

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 14th July, 2011 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

Councillors G Baxendale, P Groves, A Moran, B Murphy, D Newton,
P Whiteley, Rhoda Bailey, L Smetham and R Cartlidge

Officers

Caroline Elwood, Borough Solicitor
Brian Reed, Democratic and Registration Services Manager
Paul Jones, Democratic Services Team Manager
Mark Nedderman, Senior Scrutiny Officer
Rachel Graves, Democratic Services Officer

11 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors S Corcoran, S Jones, B Livesley, A Thwaite and D Topping.

12 DECLARATIONS OF INTEREST

No declarations of interest were made.

13 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

14 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 2 June 2011 be approved as a correct record.

15 APPOINTMENT OF APPEALS SUB-COMMITTEE

The Committee considered a report on proposals for the appointment of an Appeals Sub-Committee.

It was proposed that the appeals function should become the responsibility of the Constitution Committee and that the Committee appoint an Appeals Sub Committee of 5 Members on a politically-proportionate basis.

RESOLVED:

That Council be recommended:

- 1 To agree that the following functions become the responsibility of the Constitution Committee which will appoint an Appeals Sub Committee with full delegated powers to hear and determine the following:
 - appeals lodged under the Marriage Act
 - appeals lodged with the Council for determination, as authorised under all relevant education legislation, excluding those duties falling to the Independent Appeals Panel (school admissions and exclusions)
 - appeals lodged with the Council in respect of school transport
 - appeals from bus contractors in accordance with contract procedures
 - any appeals lodged with the Council as Social Services Authority and as authorised under all relevant social services legislation
- 2 the Sub-Committee comprise of a pool of 10 members, to be nominated by the Political Groups, from whom 5 members can be drawn on a political proportionate basis.
- 3 the Officers arrange suitable training for the Members appointed to the Sub-Committee.
- 4 the Appeals Sub-Committee's meetings be held, wherever possible, on those dates already scheduled in the calendar of meetings for the former Appeals Committee.

16 WHISTLEBLOWING POLICY

The Committee considered a report which advised them on the content of the revised Whistleblowing Policy, which had been endorsed by the Audit and Governance Committee on 30 June 2011.

The Whistleblowing Policy formed part of the Constitution and required endorsement by the Constitution Committee prior to its referral to full Council for approval and adoption.

The Committee made a number of suggestions in relation to the Policy including that the wording of the Policy should reflect the fact that it also applied to elected Members as well as employees; the Whistleblower should be kept up to date on progress with the investigation; and the telephone number for the external auditor be included.

RESOLVED:

That Council be recommended to agree that:

- (1) the Borough Solicitor and Monitoring Officer, in liaison with the Vice Chairman of the Constitution Committee, agree the wording of proposed changes to the revised Whistleblowing Policy.
- (2) the revised Whistleblowing Policy be adopted and included in the Constitution.

17 APPOINTMENT TO SANDBACH TOWN PLAN STEERING GROUP

The Committee considered a report which requested the addition of Sandbach Town Plan Steering Group to the list of approved Category 2 outside organisations.

The Sandbach Town Plan Steering Group was in the process of producing a town plan for Sandbach. The Chairman of the Steering Group had made a formal request for a Cheshire East Councillor to sit on the Group on the basis that the Member would be able to offer support and give guidance on emerging Cheshire East policies and would act as an interface between the Steering Group and Cheshire East Council.

Councillor Barry Moran had played an active role in the process to date, and in the interest of continuity, the Steering Group had requested that he be appointed as the Council's representative.

RESOLVED:

That Sandbach Town Plan Steering Group be added to the Category 2 list of approved organisations and Councillor Barry Moran be appointed as the Council's representative.

18 REVIEW OF THE CONSTITUTION - WORK PROGRAMME 2011/12

The Committee considered a report on the timetable of work for the review of the Council's constitution.

Whilst the Constitution was robust and fit for purpose, it was essential to review the contents from time to time. At its last meeting the Committee had resolved that a full work programme for the review of the Constitution be drafted. The Appendix to the report suggested a timetable of work for the review. It was suggested that the following sections of the Constitution should be reviewed during the remainder of 2011/12 municipal year:

1. Finance Procedure Rules
2. Scheme of Delegation
3. Urgency Provision
4. Questions at Council meetings

5. Budget and Policy Framework
6. Scrutiny Procedure Rules
7. Staff Employment Procedure Rules
8. Size and Layout of the Constitution

RESOLVED:

- 1 The contents of the report be noted.
- 2 The timetable of work for the review of the Constitution, as set out in the Appendix to the report, be approved.

19 EXECUTIVE ARRANGEMENTS AND CABINET PROCEDURE RULES

The Committee considered a report on the proposed changes to the Executive and Cabinet Procedure Rules as part of the review of the Council's Constitution.

The Constitution contained both Executive Procedure Rules and Cabinet Procedure Rule. Both contained similar or duplicate information and following review a consolidated Cabinet Procedure Rules Section had been produced. The Cabinet and Directors had been consulted and no specific matters had been raised.

The Committee suggested that questions at Cabinet be included in the work programme as part of the review of the Constitution.

RESOLVED:

- 1 That Council be recommended to amend the Constitution to include the consolidated Cabinet Procedure Rules.
- 2 A review of rules for Member questions at Cabinet be included in the review of the Constitution.

20 PROPOSED AMENDMENTS TO THE COUNCIL'S CONTRACT PROCEDURE RULES

The Committee considered a report on proposed amendments to the Council's Contract Procedure Rules.

The Contract Procedure Rules (the Rules) formed part of the Council's Finance and Contract Procedure Rules within the Constitution. The amendments were proposed to reflect best practice developed by the Procurement Unit, including clarification on the use of Delegated Decisions by Chief Officers. Amendments were also proposed to take into account new legislation and the Council's ability to receive electronic tenders, as well as clarify and remove parts of the Rules which were no longer applicable. There was also a proposal to increase the financial threshold at which the Rules require a formal tendering procedure from £50,000 to

£75,000 which it was anticipated would make it easier for SMEs to engage in business with the Council.

The Committee had a number of queries and concerns about the proposed amendments and proposed that a decision be deferred and further work be carried out on the amendments to the Rules.

RESOLVED: That

- 1 Council note that the Constitution Committee has deferred consideration of the report to a future meeting to enable further work to be carried out.
- 2 a report be brought to a future meeting reviewing and amending the Finance element of the Finance and Contract Procedure Rules.

21 OVERVIEW AND SCRUTINY COMMITTEES - TERMS OF REFERENCE

The Committee considered a report on the Terms of Reference for the six Overview and Scrutiny Committees.

Council, at its Annual Meeting on 18 May 2011, had increased the number of Overview and Scrutiny Committee from 5 to 6 by dividing the functions of the former Health and Adult Social Care Committee and thereby creating two new Committees: Health and Wellbeing Overview and Scrutiny Committee and Adult Social Care Overview and Scrutiny Committee.

The two new Committees had considered the draft terms of reference in June and the Scrutiny Chairmen's Group had met with the Leader of the Council to review the terms of reference of all 6 committees in light of the changes made by the Leader in respect of the portfolio responsibilities for each of the Cabinet Members.

The Scrutiny Chairmen's Group had also discussed the need for the general responsibilities, set out in Section 3 of the Constitution, to be amended to make clear that Scrutiny Committees had the right to undertake pre-decision scrutiny work as part of their work programme.

RESOLVED:

That Council be recommended:

- 1 to approve the proposed terms of reference for the six Overview and Scrutiny Committees, as set out in the Appendix to the report, and part 3 of the Council's Constitution be amended accordingly.
- 2 to agree that the Constitution should be amended to incorporate into the General Responsibilities of all Scrutiny Committee, as

contained in part 3, the responsibility for undertaking pre-decision scrutiny work, as expressed in paragraph 10.5 of the report.

22 DIRECTOR OF PEAKS AND PLAINS HOUSING TRUST

The Chairman was of the opinion that this matter constituted urgent business and would be dealt with at the meeting in accordance with Committee Procedural Rule 37.2 and Section 100B(4)(b) of the Local Government Act 1972. The reason for urgency was:

“A decision was required to be made as soon as possible and could not wait until the next meeting of the Civic Sub Committee. The Constitution Committee as parent committee of the Civic Sub Committee was able to determine the matter.”

Under the Mayoral Code of Practice, the Mayor should not be appointed as Chairman or Vice Chairman of any Committee or Sub Committee of the Council. They may accept ex officio positions with an outside organisation or body where their membership stems from their position as Mayor for the time being. They may attend the annual meeting or other special meetings of an outside organisation or body and may accept the position of patron or president, but should not become actively involved during their term of office.

The Mayor, Councillor Roger West, had served as a Director of Cheshire Peaks and Plains Housing Trust since vesting day. As a Director, both he and the Trust, had invested considerable time, effort and resources in ensuring that he had the necessary skills and capabilities to perform the role of Director. However, under the Code of Practice the Mayor should consider resigning as a Director.

Cabinet in June had made a number of appointments to Category 1 Outside Organisations including the Board of the Peaks and Plains Housing Trust. Cabinet resolved that the Civic Sub Committee be asked to consider their recommendation and endorse the Mayor's appointment as a Director of Peaks and Plains Housing Trust.

The Committee concluded that when a Councillor took on the role of Mayor, they agreed to the conditions of the Mayoral Code of Practice which applied for their year of office and that there should be no variation of these rules. Therefore the Committee agreed that it could not endorse the request that the Mayor be appointed as a Director of Peaks and Plains Housing Trust.

RESOLVED:

That the request for the Mayor to continue as a Director of Peaks and Plains Trust be declined.

The meeting commenced at 2.00 pm and concluded at 3.20 pm

Councillor A Martin (Chairman)