full Council	<p>This section sets out the arrangements for Full Council, pulling all previous references which were spread over the Constitution into one place.</p> <p>The mayoral code of practice is accessed through a link from here as is the guidance on the role of a Chair.</p>
C	Cabinet	<p>This section sets out the roles and functions of the cabinet collectively and individual portfolio holders. The role of the cabinet and the portfolio holders has been redrafted to make their democratic leadership role clearer – this has drawn on comments made as part of this project. The individual portfolio areas have not been changed.</p> <p>There are hyperlinks to aid navigation around the document and the layout should be clearer to follow with consistent drafting</p>
D	Committees	There has been extensive redrafting/tidying/standardising of this section, whilst not changing the fundamental allocation of responsibilities. Hyperlinks have been used and the layout made easier to follow.

Substantive Changes

This Part is a fundamental rewriting of what was previously in (part of) Part 2 and 3 of the old constitution – Introductory Chapters and Responsibilities for Functions. We describe the changes that we have made in three categories:

- I. Substantive changes required by law for approval
- II. Substantive changes based on best practice recommended for approval
- III. Substantive changes for consideration by the Sub-Committee

Please Note: the numbering and formatting has not been finalised. This will be addressed as part of the final draft of the whole revised document.

There is also no specific section relating to Alternative Service Delivery Vehicles (ASDVs). A separate governance review is underway, and on conclusion of that review additional information regarding ASDVs will be inserted into the appropriate sections.

I. Substantive changes required by law for approval

Page	Section	Comment and/or area for consideration
72	Audit and Governance Committee	This section has been amended to make it clear that the independent member of the committee (who is not a councillor) is not entitled to vote. This is a legal requirement.

II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration
22	Policy Framework	The following have been removed from the Policy Framework as they are no longer required by law to be included: <ul style="list-style-type: none"> • Sustainable Community Strategy; • Business Plan; and • Adult Learning Plan.
23	Local Choice Functions	A comment has been received that these need to be explained more clearly – the wording has been amended to try to do this but this is a specific statutory requirement for the Council to set out in its Constitution.
25	Appointment to Outside Organisations	It has been suggested that the list of organisations could be taken out of the Constitution and linked to elsewhere. We have inserted a link which will navigate to a page on the Council's website.
25	Role of the Mayor	Following feedback from Members we have re-inserted (as the first responsibility) the phrase "the Mayor is the conscience of the Council" which was missing from earlier drafts. A query was raised as to whether this should be included in the job description of all councillors. Although the sentiment of every Councillor needing to be the conscience of the Chair

Page	Section	Comment and/or area for consideration
		is understood, this does not seem to reflect what members collectively felt at the last working groups/sub-committee which was that it is a prime responsibility of the Chair.
32	Responsibilities of all Cabinet Members	We have updated and strengthened this list following very helpful wording suggest by respondents.
33	Portfolio Holder responsibilities for Leader	We note that the term "devolution" can have different meanings in different contexts. Following officer feedback we have made it clear that devolution in this context means the devolution of powers from Central Government to combined authorities and the Council, and from the Council to Town and Parish Councils.
48	Strategic Planning Board	Members have commented that the Strategic Planning Board no longer nominates Councillors to sit on the Northern and Southern Planning Committee. Reference to this has been removed from the draft Constitution.
55	Staffing Committee - Recruitment and Selection	Purpose and functions have been merged to avoid repetition.
65	Constitution Committee	Following officer comments we have removed the requirement for the Constitution Committee to approve appointments to the Independent Persons Panel as this is not a requirement.
78	Health and Wellbeing Board	We suggest changing the terminology from core/non-core members to voting/non-voting members to better reflect their respective roles. We have also added a link to the Code of Conduct for the HWB.

III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration
18	Introduction Key Decision	It has been proposed that operational treasury management decisions (for example investment decisions relating to the Council's reserves) should be excluded from the definition of a Key Decision (which otherwise remains the same as now) whatever the financial implications.
25	Chairman or Chair?	This page refers to the allocation of "chairmen" and "vice chairmen" to committees and sub-committees. These are the current terms used in the new document and the Sub-Committee is asked to consider if they support the continuation of these terms or would prefer to move to the use of the gender neutral terms "Chair" and Vice Chair" throughout the new Constitution?
27	The Cabinet	A query has been raised on whether in practice the Leader does present a written record of delegations and information about executive functions as currently required (7.2). This is not a statutory requirement.
34	Responsibilities of Portfolio Holders	Responsibilities for the overall interface with ASDVs needs to be identified and allocated appropriately to Cabinet/Portfolio Holders
39	Procedure for Taking Portfolio Holder Decisions	<p>The requirement for an individual Portfolio Holder to hold a meeting to make a decision has been removed. This approach was supported at the Sub-Committee meeting of 29 September.</p> <p>It should be noted of course that, as a matter of law, Key Decisions need to be publicised in advance of being taken (under Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012). We understand that Key Decisions will continue to be made with 28 clear days' notice and be identified in the Forward Plan.</p> <p>So if an individual Portfolio Holder is to make a decision which is a Key Decision they will have to publish the time of when they are to make it etc. (although this does not then need to be made at a "meeting").</p> <p>Members have raised concerns that removing the requirement for Portfolio Holder meetings for decisions could make it more difficult for Members to scrutinise in advance the decisions that are being made. It was suggested that an internal procedure be agreed to determine how information is circulated in advance of Portfolio Holders' decisions being taken.</p> <p>Members have suggested that they would like to have</p>

Page	Section	Comment and/or area for consideration
		<p>advance notice of all decisions, whether Key Decisions or not. This is an administrative procedure for the Council to determine and does not necessarily need to be recorded in the Constitution (but it may be helpful to include it). There is no legal requirement to circulate details in advance of non-key decisions being made, but the Council should decide whether it wishes to adopt such a procedure, which could include publishing details of non-key decisions in the Forward Plan.</p>
40	Role of Deputy Cabinet Members	<p>We have amended this to reflect concerns at the previous drafting which went beyond what is a legitimate role.</p>
42	Functions of Committees	<p>The Council may wish to consider including the Public Rights of Way Committee functions elsewhere e.g. a sub-committee of the Planning Board or the Planning Committees.</p>
43	Overview and Scrutiny Committees	<p>A query has been raised on whether it is best practice for Scrutiny Committees to be chaired by opposition members.</p> <p>There is no legal requirement that a Chair is from an opposition party. Practice varies on this. It is correct that a number of academic studies have advocated that scrutiny chairs should be drawn from elsewhere than the majority party but practice varies across councils.</p> <p>DCLG Guidance on scrutiny says</p> <p>"Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent governor representatives. Overview and scrutiny should be constructive and not merely be there either always to oppose the executive or to rubberstamp the executive's decisions."</p> <p>But LGA guidance makes clear that the chair of the scrutiny committee can represent any political party.</p> <p>It is a matter for the Council – in our experience the effectiveness of scrutiny can be less about the party the Chair represents and more about the overall approach and culture of a council and the skills of the members on the committee (including the Chair).</p>
45	Specific Responsibilities of Overview and Scrutiny Committees	<p>New wording has been include to recognise that the Scrutiny remits mirror the remits of the Portfolio Holder so if the Leader changes the portfolios of the Cabinet, the Monitoring Officer will automatically be able to change the Scrutiny remits to mirror this.</p>
48	Strategic Planning Board	<p>Following feedback from the Director of Planning and Sustainable Development we have made a number of</p>

Page	Section	Comment and/or area for consideration
		<p>changes:</p> <p>Membership of SPB reduced from 12 to 10 Membership of North and South planning committees has been reduced from 12 to 7.</p> <p>Reference to cross party pool of Planning Substitutes has been removed, and no substitutes will be allowed. This approach was supported by the Chairs and Vice Chairs of the Planning Committees.</p> <p>Although this position has Council support, the risk of removing the ability to use substitutes needs to be recognised in relation to situations where it is not possible to find a quorum and/or where members might wish to recuse themselves from a meeting in order to represent a constituent etc.</p>
48	Strategic Planning Board	<p>Officers have suggested that SPB will determine applications involving a significant departure from council policy only where the matter has been referred to SPB by the Planning Committees.</p> <p>The prohibition on applications to vary or remove conditions which were imposed by committee being delegated has been removed.</p>
48	Strategic Planning Board	<p>Suggestions have been made to the definition of Large Scale Major Development. These are noted. We propose that to ensure flexibility the definition of Large Scale Major Development be moved to a hyper linked document. The proposed substantive changes are:</p> <p>Threshold for developments being retained by the SPB to be increased from 200 dwellings to 250 dwellings and from 4 ha and above to 5ha and above.</p>
50	Northern and Southern Planning Committees	<p>Following Officer Feedback the threshold for developments being retained by the Planning Committees to be increased: From 20-199 dwellings to 100-249 Dwellings. From 1-4ha to 3-5ha.</p> <p>The prohibition on applications to vary or remove conditions which were imposed by committee being delegated has been removed.</p>
50	Planning Committees Terms of Reference	<p>It has been noted that the use of the term "call-in" to refer to the challenge of a delegated officer planning decision is confusing. The term call-in is a specific term relating to the functions of the Overview and Scrutiny Committee.</p> <p>It was suggested that an alternative phrase be adopted.</p>

Page	Section	Comment and/or area for consideration
		"Member Challenge", or "Referral" were proposed by members, and Bevan Brittan could suggest further alternatives. The Council should confirm the term it wishes to adopt.
53	Licensing	<p>We have re-written this section significantly taking into account officer comments and what we understand to be the aim. For discussion is whether the political proportionality waiver at paragraph (4) that applies to the sub-committees at paragraph (3) should also apply to the sub-committees at paragraph (2).</p> <p>All references to officer delegations have been taken out as these will be picked up in the local schemes of delegation.</p>
55	Staffing Committee – HR Policies	We have added to paragraph 5.3, which concerns new posts where the pay exceeds £100,000, the proviso that the Staffing Committee is not required to make recommendations to Council affecting the remuneration of a new post where remuneration for that post is already included within the Council's annually approved Pay Policy Statement.
56	Staffing Committee – appeals	Officers are considering whether there an appropriate level below which appeals will be dealt with by officers e.g. Principal Officer grades?
59	Investigatory and Disciplinary Committee – Receiving Investigating Officer's Report para 3.9	<p>A Councillor has raised a concern that in a previous version (April 2017) of the Constitution that a sentence had been added to the Terms of Reference to the Investigatory and Disciplinary Committee which gives the MO and the Chair of the staffing Committee the ability to "filter out and deal with allegations which are clearly unfounded, trivial or can be dealt with under some other procedure".</p> <p>Bevan Brittan notes that similar wording appears in the Chief Executives' National Salary Framework and Conditions of Service, dated 13 October 2016.</p> <p>Bevan Brittan recommends that the decision is delegated to the MO, unless the complaint is against the MO, in which case the delegation should be to the chief executive. In both cases we advise that the delegation should be "in consultation with the Chair of the IDC".</p>
64	Lay Members Appointment Committee	This function could be added to the Terms of Reference of the Constitution Committee.
71	Polling Districts and Polling Places Review Sub-Committee	The functions of the sub-committee could be delegated to officers.
72	Audit and Governance	We have taken out much of the previous detail for this

Page	Section	Comment and/or area for consideration
	Committee – Functions	<p>committee as the detailed list of activities of the Committee is not necessary – the headline areas are sufficient for this section. We have suggested the details are hyperlinked.</p> <p>We have extracted what look to be the most important formal/statutory and listed them. Officers/member comments on this are welcome.</p> <p>If the Initial Assessment Panel and Local Resolution Panel are standing bodies, their membership and terms of reference need to be included here.</p>
78	Health and Wellbeing Board – Agenda and notice of Meetings	Should this be amended so that exempt and confidential information be circulated to all members of the Board?
83	Shared Services Joint Committee	Are there any other joint arrangements with other Councils? – if so they need to be included here.

DRAFT

NON-SUBSTANTIVE ISSUE:

Is a diagrammatic representation of the Member decision-making bodies desirable in Section A? Does it aid understanding? It is not required by law but one was included in the previous Constitution, although it was not wholly comprehensive or up-to-date.

DRAFT