

Council

Date of Meeting: 19 April 2021

Report Title: Transitional provisions and future constitutional work

Senior Officer: Director of Governance and Compliance

1. Report Summary

1.1. This report makes provision for the transition of past executive decisions into the new committee system. The report identifies the methodology for the distribution of decisions within the new arrangements and describes the translation of cabinet/portfolio roles into the new arrangements. The report also set out the some of the consequential impacts relating to some sub committees, external boards and appointments. The report provides for an indicative process for budget setting for next year and summarises the list of further work that will be undertaken on the constitution

1.2. All the relevant background information and decision making is set out in the Report to Council, for the Extraordinary Council Meeting on 19 November 2021

‘Proposed Change of the Council’s Governance Arrangements: Formal Resolution to Move to a Committee System Form of Governance’. (The November 2020 Report). This report had 13 Appendices A to M which are referenced this report. For clarity, the appendices of this report for 19 April 2021 are numbered 1, 2 and 3.

1.3 This report was considered and approved, in draft, by the Constitution Committee which met on 9th April 2021. In approving the draft report, the Committee made specific changes to it, and which have now been incorporated into paragraphs 5.3 and Appendix 1 to this report. These changes relate to:

- The budget process, and the opportunity for service committees to comment upon future proposals relating to their areas, by individual service area.
- Appendix 1: the removal of the previous proposal that matters currently to be decided by portfolio holders should be decided by

officers; this being changed to require decisions by service committees.

2. Recommendations

2.1. That Council:

- 2.1.1. Agree the transitional provisions in paragraph 4.6 and appendix 1.
- 2.1.2. Note and approve the indicative approach to budget setting appendix 2.
- 2.1.3. Agree the scope of the further constitutional review work in appendix 3.

3. Background

- 3.1. At its Annual Council meeting on 22nd May 2019, Council stated its commitment to implementing a change in its decision-making governance arrangements, comprising the implementation of a committee system of governance, subject to a legally and constitutionally robust process being in place to facilitate this.
- 3.2. On 19th November 2020, Council resolved to cease operating the existing Leader and Cabinet model of governance, and to implement a committee system of governance; this will take effect from the Annual Council meeting in 2021. This is currently proposed for the 12 May 2021.
- 3.3. In summary Council agreed policy approach that overall engagement with residents and councillors could be improved. The political solution adopted to achieve greater inclusivity was to change the governance structure of the Council to a committee system.
- 3.4. Council confirmed the five design principles as set out in appendix G of The November 2020 Report:
 - Openness
 - Quick efficient decision making
 - Affordability
 - Legal requirements
 - A modern committee system
- 3.5. Council also resolved to authorise the Director of Governance and Compliance to prepare in accordance with the principles agreed the necessary constitutional provisions associated with the new arrangements.
- 3.6. The administrative approach to deliver the Council's objectives must be legally compliant, it must be operationally practicable, enforceable in terms of governance, understandable to the public, officers, and members.

Importantly the final product must reflect the initial design principles in paragraph 3.4. This report assists Council the administrative delivery of the transitional provisions, note the indicative administrative approach to the budget and agree the scope of additional work to be completed.

4. Transitional provisions Appendix 1

- 4.1. Whilst every effort has been made to facilitate a seamless transition to the new committee system in May 2021, it is prudent for Council to put in place general provisions which will remove any future uncertainty in respect of the changes which will be implemented, and issues which might subsequently arise following the transfer from an executive system, to a committee system of governance.
- 4.2. Since the Council was formed in 2009 each decision has been made under an executive model. Every decision made by any cabinet will create a legacy which extends past the implementation of the committee system. The Council must be certain that previous decisions and any action or activity under those decisions may continue under the new arrangements. Any matter in progress which involves a decision of the Council's Cabinet or is delegated to a Portfolio Holder or officer is resolved in using the principles in appendix 1. This for example, could apply to the delegation of powers by the Cabinet to a Portfolio Holder, or to an officer in consultation with a Portfolio Holder. Provision must be made for such delegation to operate effectively in the absence of a Portfolio Holder.
- 4.3. A further example might be that of a matter which Council had resolved to be considered by an overview and scrutiny committee. Provision must be made for the matter to continue to be considered in the light of the absence of overview and scrutiny committees.
- 4.4. Provision also needs to be made for the continuity of the work of various bodies, appointed by the Council, or attended by the Council, after May 2021. Such bodies may have members who are nominated by the Leader or Cabinet; for example, the Health and Wellbeing Board.
- 4.5. Council should also provide certainty for those Members appointed to the large number of its partner outside organisations, and for the organisations themselves, by making provision for the continuation of appointments. This provision should continue until the next appropriate review date, whether that be the next Annual Council meeting date, or the regular review of most outside organisation appointments, which takes place after the local elections.

4.6. This report, therefore, seeks a resolution of Council in respect of the following miscellaneous matters:

4.6.1. Any matter currently in progress which involves, or is reliant upon, the Council's Cabinet or executive members will continue to be progressed by the executive until Annual Council and thereafter by officers with the involvement of the appropriate service committee, or consultation with its chair as appropriate.

4.6.2. Where any work of the Council's overview and scrutiny committees remains unfinished as at the date of the Council's Annual General Meeting in May 2021, the appropriate Director will be required to consult with the chair and deputy chair of the responsible service committee to decide whether and how such work should be progressed.

4.6.3. Appendix 1 also sets out the approach to be applied to the realignment of sub committees within the new structures. The nature and continuation of the sub committee in question will be then revisited by the parent committee at its first meeting.

4.6.4. Each Committee will also be asked to review the provisional workstream and calendar of meetings.

4.6.5. That existing outside organisation appointments shall continue until the next appropriate review date. Appointments may currently be made entirely on the basis of Cabinet membership, such appointees will, following the change to the committee system, be replaced by a member of the appropriate service committee.

5. Provisional approach to budget Appendix 2

5.1. The budget is and remains the responsibility of Council and primary budgetary responsibility rest with the Corporate Policy Committee (and Finance Sub-Committee) and the Chief Officers who are responsible for administering the budget. The Statutory obligations of the Chief Financial Officer to ensure, and if required impose, sound financial management controls is unchanged.

5.2. Service Committees will be constrained by the budgetary framework. Budgets have wherever practicable been aligned with service committees to facilitate expenditure assurance. Council wide budget control rests with the Corporate Policy Committee and Council. Committee members will receive further training on budget issues, but the fundamental principle is that officers are responsible for budget management; budgets are aligned to committees; committees do not hold 'a budget' but the Committee is responsible for

assuring the budget is spent on delivering the objectives set out in the policy framework of the Corporate Plan.

- 5.3. The new budget process will provide each committee with a review of the mid year position and the opportunity to comment on future proposals relating to their areas, by individual service area, which can be considered within the budgetary consultation process, and will be considered by Corporate Policy Committee for recommendation to Council.

6. Ongoing workstreams to November 2021 Appendix 3

- 6.1. The constitutional revision is a fundamental piece of work being undertaken by this council impacting on virtually all areas of business. The November 2020 Report at paragraphs 1.15 to 1.19 identified a significant number of strategic risks accompanying this change. The council has continued to manage the strategic response to the Covid-19 pandemic, and to understand, respond to and plan for recovery from an emergency that affects lives, health, care, education, businesses, livelihoods, culture and leisure.
- 6.2. The council has been operating in this emergency mode for more than 13 months and the next six months will continue to be challenging as the road map out of lock down is implemented and the plans on mitigating the impact of the pandemic on our residents are implemented.
- 6.3. Officer resources remain stretched and this is reflected in the phased approach being taken to implementation which remains the only major change facing the council that is entirely under its own control. The council has never before had to navigate through such high levels of uncertainty where it is difficult to forecast major issues even over the short term, for example at the time of drafting the mechanism to hold an 'in person' annual general meeting in May is unknown. Nor are the detailed arrangements for the inaugural May committees fully known.
- 6.4. The statutory countdown has commenced and the committee system will start at the next Annual General Meeting. This must occur by the end of May 2021, (albeit the mechanism for holding such a meeting currently is unknown). Since November and allowing for a pandemic, new staff, Christmas and Easter it was necessary to phase the approach for commencement of the committee system into the 'must haves' (phase 1) and the consequential changes (phase 2) Appendix 3 represents a summary of the phase 2 work that must be undertaken. This approach was anticipated in recommendation 2.6 of the November 2020 Report which requires a further report to be presented for consideration at council by 12 November 2021.

7. Implications

7.1. Legal Implications

7.1.1. It is imperative that a lawful and transparent decision-making process exists which translates the existing forms of decisions into the new style of governance. If Council remains silent on these issues the efflux of time will create issues of urgency and cost which require officers to act. This would be costly and defeat the design principles of openness.

7.2. Finance Implications

7.2.1. The clear decision making, and the adoption of a budget setting process is a necessity. A failure to set a budget due to a failure to agree an approach would result in statutory intervention. A failure to set a lawful budget may result in personal liability for Councillors. This process is designed to facilitate the setting of the budget, assist residents in understanding the process that will be followed and protect councillors.

7.3. Equality Implications

7.3.1. There are no direct implications for equality. Every effort will be made to ensure the revised constitution is available in accessible formats.

7.4. Human Resources Implications

7.4.1. There are no direct implications for staff.

7.5. Risk Management Implications

7.5.1. The transitional provisions and future work streams form part of the wider risk management of the change of governance arrangements.

7.6. Rural Communities Implications

7.6.1. There are no direct implications for rural communities.

7.7. Implications for Children & Young People

7.7.1. There are no direct implications for children and young people.

7.8. Public Health Implications

7.8.1. There are no direct implications for public health.

8. Ward Members Affected

8.1. This report impacts on the functioning of the entire Borough.

9. Consultation & Engagement

9.1. A recommendation from the constitution committee.

10. Access to Information

10.1. Additional, supporting information is available to member on the committee system share point site.

11. Appendices

11.1. Appendix One-Schedule of Transitional Provisions

11.2. Appendix Two-Indicative Budget Setting Process

11.3. Appendix Three-Phase 2

12. Contact Information

12.1. Any questions relating to this report should be directed to the following officer:

Name: David Brown

Job Title: Director of Governance and Compliance

Email: david.c.brown@cheshireeast.gov.uk

Schedule of Transitional Provisions

General Provisions Cabinet

Any matter in progress which involves a decision of the Council's Cabinet will continue to be progressed for decision by the appropriate service committee.

The Head of Democratic Services and Governance will allocate matters to appropriate service committees in accordance with their terms of reference. Where a matter appears to be relevant to more than one service committee, it will be allocated to the service committee which the Head of Democratic Services and Governance determines is the most appropriate.

General Provisions Portfolio Holder

Where Cabinet delegated the making of any decision to an individual Cabinet member, that decision will be allocated to the appropriate service committee, by the Head of Democratic Services and Governance in accordance with the following principles:

Matters to be decided by the relevant committee

- a) Any matter of policy
- b) Any matter requiring a decision in respect of a material¹ budget increase or decrease in relation to the original decision
- c) Any matter relating to material service increase or decrease in relation to the original decision
- d) Any matter not within the scope of the Corporate Plan or the current MTFS
- e) Any other matter previously delegated to a member of Cabinet/Portfolio Holder.

Portfolio Holder consultation

Where a decision is delegated to an officer but requires consultation with an executive member, the matter remains delegated to the relevant officer. Consultation will be with the chair of the appropriate service committee².

General Provisions in respect of Scrutiny

Save where work relates to the remaining terms of reference of the Scrutiny committee, where any other work of the Council's existing overview and scrutiny committees

¹ Material budget change is determined by the Chief Finance Officer and a material service change by the Chief Executive.

² It is not possible for the committee chair to re-consider or revisit the original decision.

remains unfinished as at the date of the Council's Annual General Meeting in 2021, the Head of Democratic Services and Governance will allocate the work to the forward plan of the appropriate service committee and the appropriate Director will be required to consult with the chair and deputy chair of the service committee to determine whether and how such work should be progressed and the Head of Democratic Services and Governance will amend the forward plan.

Cabinet 4 May 2021

If any decision of Cabinet on the 4 May 2021 is subject to a call in by members, the existing appropriate scrutiny committee shall consider the call-in, in accordance with the rules currently in force. The scrutiny committee must conclude its deliberations upon any such call-in no later than the day prior to the Council's Annual General Meeting in 2021. The decision of the scrutiny committee may be referred to the relevant service committee.

Continuation of Specific Committees, subcommittee, and boards.

Health and Wellbeing Board: the lead service committee in respect of this Board will be the Adults and Health Committee; and the three Council nominees to the Board will be formally nominated by the Adults and Health Committee, the Corporate Policy Committee, and the Children and Families Committee.

The Local Authority School Governor Appointments Panel shall become a sub-committee of the Children's & Family Committee and shall be appointed at the Committee's first meeting.

The Community Governance Review Sub-Committee shall become a sub-committee of the Corporate Policy Committee and shall be appointed at the Committee's first meeting.

The role of the ASDV Shareholder Committee shall be undertaken on behalf of the Corporate Policy Committee by the Finance Sub Committee.

Shared Services and Scrutiny Committees

The Shared Services Joint Committee shall continue to undertake the functions and responsibilities allocated to it by Cabinet on 24th March 2009, but the Council's nominees to the Committee shall be chosen by the Corporate Service Committee.

Where any work was initiated by, or which involved a decision of the Council's overview and scrutiny committees, or Cabinet, (for example, the delegation of powers to officers or work with other local authorities e.g. relating to Best4Business), such delegation or work will continue after the implementation of the committee system. Any necessary reports to Members will, thereafter, be made to the appropriate service

committee of the Council or, where there are any cross-cutting issues, to the Council's Corporate Policy Committee.

The **Joint Extra Care Housing Management Board** last met on 12 December 2016. The Board is expected to carry out further work to potentially provide input (ranging from reviewing documents to approving decisions) as changes are negotiated to the PFI contract, and oversight of the contract management over the next two to three years. The Board comprises three Portfolio Holders from each authority nominated by the leader. Nominations will be made by the Chair of Corporate, Adults and the Finance Sub -Committee.

The Appeals Sub-Committee

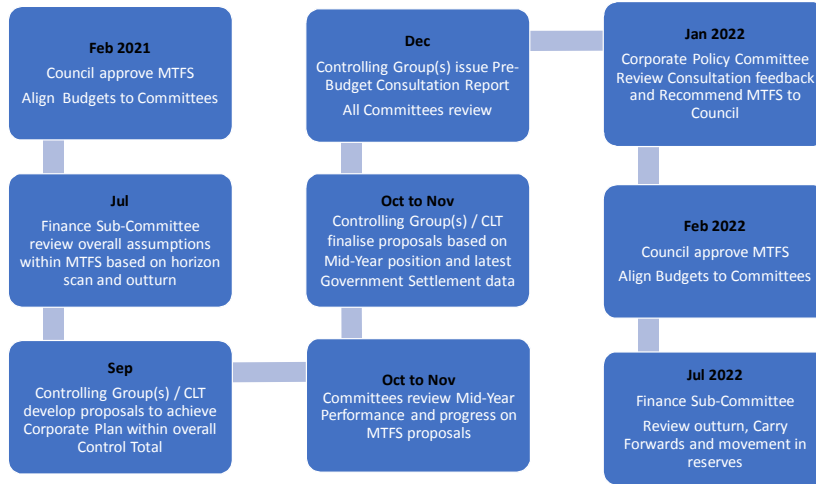
This is a sub-committee of the Constitution Committee, which will no longer exist under the committee system arrangements. This function is transferred to the Corporate Policy Committee for reappointment of the sub-committee.

Appointments to Outside Bodies

Where an appointment is made entirely on the basis of Cabinet membership, the chair of the relevant service committee shall continue in that role until a Member of the appropriate service committee is appointed.

Any other outside appointments shall continue until the next appropriate review date.

Indicative Budget Setting Process



OFFICIAL

APPENDIX 3

Phase 2

Council has directed the Director of Governance to provide a further report by 12 November 2021.

The provisional dates for Council meetings in the 2021/2022 municipal year provides for a meeting on 18 November 2021.

1. Finalise constitution review to remove inaccuracies and legislative inconsistencies.
2. Review of committee terms of reference to identify and clarify any anomalies following implementation.
3. Review of the Council and Committee procedure rules following the initial committees.
4. Access to information and transparency rules to be reviewed and checked for legal compliance.
5. Finance Procedure Rules review following implementation.
6. Contract Procedure Rules review following implementation
7. Review of the employment procedures rules and change of role of Appointment Committee.
8. Member Code of Conduct. Review and redraft to consider LGA model code and Committee for Standards in Public Life recommendations.
9. Officer Code of Conduct Review
10. Member & Officer Protocol Review
11. Planning and other protocols to be refreshed
12. Review of the scheme of delegation