

Constitution Committee

Agenda

Date: Thursday, 5th July, 2012
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Minutes of Previous meeting** (Pages 1 - 8)

To approve the minutes of the meeting held on 11th May 2012.

Contact: Paul Mountford, Democratic Services Officer
Tel: 01270 686472
E-Mail: paul.mountford@cheshireeast.gov.uk

5. **Audlem Education Foundation** (Pages 9 - 22)

To consider the number of members appointed to the Audlem Education Foundation Awards Committee, and to review the responsible body for making the appointments.

6. **Changes to Outside Organisations Appointments** (Pages 23 - 28)

To consider changes in representation on a number of organisations on the Category 2 list of outside organisations.

7. **Notice of Motion on Changes to the Arrangements for Scheduled Committee Meetings** (Pages 29 - 30)

To consider a Motion regarding Member consultation when making changes to the arrangements for scheduled committee meetings.

8. **The Cheshire and Wirral Councils Joint Scrutiny Committee** (Pages 31 - 34)

To consider a report proposing the withdrawal by the Council from the Cheshire and Wirral Councils Joint Scrutiny Committee with immediate effect.

9. **Localism Act 2011: Proposed Amendment to Audit and Governance Committee's Terms of Reference and the Council's Procedure Rules** (Pages 35 - 40)

To consider a report recommending to Council:

1. the adoption of additional terms of reference for the Audit and Governance Committee to enable responsibility for ETHICAL standards and conduct issues to be transferred from the Standards Committee in line with the requirements of the Localism Act 2011; and
2. an amendment to the Council's Constitution which would require a Member to withdraw from a meeting having declared a pecuniary interest.

10. **Draft Member / Officer Code of Practice - Delegation and Communication** (Pages 41 - 90)

To consider a report which seeks to respond to the resolution of the Audit and Governance Committee of 14th June 2012, which called for a report to be presented to the Constitution Committee on the Council's Contract Procedure Rules and Officer Scheme of Delegation, with a view to increasing the level of Member involvement in decision-making.

11. **Delegated Decisions - Waiver of Contract Procedure Rules** (Pages 91 - 134)

To consider a report which outlines the interim procedure and revised process for the waiver of the Council's Contract Procedure Rules under the Delegated Decision Process and seeks Members' views on whether any further amendments are necessary.

12. **Review of the Constitution** (Pages 135 - 138)

To consider the Committee's approach to the review of the Council's Constitution.

THERE ARE NO PART 2 ITEMS

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Friday, 11th May, 2012 at West Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

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

Councillors G Baxendale, R Cartlidge, R Fletcher (for Cllr S Jones), P Groves,
W Livesley, A Moran, B Murphy, D Newton, A Thwaite, D Topping and
P Whiteley

In attendance

Councillors D Bebbington, L Brown and S Hogben

Officers

Brian Reed, Democratic and Registration Services Manager
Mike Flynn, Community Governance Adviser
Paul Mountford, Democratic Services Officer
Rose Hignett, Senior Electoral Services Officer
James Morley, Scrutiny Officer
Jamie Oliver, Communications Officer

Also present: Honorary Alderman P Kent

Apologies

Councillors S Jones and G Wait

58 DECLARATIONS OF INTEREST

There were no declarations of interest.

59 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak or ask a question.

60 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 22nd March 2012 be approved as
a correct record.

61 DELEGATED POWERS RELATING TO DEVELOPMENT MANAGEMENT

The Committee considered an addition to the functions of the Strategic Planning Board to enable the Board to consider applications for certificates of appropriate alternative development under Section 17 of the Land Compensation Act 1961.

The Local Planning Authority was required to respond to an application for a certificate of appropriate alternative development by setting out what planning permission would have been granted if the land had not been compulsorily acquired. In the absence of a specific delegation to a committee, such applications would have to be dealt with by full Council. The Strategic Planning Board was considered to be the appropriate body to deal with such applications.

RESOLVED

That Council be recommended to approve that the function of dealing with applications for Certificates of Appropriate Alternative Development under Section 17 of the Land Compensation Act 1961 be added to the functions delegated to the Strategic Planning Board, and the Board's terms of reference within the Constitution be amended accordingly.

62 COMMUNITY GOVERNANCE REVIEWS

1. Crewe

At its meeting on 22nd March 2012, the Committee had recommended to Council that:

- a Crewe Parish Council should be created;
- there should be 16 members representing 6 wards mirroring the Borough Wards;
- the electors from the unparished part of Leighton Borough Ward should be asked whether they would prefer to be included in the proposed parish of Crewe or the existing parish of Leighton; and
- elections should take place as soon as practicably possible.

Council at its meeting on 19th April 2012 had deferred consideration of the recommendations of the Constitution Committee on the draft recommendation for the Crewe Community Governance Review in order that advice received from Counsel on some aspects of the Review could be taken into consideration.

The matter was considered further by the Community Governance Review Sub-Committee on 27th April 2012 in the light of advice received from Counsel which in summary was as follows:

1. Any reorganisation order should take effect on 1st April in any year, including 1st April 2013. The Order should ideally be made by 15th October 2012 but no later than 39 days before the election.
2. The Parish Council itself would not come into being until elections following the taking effect of the Order.
3. There was no such legal entity as a “temporary parish council”.
4. There was no power to set up a transitional body for a long period of time, exercising significant powers and taking decisions which would bind the new parish council.
5. Combining parish council elections with Police and Crime Commissioner elections would seem to be administratively complex.

Having considered the advice of Counsel, the Sub-Committee confirmed its support for the original recommendations of the Constitution Committee to Council but asked that further consideration be given to budgetary and precepting arrangements and to the transitional arrangements for the period leading up to parish elections.

Since the Sub-Committee’s meeting, further advice had been sought and received from Counsel, which was briefly summarised as follows:

1. Cheshire East Borough Council would calculate the budget for the new Parish Council, not a transitional body. The Council would specify a ceiling in respect of the sum which the Parish Council would receive.
2. This sum would be identified in the Establishment Order.
3. The new parish would come into effect from the date of the Order (1st April 2013).
4. Elections could then be held as early as 4th April 2013.
5. The Parish Council would fix its precept at some point prior to October 2013; this could not exceed the sum specified in the Order.
6. The Council Tax payers of the unparished area of Crewe would then receive bills in respect of the Parish Council’s precept.
7. Although any transitional body would have the task of “laying the ground” for a new Parish Council, as the new Parish Council could be elected on 4th April, there would be little point in formally appointing a transitional body under the Order.

As part of the debate, discussion took place on the proposed number of parish councillors.

The Committee was advised that further consideration would need to be given to the detailed arrangements for dealing with the first year budget and precept for the parish council, as well as the transfer of any assets to the new council.

RESOLVED

That the resolutions of the Community Governance Review Sub-Committee be received and supported, and Council be advised:

That

(1) having considered the matter further in light of the advice received from Counsel, the Committee reaffirms the recommendations previously made to Council on 19th April 2012, namely:

- “a. that the interests of effective and convenient local government and community identities in the area would be served by the creation of a new parish with a parish council for the unparished area of Crewe and that parish council be advised to consider its designation as a Town Council;
- b. that the parish should be divided into 6 wards for the purposes of election to the Parish Council, such wards to be coterminous with the existing Borough wards except that, subject to recommendation c. below, the unparished part of Leighton (Polling District 1FJ4) be incorporated into the St Barnabas parish ward, and that each ward should have the number of parish councillors as follows:

St Barnabas	2
Crewe Central	2
Crewe North	2
Crewe South	3
Crewe East	4
Crewe West	3
TOTAL	16

- c. that the electors of the unparished part of the Borough ward of Leighton should be asked whether they would prefer to be included within the proposed parish of Crewe or within the existing parish of Leighton;
- d. that elections to the Crewe parish council should be held as soon as is practicably possible, and should thereafter be synchronised with the ordinary date of parish council elections; and
- e. that these proposals form the basis of a second stage of public consultation and that the Boundary Commission be informed of the proposals.”

- (2) the proposed arrangements for the Stage 2 consultation process as set out in paragraph 4.2 of the report to the Community Governance Review Sub-Committee on 27th April 2012 be approved subject to the dates being altered in line with paragraph 4 below;
- (3) the proposed consultation with the electors for the unparished part of Leighton be conducted by means of a formal ballot;
- (4) the indicative timetable proposed by the Sub-Committee for the latter stages of the Review be approved as follows and the project plan be amended accordingly:

28 th May 2012	Publish Notice of Stage 2 consultations
11 th June – 2 nd July 2012	Stage 2 public consultations
	Postal Ballot in unparished part of Leighton Borough Ward
20 th September 2012	Constitution Committee
11 th October 2012	Council makes final decision and approves Order
1 st April 2013	Order comes into effect
4 th April 2013	Elections to new parish council

- (5) it be noted that Gresty Brook (Polling District 1GM2) in the Crewe South Borough Ward is already located within the parish of Shavington and accordingly does not form part of this Review; and
- (6) the Community Governance Review Sub-Committee be asked to consider the detailed arrangements for setting a budget and precepting, and the extent and timing of the transfer of assets to the new parish council, to enable the relevant provisions to be included in the Order.

2. Macclesfield

The Community Governance Review Sub-Committee, in considering the process for conducting the Macclesfield Community Governance Review, acknowledged the need to review its membership so that Members with appropriate knowledge and experience could participate. Any review of the Sub-Committee's membership would need to balance the need for local knowledge with the experience already gained by existing Members and the continuity that this provided. It was recognised that there were alternative approaches to involving local members in the Review process.

The Sub-Committee had been appointed on a politically-proportionate basis and each constituent Group had the right to review its own representation on the Sub-Committee through its Group Whip. The normal substitution arrangements also applied for individual meetings. As with the Wilmslow and Crewe Reviews, Members for the unparished area of Macclesfield would be able to attend and participate in meetings of the

Sub-Committee or to feed back their comments during the course of the Review.

RESOLVED

That any changes to the membership of the Community Governance Review Sub-Committee be a matter for each constituent Group, subject to written notification to the Democratic and Registration Services Manager.

63 PROPOSED COUNCIL GOVERNANCE ARRANGEMENTS

The Committee considered a report on the work undertaken so far by the Joint Member Working Group appointed by Council to investigate the options available for new governance arrangements. The report proposed changes to the existing arrangements.

Council had appointed the Working Group to consider all available options to review governance arrangements under the Localism Act 2011.

The Joint Member Working Group had given thought to the options available and had concluded that neither a directly-elected Mayor nor a committee system would meet the needs of the Council. The Group had therefore worked on arrangements based on the existing leader and cabinet model but which would allow for greater involvement of non-executive Members in policy development and review.

The Committee had before it the minutes of the Working Group's meeting on 20th April 2012, together with the Borough Solicitor's report to the Working Group. These explored in detail a number of alternative governance options. A summary of the Working Group's preferred option, Option B, was circulated at the Committee's meeting as follows:

- Leader and Cabinet
- Up to 9 Portfolios
- Cheshire East Council Overview and Scrutiny Committee
- Health and Wellbeing Scrutiny Committee
- Cross-party "Policy Groups" aligned with Cabinet. These would:
 - be non-decision-making (ie would act in an advisory capacity)
 - operate in shadow form at an early stage
 - review and develop policy and advise upon significant service delivery issues
 - have access to financial and performance information
 - meet in private but with the option of meeting in public
 - call on Officers and Cabinet Members to attend
- An announcement of the proposals to be made at the Annual Council meeting with the projected timeline being the end of the calendar year
- Option C to be considered in due course

Members noted that Option C would provide for the Policy Groups to become full decision-making bodies. A move towards this could be considered in due course as further guidance was published and in the light of experience with the arrangements now proposed. Members were strongly of the view that the Council should eventually aim to move to Option C.

RESOLVED

That Council be recommended to agree that

- (1) with effect from the end of a shadow period of operation, which shall end no earlier than September 2012, the existing Overview and Scrutiny Committees will be dissolved and be replaced with two Overview and Scrutiny Committees with the names and provisional terms of reference set out in Appendix 1 of the report;
- (2) with immediate effect Council establishes, initially in shadow form, up to nine Policy Groups, aligned with the Cabinet, with the provisional terms of reference set out in Appendix 2 of the report;
- (3) the Leader will determine the size and cross party composition of the Policy Groups and invite the Political Groups to notify the Borough Solicitor of their nominations;
- (4) the consideration of the terms of reference of the two new Overview and Scrutiny Committees be referred to the Overview and Scrutiny Chairmen in the June/July cycle of meetings and the terms of reference thereafter be finalised by Council, following consideration by the Constitution Committee;
- (5) the consideration of the terms of reference of the new Policy Groups be referred to the shadow Policy Groups in the June/July cycle of meetings and thereafter be finalised by Council, following consideration by the Constitution Committee; and
- (6) the Borough Solicitor submit a further report to Council which will enable Council to formalise all remaining arrangements following the shadow period.

The meeting commenced at 9.30 am and concluded at 11.26 am

Councillor A Martin (Chairman)

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Borough Solicitor
Subject/Title: Audlem Education Foundation

1.0 Report Summary

The report asks the Constitution Committee to consider the number of members appointed to the Audlem Education Foundation Awards Committee, and to review the responsible body for making those appointments in the light of Local Government Reorganisation changes since the Awards Committee was established.

2.0 Recommendation

- 2.1 As requested by the Audlem Education Foundation (in paragraph 10.2 of this report), the Committee is recommended to agree the representation on the Audlem Education Foundation Awards Committee and any necessary changes to its Constitution arising from that decision.

3.0 Reasons for Recommendation

- 3.1 The Awards Committee currently has a vacancy which needs to be filled. In addition, there have been a number of occasions on which the Committee has met and unfortunately been inquorate; for that reason an increase in the number of its core members has been requested in order to avoid this happening in the future.

4.0 Wards Affected

- 4.1 Audlem.

5.0 Local Ward Members

- 5.1 Councillor Rachel Bailey.

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. In addition there is now the general power of competence under the Localism Act 2011. These are the main provisions which the Council would rely on to appoint members to outside bodies/select those bodies to which they are appointed.

9.0 Risk Management

An inability to appoint members, and the inability of the Foundation to hold meetings that are quorate, could have an impact on the organisation and on the work of its charity.

10.0 Background and Options

10.1 History of the Audlem Education Foundation Awards Committee

The Clerk of the Audlem Education Foundation has asked for assistance in resolving a problem concerning the number of representatives on its board of Trustees.

The former Cheshire County Council was set up as a Trustee to the Foundation in 1973 and the Awards Committee was subsequently established with a membership of 5, which, at that time comprised:

- 3 from Cheshire County Council Education Committee
- 1 from Crewe and Nantwich Borough Council
- 1 from Audlem Parish Council

The last appointments made by the County Council were in 2006, for a 4 year period, and were noted as being 2 Conservative representatives and 1 Labour representative. None of the appointees were Councillors although they were noted as having a political connection and it was sometimes the practice in predecessor authorities to appoint people

who were local to the organisation and known or affiliated to the political group.

In 2010, and post Local Government Reorganisation, the Foundation asked Cheshire East Officers from the Legal and Democratic Services Sections for advice on amending the Awards Committee Constitution to take into account the demise of the Cheshire County and Crewe and Nantwich Councils. Advice was given that any change would need to be considered by this Committee and that the scheme might well then also need to be referred to the Charity Commission with an explanation of the reasons for change. No action was however taken at that time.

10.2 Current Members of the Awards Committee

Councillor Rachel Bailey was appointed by Cheshire East Council in 2009 to fill the position previously appointed to by Crewe and Nantwich Borough Council, and she was then reappointed in 2011 for the period until 2011.

The current membership is as follows:

Cllr Rachel Bailey	Cheshire East Council (former Crewe and Nantwich Borough Council appointment)
Mr Smith	former Cheshire County Council appointment
Mrs R Foster	former Cheshire County Council appointment
1 vacancy (Mr F Goodwin deceased)	former Cheshire County Council appointment
Mr B Consterdine	Audlem Parish Council

When the Awards Committee last met in March 2012 the following resolution was made:

RESOLVED:

A reply be sent to Democratic Services to forward the following requests to the Constitution Committee at their next meeting.

- 1. For Mrs Helen Rounding to be considered to fill the vacancy on the Awards Committee.*
- 2. To request approval to appoint an additional member to the Awards Committee from 5 to 6 people and for Mr Peter Marshall to be considered, due to Cllr Bailey's evening commitments.*
- 3. The Committee wish to make reference for the following paragraphs of The Audlem Educational Foundation*

Scheme made by the Secretary For Education and Science under Section 18 of The Charities Act 1960:

“Delegation

4. The Council may, with or without any restrictions or conditions as the Council shall think fit, delegate all or any of their powers under this Scheme to its Education Committee or to an Awards sub-Committee, the latter to be constituted in such manner as the Council may think fit.

General Power to make Rules

11. Within the limits prescribed by this Scheme, the Council shall have full power to make and alter rules for the management of the Foundation.”

10.3 Amending the Charitable Scheme

The Charitable Scheme governs the manner in which the Foundation’s Trustee is required to manage its assets and make awards, an Internal Memorandum (copy attached) explains how Cheshire County Council decided to comply with the scheme, including its procedures for appointing individuals to the Foundation’s Awards Committee.

As Cheshire East Council is the County Council’s successor it is now required to carry out the functions of the Trustee and so the Council may wish to amend the Constitution to reflect the latest position within Cheshire East.

If the Constitution is amended to name Cheshire East Borough Council rather than Cheshire County Council, the new version of the scheme would need to be referred to the Charities Commission for its approval along with an explanation of the reasons for change.

11.0 Access to Information

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

Contact Officer:	Cherry Foreman
Designation:	Democratic Services Officer
Tel:	01270 686463
E-mail:	cherry.foreman@cheshireeast.gov.uk

Item 7

F

POLICY & FINANCE SUB-COMMITTEE

7th May 1974

Audlem Educational Foundation.Introduction

Audlem Grammar School was closed as a school in 1965. The site and buildings, part of which date back to 1655, formed part of the trust property belonging to the Audlem Educational Foundation. The County Council have been the Trustees of this charitable foundation since 1910.

When no alternative use for the property could be found the old County Council (Finance and General Purposes Committee - 13.3.72) decided, with the consent of the Department of Education and Science, to transfer the building from themselves in their role as Trustees to themselves in their role of Local Planning Authority. This took place at the District Valuer's valuation of £8,500 which was paid into the Foundation's account. This cleared off the educational trust making it easier for the County Council to sell the property on the open market and the property was eventually auctioned in October 1972.

The £8,500 paid into the Foundation's account was added to the assets of the Foundation in place of the property sold and invested in appropriate trustee securities. At the present time, there is £11,350 in the Foundation fund producing an annual income of £1,158.

The Present Position.

The sale of the school and changes in social conditions meant that some of the objects of the 1910 Scheme were defunct and on 18.6.73 the Finance and General Purposes Committee of the Old County Council resolved that this scheme be revoked and a new scheme with a new list of benefits be made within the spirit of the 1910 Scheme. This was drawn up in consultation with the Department of Education and Science and was established by the Secretary of State on 7 December 1973.

The new benefits are as follows :-

A. Special benefits for Maintained Schools.

A sum of not more than one third of the net income in each year may be applied by the Council in the provision of such special benefits of any kind not normally provided by the Local Authority for any maintained voluntary or county school in the area of benefit of the Foundation as may from time to time be agreed between the Council and the managers or governors of the school.

INTERNAL MEMORANDUM

From:
To

H H Davidson

REF 5 HD

IN 1100

EDUCATION POLICY AND FINANCE SUB COMMITTEE - 7.5.74

As a record for the file and to enable the necessary further action to be taken the following is an extract from the minutes of this meeting:

26. AUDLEM EDUCATIONAL FOUNDATION

The Sub-Committee received a report on the revised scheme for the administration of this charitable foundation.

RESOLVED - (i) That the proposed arrangements be approved and that an Audlem Awards Committee with the following constitution be established:-

- 3 persons appointed by the Education Committee
(including the local member)
- 1 person appointed by the Crewe and Nantwich District Council,
being the local member
- 1 person appointed by the Audlem Parish Council

(ii) That the Awards Committee submit an annual report to this Sub Committee.

(iii) That the Selection Committee be recommended to appoint the following members to represent the County Council

Councillor B L Mulliner (local member)
Councillor R Hinks
Councillor T G Holman.

- RECOMMENDED - (1) That the above arrangements be approved and an Audlem Awards Committee be established.
- (2) That three representatives be recommended including the local member.

J T Kelle tt
County Secretary

J R G Tomlinson
Director of Education

dated 7th December 1973.

No. 7089 P.

County - CHESTER

Ancient Parish - AUDLEM

Foundation - THE AUDLEM EDUCATIONAL
FOUNDATION

Scheme

SCHEME MADE BY THE SECRETARY OF STATE FOR EDUCATION AND SCIENCE UNDER SECTION 18
OF THE CHARITIES ACT 1960.

The Foundation

1. In this Scheme the expression "the Foundation" means the Audlem Educational Foundation, in the Ancient Parish of Audlem, in the County of Chester, now regulated by a Scheme made by the Board of Education under the Charitable Trusts Acts, 1853 to 1894, on 23rd September 1910, and whereof the Cheshire County Council (hereafter called "the Council") is the Trustee.

Revocation and Substitution

2. The provisions of the said Scheme of 23rd September 1910 are hereby revoked and the provisions of this Scheme are substituted therefor.

Administration and Title

3. The Foundation and its endowment (including the particulars specified in the Schedule to this Scheme) shall be administered by the Council as the present Trustee thereof in conformity with the provisions of this Scheme under the name of THE AUDLEM EDUCATIONAL FOUNDATION.

Delegation

4. The Council may, with or without any restrictions or conditions as the Council shall think fit, delegate all or any of their powers under this Scheme to its Education Committee or to an Awards sub-Committee, the latter to be constituted in such manner as the Council may think fit.

Councillors, etc. not to be financially interested in the Foundation

5. Except in special circumstances with the approval in writing of the competent Central Authority for the time being exercising jurisdiction in respect of the Foundation under the Charities Act 1960 (hereinafter in this Scheme referred to as "the Central Authority"), no member of the Council or of their Education Committee or other committee or body to whom the exercise of powers under this

to the Foundation otherwise than as a trustee for the purposes thereof, or receive any remuneration, or be interested in the supply of work or goods at the cost of the Foundation.

Application of Income

6. After payment of any expenses of administration, the net yearly income of the Foundation shall be applied by the Council in the manner and to the objects hereinafter prescribed.

Special Benefits for Maintained Schools

7. The Council may apply such yearly sum as they think fit, being not more than one-third of the said net income, in providing for any maintained voluntary or county school in the area of benefit of the Foundation such special benefits, of any kind not normally provided by the Council as Local Education Authority, as may from time to time be agreed upon between the Council and the managers or governors of the said school:

Provided that the Central Authority may, on the application of the Council, approve in writing the application in any year of a sum in excess of the said one-third.

Other Educational Benefits

8. (1) The residue of the net yearly income of the Foundation shall be applied by the Council in any one or more of the following ways for the benefit of beneficiaries as hereinafter defined:-

(a) In awarding to beneficiaries Exhibitions, Grants or Maintenance Allowances tenable at any secondary school, university or other place of learning approved by the Council;

(b) In providing financial assistance, outfits, clothing, tools, instruments or books to enable beneficiaries on leaving school, a university or other educational establishment, to prepare for, or to assist their entry into, a profession, trade or calling;

(c) In awarding Bursaries or Maintenance Allowances to enable beneficiaries to travel, whether in this country or abroad, to pursue their education;

(d) In providing financial assistance to enable beneficiaries to study music or other arts; or

(e) In otherwise promoting the education, including social and physical training, of beneficiaries.

(2) Within the limits prescribed by this Scheme, the Council shall have full power to make and alter rules for the award of Exhibitions, Grants,

aries, Maintenance Allowances or other benefits, including rules as to the value and period of tenure of the awards, and the qualifications and method of ascertainment and selection, of beneficiaries.

(3) In this clause the expression "beneficiaries" means young persons of either sex who have not attained the age of 25 years, who are resident in the Ancient Parish of Audlem and who are, in the opinion of the Council, in need of financial assistance, with a preference for such young persons qualified as aforesaid who are attending, or have for not less than two years at any time attended, as registered pupils at a maintained school.

Surplus Income

9. (1) Any income of the Foundation remaining unapplied in any year may be retained by the Council for application in the following year in the manner and to the objects above prescribed.

(2) Subject thereto, any sum of cash at any time belonging to the Foundation and not needed as a balance for working purposes shall, unless otherwise directed by the Central Authority, be invested in trust for the Foundation.

Savings of Interests

10. Any Exhibition or other like emolument awarded on or before the date of this Scheme shall be maintained and held, as nearly as may be, as if this Scheme had not been made.

General Power to make Rules

11. Within the limits prescribed by this Scheme, the Council shall have full power to make and alter rules for the management of the Foundation.

Accounts

12. The Council shall provide and keep books of account referable to the income and expenditure of the Foundation, and proper accounts in relation thereto shall in each year be made out and certified in such form as the Central Authority may require.

Further Endowments

13. The Council may accept any additional donations or endowments for the general purposes of the Foundation or for any special objects connected with the Foundation which shall not be inconsistent with, or calculated to impede the due working of, the provisions of this Scheme.

Questions under Scheme

14. If any question arises as to the construction of this Scheme, or as to the regularity or the validity of any acts done or about to be done thereunder, it shall be determined by the Central Authority, upon such application made for the purpose as the Central Authority thinks sufficient, and such determination shall be binding on the Council and all persons claiming under the trusts of the Foundation.

Interpretation

15. The Interpretation Act 1889 shall apply for the interpretation of this Scheme as it applies for the interpretation of an Act of Parliament.

Date of Scheme

16. The date of this Scheme shall be the day on which it is established by an Order of the Secretary of State for Education and Science.

AUDLEM EDUCATIONAL FOUNDATION
BENEFITS

A Special benefits for Maintained Schools.

A sum of not more than one third of the net income in each year may be applied by the Council in the provision of such special benefits of any kind not normally provided by the Local Authority for any maintained voluntary or county school in the area of benefit of the Foundation as may from time to time be agreed between the Council and the managers or governors of the school.

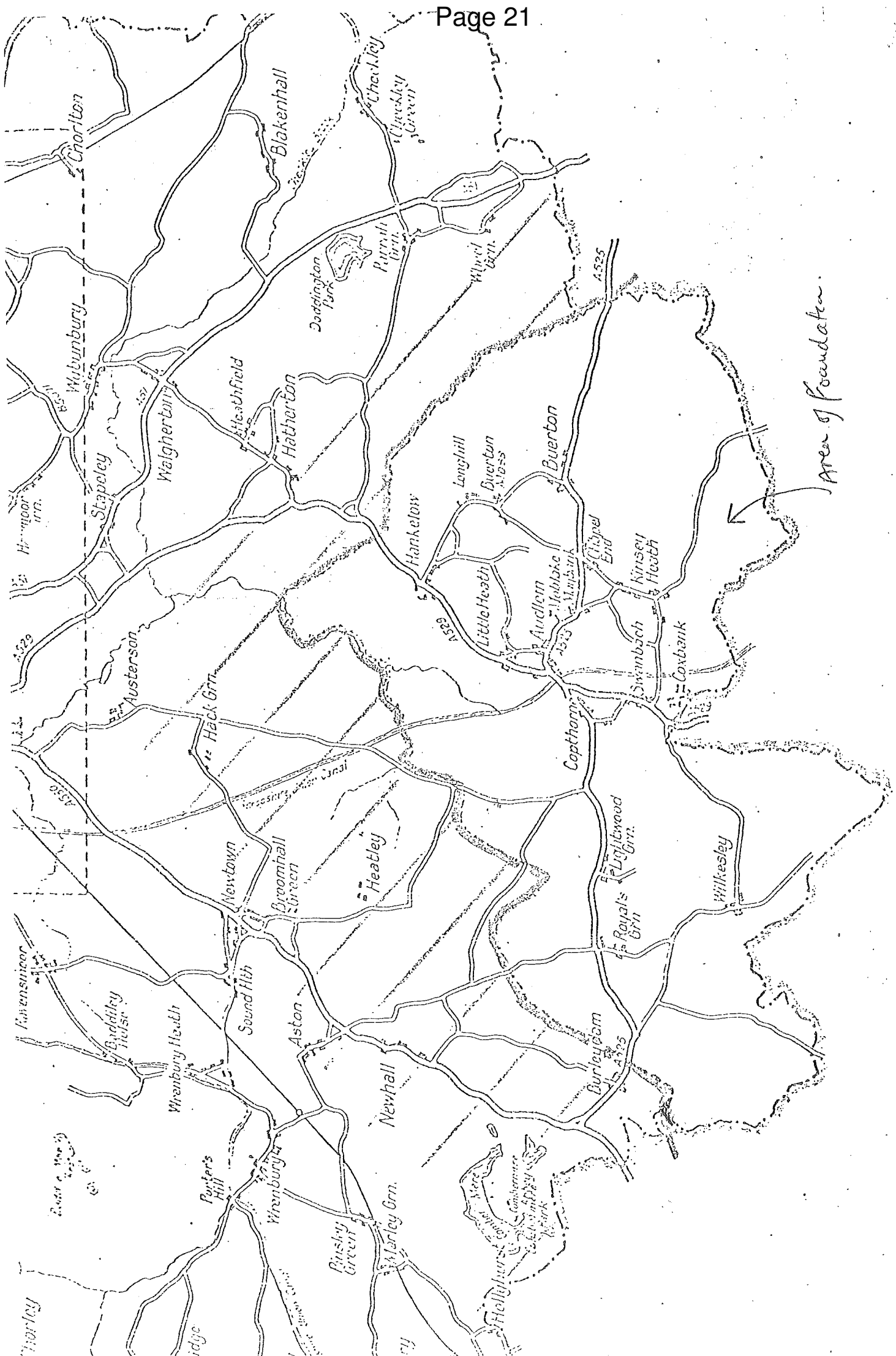
B Other Educational Benefits

The residue of the net yearly income shall be applied by the Council in one or more of the following ways:

- (a) In awarding to beneficiaries Exhibitions, Grants or maintenance allowances tenable at any secondary school, University or other place of learning approved by the Council.
- (b) In providing financial assistance, outfits, clothing, tools, instruments or books, to enable beneficiaries on leaving school, a University or other educational establishment, to prepare for, or to assist their entry into, a profession, trade or calling
- (c) In awarding Bursaries or Maintenance Allowances to enable Beneficiaries to travel, whether in this country or abroad, to pursue their education
- (d) In providing financial assistance to enable Beneficiaries to study music or other arts; or
- (e) In otherwise promoting the education, including social and physical training, of Beneficiaries.

"Beneficiaries" means young persons of either sex who have not attained the age of 25 years, who are resident in the Ancient Parish of Audlem and who are, in the opinion of the Council, in need of financial assistance, with a preference for young persons attending or have attended for not less than two years as registered pupils at a maintained school.

I have established that the Ancient Parish of Audlem comprised the civil parishes of Audlem, Buerton and Hankelow, and part of Dodcott-cum-Wilkesley and Newhall.



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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Borough Solicitor
Subject/Title: Changes to Outside Organisations Appointments
2011-2015

1.0 Report Summary

- 1.1 The report details changes in representation on a number of organisations on the Category 2 list of outside organisations; these are appointments which have been allocated to the Constitution Committee to make the appointments.
- 1.2 In June 2011 the Committee appointed to the complete list of organisations for the period 2011 – 2015, this being the life of the Council. Since then, however, in the natural course of events, the need for some revisions has arisen and it is these appointments that now need to be considered.

2.0 Recommendations

That

- (1) approval be given to the changes of representative shown on the schedule attached to this report, subject to any further updates at the meeting, the appointments to run until such time as the Council's representation is reviewed following the election of the new Council in 2015;
- (2) the appointments take immediate effect; and
- (3) notwithstanding (1) above, the Council retain the right to review the representation on any outside organisation at any time.

3.0 Reasons for Recommendation

- 3.1 It is important for the Council to appoint to outside organisations to ensure that it continues to represent the interests of both the Authority and the wider community.
- 3.2 Whilst appointments were made for the duration of the Council, that is 2011-2015, it has become necessary to review them to take into account changes that have arisen since that time.

- 3.3 There is a casual vacancies procedure for dealing with changes that arise from time to time and it will continue to be used for the small number of changes that might occur throughout the year.

4.0 Wards Affected

- 4.1 Not applicable.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications

- 6.1 None identified.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 None identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 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 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 any thing 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. In addition there is now the general power of competence under the Localism Act 2011. These are the main provisions which the Council would rely on to appoint members to outside bodies/select those bodies to which they are appointed.

9.0 Risk Management

Risk	Mitigation
Failure to appoint Members to outside organisations could have a direct or indirect impact on the outside organisations.	The operation of a procedure for making timely appointments to outside organisations.
Cheshire East Council is unable to influence key stakeholders.	Operation of a satisfactory scheme of appointment to ensure Council representation.

10.0 Background and Options

- 10.1 On 2 June 2011 the Constitution Committee made appointments to the list of Category 2 outside organisations and Members were appointed to serve until such time as representation is reviewed following the election of a new Council in 2015.
- 10.2 There is a casual vacancies procedure for dealing with changes that arise from time to time and it will continue to be used for the small number of changes that might occur throughout the year.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer. There are no specific background documents.

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CHANGES TO OUTSIDE ORGANISATION APPOINTMENTS MADE BY THE CONSTITUTION COMMITTEE

Changes that have been made since the appointments were made in June 2011 and auctioned under the Casual Vacancies Procedure.

ORGANISATION	APPOINTMENT MADE FOR 2011-2015	AMENDED TO
Crewe and Nantwich Twinning Association	C Thorley	R Cartlidge
Chelford Sand Quarry Liaison Group (<i>aka Dingle Bank</i>)	J Macrae G Walton	L Smetham G Walton

Changes that now need approval.

ORGANISATION	APPOINTMENT MADE FOR 2011-2015	AMENDED TO
Macclesfield Chamber of Commerce and Business Link	J Macrae	tba
Standing Advisory Council on Religious Education (SACRE)	S Wilkinson H Gaddum S Jones	S Wilkinson C Andrew S Jones
Weaver Valley Partnership	J Macrae	S Wilkinson
Cheshire County Playing Fields Association	D Hough M Hardy	D Hough tba
Reaseheath College	S Wilkinson	Rachel Bailey
South Cheshire Chamber of Commerce and Industry	J Macrae	P Groves

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Democratic and Registration Services Manager
Subject/Title: Notice of Motion on Changes to the Arrangements for Scheduled Committee Meetings

1.0 Report Summary

- 1.1 This report invites the Committee to consider the following Motion, proposed by Councillor D Brickhill and seconded by Councillor P Edwards, which has been referred by Council to the Committee for consideration:

“That meetings set out in the Council diary shall not be changed either by timing or location unless:

All Members have been consulted and there is no relevant business in which case the meeting is cancelled.

All Members are consulted and more than 60 agree to the change.”

2.0 Recommendation

- 2.1 That the Committee consider the Motion and offer its advice to Council.

3.0 Reasons for Recommendations

- 3.1 To enable Council to consider the Committee’s views on the matter.

4.0 Wards Affected

- 4.1 None

5.0 Local Ward Members

- 5.1 None

6.0 Policy Implications (including carbon reduction and health)

- 6.1 None

7.0 Financial Implications (authorised by Director of Finance and Business Services)

- 7.1 None

8.0 Legal Implications (authorised by Borough Solicitor)

- 8.1 Any changes to the current arrangements for changing meetings would require an amendment to the Constitution.

9.0 Risk Management

- 9.1 There may be a risk in securing a sufficient response from Members in time to enable meeting arrangements to be changed, which could impact on the Council's ability to operate flexibly and efficiently. Many Members may choose not to respond because they are not directly affected by the proposed changes.

10.0 Background and Options

- 10.1 Committee Procedure Rule 26 provides that meetings of committees and sub-committees will be set out in the calendar of meetings approved by the Council under Council Procedure Rule 1.1. There will be a presumption against alterations to the date, time and venue for meetings. When it is necessary to alter the date, time and/or venue of a meeting, or to arrange a special meeting, the Monitoring Officer will consult the Chairman and Spokesmen of the relevant Committee or Sub-Committee before any action is taken. The Chairman of the Committee or Sub-Committee will then determine the matter. Any changes to the arrangements of scheduled meetings, and the details of any special meetings, are notified to all Members of the Council.
- 10.2 The introduction of a procedure whereby all Members of the Council have to be consulted on any change in the meeting arrangements for a scheduled committee meeting, and which would require at least 60 Members to agree any such change, could make the operation of the Council's committee system unwieldy, inflexible and inefficient. Under current arrangements, not only the Chairman and Vice-Chairman but also the spokesmen of other political groups represented on the Committee must be consulted and they will no doubt wish to take soundings from their colleagues on the Committee. It is then for the Chairman to determine the matter. All Members of the Council are then be notified immediately of any changes or cancellations and the reason for them. Where it is necessary to convene a special or ad hoc meeting of a relatively small body such as a sub-committee or working group, it is normally the practice to consult all Members of the body on the proposed arrangements.

11.0 Access to Information

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

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	5 th July 2012
Report of:	Democratic and Registration Services Manager
Subject/Title:	The Cheshire and Wirral Councils Joint Scrutiny Committee

1.0 Report Summary

- 1.1 This report proposes the withdrawal by the Council from the Joint Scrutiny Committee with immediate effect.

2.0 Recommendation

- 2.1 That this Council's nominations to the Cheshire and Wirral Councils' Joint Scrutiny Committee be formally withdrawn with immediate effect.

3.0 Reasons for Recommendations

- 3.1 Cheshire West and Chester Council has not made nominations to the Joint Scrutiny Committee which means that, under the current procedural rules, it will not be able to hold legally constituted meetings (because the quorum requires representatives of all 3 constituent Councils). It is an opportune time to consider the Joint Committee's future.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 N/A

6.0 Policy Implications

- 6.1 The disbanding of the Joint Scrutiny Committee will mean that any scrutiny role will need to be undertaken by the Council's own Scrutiny Committees.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 None

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 None.

9.0 Risk Management

9.1 None known

10.0 Background and Options

10.1 The Cheshire and Wirral Councils Joint Scrutiny Committee is a Joint Committee of Cheshire East Council, Cheshire West and Chester Council and Wirral MB Council. Each Authority appoints 6 Members on a proportional basis; there is also one co-opted Member (representing patients/carers). The Committee has 4 scheduled meetings a year. The Chairmanship rotates around the 3 Authorities and the Authority that holds the Chair, also provides secretariat support.

10.2 The Committee's Terms of Reference are below:

1. to undertake the Scrutiny of, and report on, any matter relating to the planning, provision and operation of services provided by the Cheshire and Wirral Partnership NHS Foundation Trust (including commenting on the annual "Quality Account" of the performance of the Trust) within the areas of Cheshire East Council, Cheshire West & Chester Council and Wirral Metropolitan Borough Council;
2. to consider and comment upon any proposals submitted by the Trust for substantial development or variation in the provision of its services;
3. to consider any matters referred to the Joint Committee by Cheshire East Council Health & Wellbeing or Adult Social Care Scrutiny Committees, or Cheshire West & Chester Health and Wellbeing Select Panel, or the Metropolitan Borough of Wirral's Social Care, Health and Inclusion Overview and Scrutiny Committee; and
4. to consider any matters referred to the Joint Committee by the appropriate Local Involvement Network (LINK).

10.3 The Cheshire and Wirral Partnership NHS Foundation Trust (CWP) provides mental health, learning disability and drug and alcohol services. These services are provided by CWP in Cheshire and Wirral but also in other areas. CWP provides both in-patient services and services in the community. It also provides community services in Western Cheshire. As local authorities can commission services from various providers, not all mental health, learning disability and drug and alcohol services in Cheshire East are necessarily going to be provided by CWP, either now or in the future.

10.4 As CWP is a provider of services, this is where the Joint Committee has focused its work. However, if Members of the Joint Committee had questions on wider commissioning issues, these could not be answered at the Joint Committee (because representatives of commissioners do not attend) and were probably more appropriately addressed at the local Scrutiny Committees.

- 10.5 At the full Council meeting of Cheshire West and Chester Council (CWAC) on 17 May, the Council did not appoint Members to the Joint Scrutiny Committee; it was felt that the regular scrutiny of a single, all be it important, provider of Mental Health and Learning Disability Services was not the most efficient use of Councillor time.
- 10.6 This withdrawal from the arrangements by CWAC has implications for the Joint Committee in that the current procedural rules require that to meet the quorum representatives of all three Councils must be present.
- 10.7 The future role of the Joint Committee has been discussed by both the Health and Wellbeing Scrutiny Committee (which supported disbanding it) and the Adult Social Care Scrutiny Committee, which was in favour of its retention. Scrutiny Chairmen's Group has also discussed the future of the Joint Committee and has been keeping it under review. In light of the decision of CWAC, the Group at its meeting on 1 June felt it would not be possible for the Committee to continue under the circumstances and that the Council should now concentrate on how it could best influence mental health provision locally and that the Council should now focus on successor arrangements. The Group therefore recommends that the Constitution Committee be requested to formally withdraw this Council's nominations from the Cheshire and Wirral Councils' Joint Scrutiny Committee.
- 10.8 If the Joint Committee is disbanded there will still be a need to scrutinise the provision of mental health, learning disability and drug and alcohol services. There will also remain a statutory requirement that CWP consult Scrutiny if it is proposing to make any major changes to services. This can be accommodated within the existing Scrutiny arrangements.

11.0 Access to Information

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

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Borough Solicitor and Monitoring Officer
Subject/Title: Localism Act 2011: Proposed Amendment to Audit and Governance Committee's Terms of Reference and the Council's Procedure Rules

1.0 Report Summary

- 1.1 The report asks the Constitution Committee to approve and recommend to full Council the adoption of additional terms of reference for the Audit and Governance Committee to enable responsibility for ETHICAL standards and conduct issues to be transferred from the Standards Committee in line with the requirements of the Localism Act 2011.
- 1.2 The Committee is also invited to recommend to Council an amendment to the Council's Constitution which would require a Member to withdraw from a meeting having declared a pecuniary interest.

2.0 Recommendation

- 2.1 That the terms of reference set out in the Appendix to the report be recommended for formal adoption by full Council on 19th July 2012, the sub-committee and panels to operate under the procedures approved and adopted by Council.
- 2.2 Council be recommended to approve that the Council Procedure Rules be amended to require a Member who declares a pecuniary interest in an item of business to withdraw from the meeting at the appropriate juncture.

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to have in place appropriate procedures to deal with any breaches of the new Code of Conduct with effect from July 2012.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

- 6.1 Strong Ethical Governance, including a robust and transparent policy for investigation of alleged breaches of the Code of Conduct, is critical to the corporate governance of the Council and also underpins the Council's decision making processes as a whole.

7.0 Financial Implications

- 7.1 Costs of investigating breaches are dependent upon the number of complaints received which are referred for investigation, however at the moment it is anticipated that costs will be met from existing resources.

8.0 Legal Implications

- 8.1 The Localism Act 2011 is being implemented over a phased period of time. The provisions in relation to the replacement of the current Standards regime are due to be brought into force with effect from 1 July 2012. The Act requires that the Council not only adopts a Code of Conduct but has in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct.

9.0 Risk Management

- 9.1 If the authority fails to adopt the new arrangements, then there are risks to the Council not only from a reputational management viewpoint but also to the integrity of the Council's Corporate Governance and decision making processes as a whole.

10.0 Background

- 10.1 Under the Localism Act 2011, the Council has a statutory duty to promote and maintain high standards of conduct by both its elected Members and co-opted Members. The Council must adopt a Code of Conduct which sets out the conduct which is expected of Members whenever they act in their capacity as an elected Member and must also have in place a suitable procedure at a local level to investigate complaints that a Member is in breach of the new Code of Conduct.
- 10.2 The Borough Council is also responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.
- 10.3 Local authorities are no longer required, under the Act, to appoint a Standards Committee to deal with matters concerning standards and

conduct issues. Following consideration of the matter by the Standards Committee, Council agreed at its meeting on 19 May 2012 that responsibility for standards and conduct should be transferred from the Standards Committee to the Audit and Governance Committee.

10.4 The decision of Council (as extracted) was as follows: That

i) the Audit and Governance Committee establish, on an ad-hoc basis, a sub-committee with delegated powers to deal with standards issues, with effect from the next meeting of the Council in July 2012; and

ii) the draft terms of reference at Appendix 9i) of the report submitted be adopted in respect of the Audit and Governance sub-committee.

11.0 Terms of Reference

11.1 The Regulations, which underpin much of the new procedure, had not been published when the initial report was submitted to Council, resulting in the terms of reference being in draft form only. Since that time, the Regulations have come forward, which has enabled the Standards Committee, at its meeting on 18 June 2012, to finalise its recommendations on the future of the standards regime. The draft terms of reference submitted to Council in May have therefore been amended to reflect the current position.

11.2 The Committee is invited to approve the Terms of Reference set out in the Appendix to the report in respect of the Audit and Governance Committee and its three sub-committees i.e.

- the Initial Assessment Panel
- the Local Resolution Panel
- the Hearing sub-committee

for formal adoption by Council. The procedures under which the sub-committees will operate will be the subject of a separate report to Council.

12.0 Withdrawal from Meetings

12.1 There is no requirement in the Act for a Member to withdraw from a meeting during an item of business where they have a pecuniary interest in that item or have disclosed such an interest although participation in the discussion or voting will be a criminal offence. Under Section 31(10) of the Act, a Council may agree to provide under the rules of conduct in the Constitution that Members should be excluded from meetings where they have a disclosable pecuniary interest. This would prevent any perception that Members were able to influence meetings through their continued presence.

- 12.2 Having considered the matter at its meeting on 18 June 2012, the Standards Committee was supportive of this approach and agreed that Council be asked to support an amendment to the Constitution to this end.

13.0 Access to Information

- 13.1 The background papers relating to this report can be inspected by contacting the report writer:

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TERMS OF REFERENCE AUDIT AND GOVERNANCE COMMITTEE

The Committee is responsible for:

- Promoting high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity)
- Ensuring that Members receive advice and training as appropriate on the Members Code of Conduct
- Granting dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted Member to participate in a meeting of the Authority

The Committee will appoint three ad-hoc sub committees / panels as follows:

Initial Assessment Panel

3 Members plus Independent Person. The panel is responsible for:

- Receiving and determining whether to refer for investigation or other appropriate action, any written complaints regarding alleged misconduct and breach of the Code of Conduct by any Borough Councillor or Town or Parish Councillor within Cheshire East.

Local Resolution Panel

3 Members plus Independent Person. The panel is responsible for:

- The hearing and determination of complaints referred to it by the Initial Assessment Panel that there has been a breach of the Code of Conduct by any Borough Councillor or any Town or Parish Councillor within Cheshire East. The panel will act in consultation with the Independent Person.
- Matters may be referred for external investigation should the panel consider it appropriate due to the complexity of the matter or if serious issues emerge.

Hearing Sub Committee

3 Members plus Independent Person. The sub committee is responsible for:

- Consideration of the written report of the external investigator in relation to a complaint that a Borough Councillor or Town or Parish Council Member has broken the Code of Conduct and the determination of any appropriate action in consultation with the Independent Person.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Borough Solicitor and Monitoring Officer
Subject/Title: Draft Member / Officer Code of Practice – Delegation and Communication

1.0 Report Summary

- 1.1 This report seeks to respond to the resolution of the Audit and Governance Committee of 14th June, which called for a report to be presented to the Constitution Committee on the Council's Contract Procedure Rules and Officer Scheme of Delegation, with a view to increasing the level of Member involvement in decision-making.

2.0 Recommendation

- 2.1 That the Committee consider the contents of this report, and determine how it wishes to proceed in the light of the potential options set out at paragraph 7.6 of this report.

3.0 Policy Implications

- 3.1 Any changes to delegation processes or procedure rules will need to be included in the Council's Constitution.

4.0 Financial Implications

- 4.1 There would appear to be no direct financial implications arising from the proposals contained in this report.

5.0 Legal Implications

- 5.1 Changes to the Council's Constitution would need to be put in place which would need to be approved by Council following recommendations of the Constitution Committee.

6.0 Risk Management

- 6.1 The introduction of the new arrangements referred to in this report would reduce risks to the authority.

7.0 Background and Options

- 7.1 At the meeting of the Audit and Governance Committee on 14th June, the Committee resolved as follows:
- 7.2 “The Council’s Contract Procedure Rules and Officer Scheme of Delegation be submitted to the next meeting of the Constitution Committee for further review with a view to increasing the level of Member involvement in decision-making.”
- 7.3 Appendix 1 to this report contains a draft Code of Practice which seeks to address the issues which were of concern to the Audit and Governance Committee.
- 7.4 In summary, the Code of Practice seeks to strengthen the exchange of information between officers and Members and improves and clarifies current practice and procedures around decision making, including the use of officer delegations.
- 7.5 The Code of Practice is produced in draft form. The Committee will need to form a view upon whether it takes the right approach in seeking to address the issues in question.
- 7.6 There are various options:
 - 7.6.1 That the Code should be agreed, subject to the comments of the Committee, perhaps with authority being delegated to the officers in consultation with the Chairman to agree its final form; thereafter this being recommended for adoption at Council.
 - 7.6.2 That the Code should be agreed in draft form, this to be used on an interim basis over the next 6 months in order to establish whether it is fit for purpose, following which a further report should be presented to the Committee, perhaps following consultation with Members.
 - 7.6.3 That the Committee ask for further work to be undertaken in order to produce an amended draft document which can be reported to the next meeting of the Committee for consideration.

8.0 Officer Scheme of Delegation

- 8.1 Appendix 2 sets out the current Officer Scheme of Delegation as requested by the Audit and Governance Committee. The original intention was that this should be reviewed as part of the Council’s new Governance arrangements.

9.0 Access to Information

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

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APPENDIX 1

Draft Member / Officer Code of Practice – Delegation and Communication

1. Introduction

- 1.1 The purpose of this Code of Practice is to strengthen the exchange of relevant information between officers and members and to improve and clarify current practice and procedures around decision making in its widest sense, including the use of officer delegations under the Council's Constitution.
- 1.2 It should be read in conjunction with the Council's existing member / officer relations protocol and builds upon the aim of that protocol to embed good working relationships between members and officers and to develop strong constructive relationships which are recognised as essential to the effective and efficient working of the Council.
- 1.3 This code of practice is an initial draft and will need to be regularly reviewed and developed further in the light of experience and as new processes and procedures are adopted.

2 Delegated Decisions - General

- 2.1 The Constitution makes clear that decisions can be taken at different levels within the Council's corporate structure and by both members and officers. The list of officer delegations can be found at part 3 of the Council's Constitution under "Powers and Responsibilities of Officers". Chief Officers may further delegate to Senior Officers within their service in accordance with the Constitution.
- 2.2 Pending a full review of officer delegations this code of practice sets out guidelines to be followed by officers when exercising delegated decisions and encourages a culture of informing and advising elected members so that members are aware of key current issues.
- 2.3 In practice a number of the decisions which are delegated to officers are operational in nature and are not routinely recorded. If however chief officers are making formal signed delegated decisions in accordance with their delegated powers then there will be an over arching requirement to consult relevant portfolio holders / committee chairmen prior to the formal signing off of the delegated decision.
- 2.4 Officers will not make "key decisions". Key decisions appear on the Council's forward plan and are defined as executive decisions either (a) likely to result in

the Council either incurring expenditure or making savings which are significant, having regard to the authority's budget for the relevant service or function, or (b) alternatively as significant in terms of its effect on communities living or working in an area comprising 2 or more wards. Accordingly any decisions which fall within this definition will always be escalated to Member level.

3 Delegated Decisions – Waiver of competition requirement

- 3.1 Contract Procedure Rules E23 –E26 (inclusive) set out a specific process to be followed solely in connection with a waiver of competition rules for the procurement of goods, works and services. The procedure is to be followed in limited and specific circumstances and currently requires a delegated decision to be signed by the decision taking officer and counter signed by both the Borough Solicitor and the Director of Finance and Business Services.
- 3.2 An interim process has been adopted specifically for these type of delegated decisions and a flow chart setting out the interim process is attached as Annex 1 to this Code of Practice.
- 3.3 This procedure is subject to any further comments or amendments from elected members and the code of practice will be updated accordingly.

4 Briefings and Communications

- 4.1 Chief Officers will be expected to hold regular Portfolio Holder Briefings to suit the requirements of the relevant Portfolio holder and based on the level of business within the service area. Where appropriate Briefings may be cascaded to a wider audience as agreed with the Portfolio holder.
- 4.2 Information for all Members, in this context, can be divided into three very broad areas – national and regional information, local/ward information and council information. Members receive this information from many sources and in many formats. In this scenario, it is all too easy for Members to miss important information or simply not get to something within timescales. To improve the flow of information from officers to Members, it is important to have a way of communicating that is implemented and complied with in a consistent and robust way.
- 4.3 This requirement to inform members is especially important :
 - during formative stages of policy development
 - in relation to significant or sensitive operational matters

- during any form of public consultation
 - during an Overview and Scrutiny Investigation
- 4.4 If a public meeting is convened to consider a local issue those members representing the wards which are affected should always be invited to attend the meeting.
- 4.5 Work is currently underway to scope and develop a dedicated intranet site for Members (working title 'Membernet'). Early ideas on what Information could be included on Membernet include
- National, regional and local policy developments
 - Live consultations consultation results
 - Demographic information at ward (and other) levels
 - Any live local planning applications
 - Any planned council works such as road works, street cleansing etc
 - Council and committee papers
 - Media releases
 - Members bulletin (currently being reviewed and may incorporate Ward specific issues as appropriate)
- 4.6 There are clear advantages to having this information available as a one stop shop for Members. Whilst there are no technological barriers to developing Membernet, this approach does involve 'channel shift' and may take some time to achieve fully. The project will need significant input from Members to develop fully and appropriately.
- 4.7 It is important to note that information and communication should be a two way process and so it is also important that Members advise Officers of relevant issues and cascade information through their own communication channels as appropriate.

5 Finance and Budget Updates

- 5.1 The Finance Team are working through the Corporate Scrutiny Committee and the Budget Task Group as part of the 2013/16 Business Planning Process. A key aim of this year's process is to enable early involvement in the development of the process but more importantly the development of policies and service delivery options. The Team will also be reviewing the development of the new Policy Groups as part of the new Governance structure to establish how the development of policies and options can be a part of the work programmes in the future.

- 5.2 Monthly Performance reporting to Cabinet on an informal basis is now embedded and has been provided from April in the current financial year. The formal quarterly performance reports to Cabinet, including financial performance, are being improved and developed year on year. The Cabinet reports are considered by the Corporate Scrutiny Committee ahead of the Cabinet meeting and comments are presented at the Cabinet meeting.
- 5.3 The Director of Finance and Business Services is reviewing the Finance Protocol as part of the new Governance Structures so that information is targeted to the appropriate member Groups/Committees. The Finance Protocol was developed to provide a structure for the provision of financial information in line with the needs of the Overview and Scrutiny Committee work programmes with recognition of available support resources.
- 5.4 A new governance framework is being developed for the delivery of the Council's Capital Strategy, which includes Finance Portfolio Holder leadership in the Capital Planning process and integration with the new Gateway Process for projects and programmes. This will be aligned with the Council's Business Planning Process.

6 Project Management / Gateway Process

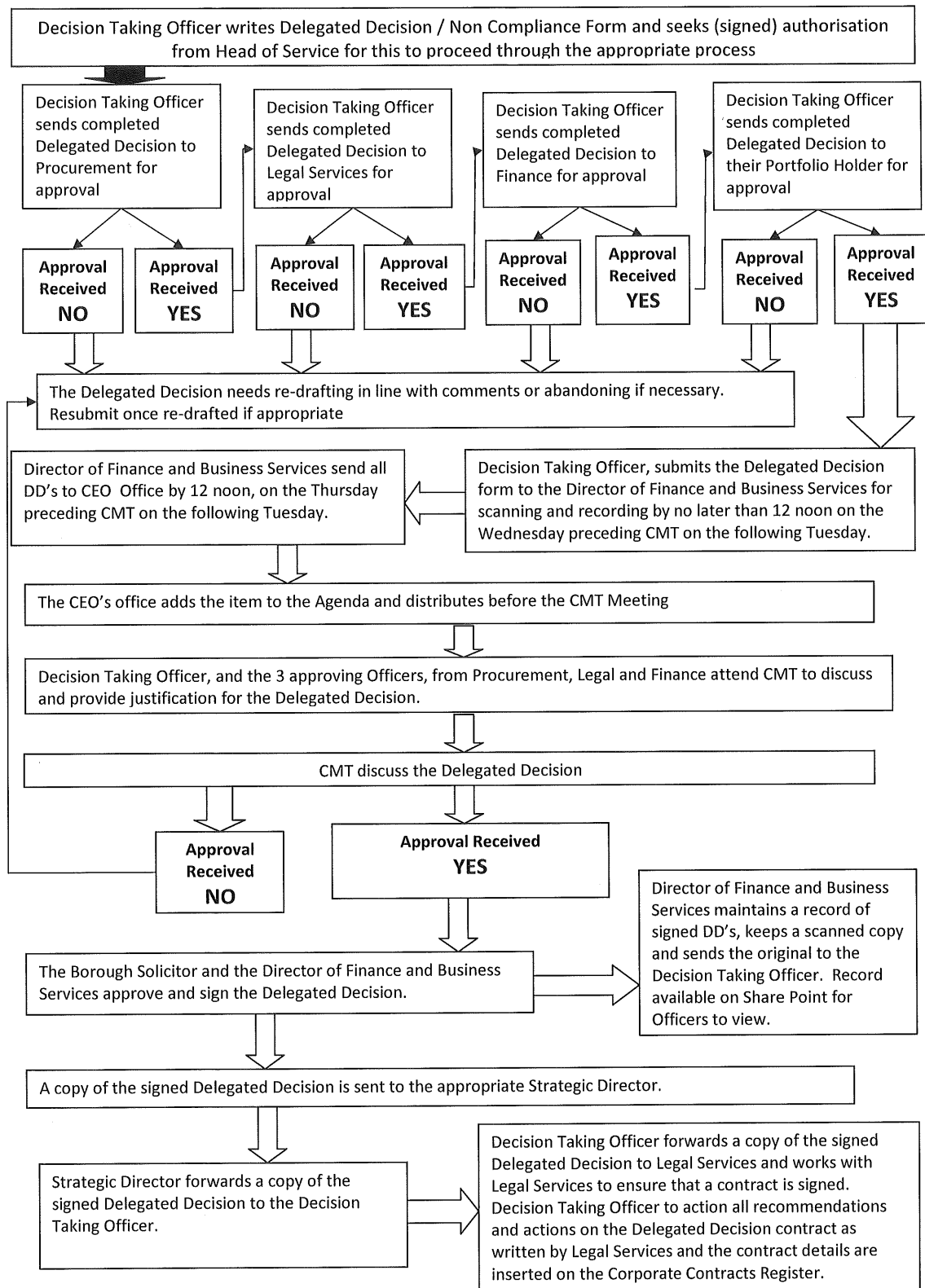
- 6.1 Many projects within the Council are delivered well but there is significant room for improvement. There is a lack of a consistent and robust corporate methodology for managing and reporting projects and programmes and the need for improvements in the overall quality of initial Business Cases. It is also apparent that governance arrangements and monitoring of projects need to be improved.
- 6.2 The Portfolioholder for Performance is sponsoring a project to improve project management within the Council ensuring consistent principles are applied to all levels. A key component will be the introduction of a new Gateway process providing the controlled authorisation of Projects and Programmes, including the objective scrutiny of Business Cases through a new Executive Monitoring Board as referred to above.

7 Cabinet Reports

- 7.1 Cabinet reports often contain a wealth of information. As part of the review of Governance arrangements a new template will be introduced incorporating an "Executive Summary" so that members can read a condensed overview of the information within the report. If Members wish the summary sheets could be used to inform the new Policy Groups and Overview and Scrutiny Committees of the issues at Cabinet.

8 Summary

- 8.1 This initial high level document is intended to act as a guide to aid the flow of relevant information and aid communications between Officers and Members. It is recognised it needs further development but it is designed to begin to embed a culture where the Members feel briefed and aware of key issues in the Council. Cheshire East is a large Council with ambitious plans for the future. Put simply a lot is happening and it is difficult to keep abreast of all issues. Nevertheless we need a culture of “Think Member” so that Elected Members do feel informed, valued and able to contribute and make a difference to the future of Cheshire East.



APPENDIX 2

POWERS AND RESPONSIBILITIES OF OFFICERS
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1.0 AN INTRODUCTION TO THE ROLES AND RESPONSIBILITIES OF OFFICERS AND ELECTED MEMBERS

- 1.1** Elected Members set policy priorities and strategies to reflect local interests and needs and are also responsible for allocating funding between individual priority areas.
- 1.2** Officers of the Authority are responsible for implementing these strategies and policies by delivering services and major initiatives. It is Officers therefore, who have responsibility for managing the Authority's day to day operations, within a policy and budgetary framework laid down by Members.
- 1.3** As such, the Chief Executive, Corporate Management Team¹ and Heads of Service or their nominated representatives are entitled to be notified and represented at all meetings of the Council and Cabinet² and to be consulted in advance on all reports and items of business being submitted to Members.
- 1.4** Under laws introducing "executive arrangements" in the discharge of local authority functions, both the full Council and Cabinet have specific functions which can be delegated to committees or to Officers.
- 1.5** Where Council or Cabinet have established a committee to discharge their respective functions then subject to any limitations they impose, that committee can also delegate its functions to sub-committees or Officers.
- 1.6** This scheme of delegation captures a full range of executive and Council functions by service area. A definition of what constitutes an executive function is set out below.
- 1.7** The majority of the functions set out in this scheme of delegation are executive functions delegated to Officers by the Cabinet. Details of the functions that are delegated to Officers by full Council and its committees can be found in the sections of this Constitution that relate to Local Choice Functions and Non-Executive Functions.

2.0 EXECUTIVE FUNCTIONS DEFINED

- 2.1** Executive functions include those Local Choice Functions identified in this Constitution as being the responsibility of the Cabinet, and all the other

¹ Defined at paragraph 3.2 below

² "Council" and "Cabinet" shall include any committees, sub-committees, special committees, panels, boards or other similarly constituted bodies including briefing meetings and in respect of the Cabinet shall the Cabinet Members sitting *functus officio* whether individually or collectively.

functions of the Authority that are not specified in the section of this constitution that sets out Non-Executive Functions.

2.2 However, in accordance with the functions Regulations³, the following are NOT functions of the Executive:

2.2.1 Imposing conditions, limitations or restrictions on approvals, licences, permissions or registrations on a non-executive function.

2.2.2 Determining any terms that any such approval etc. is subject to.⁴

2.2.3 determining whether and how to enforce any failure to comply with such approvals or any of the attached conditions etc.⁵

2.2.4 Amending, modifying, varying or revoking any such approval.⁶

2.2.5 Determining whether a charge should be made for such approvals or the amount of such charge.⁷

2.2.6 Making, amending, revoking or replacing the Members Allowance Scheme or determining any amounts or rates in the scheme.⁸

2.2.7 Electoral arrangements.⁹

2.2.8 Governance arrangements.¹⁰

2.2.9 Community governance reviews.¹¹

2.2.10 Subject to any Regulations under S20 of the Local Government Act 2000, making arrangements for the joint exercise of functions under S101(5) of the Local Government Act 1972 and making appointments to committees/joint committees under S.102 of the 1972 Act.¹²

2.2.11 Any functions reserved to full Council under legislation which pre-dates the Regulations.¹³

³ The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

⁴ Reg. 2(2)

⁵ Reg. 2(3)

⁶ Reg. 2(4)

⁷ Reg. 2(6)

⁸ Reg. 2(5) and 2 (6)

⁹ Reg 2(6A and B)

¹⁰ Reg2(6Ca) -c),Da) and b), and F)

¹¹ Reg2(6E)

¹² Reg. 2(8)

¹³ Reg. 2(11)

2.2.12 Amending, modifying, varying or revoking any plan or strategy unless it is required to give effect to the requirements of the Secretary of State or Minister submitted for approval or where full Council when approving the plan/strategy authorised the Executive to do so.¹⁴

2.2.13 The adoption/approval of a plan/strategy which is not in the policy framework, if full Council has determined that full Council should take the decision¹⁵ and where the decision is contrary to or not wholly in accordance with the Budget and Policy Framework.¹⁶

3.0 OFFICER MANAGEMENT ARRANGEMENTS

3.1 The Officer management arrangements for the Authority are overseen by a Corporate Management Team comprising the Chief Executive, the Strategic Director (Places and Organisational Capacity), the Strategic Director (Children, Families and Adults), the Head of HR & Organisational Development, the Director of Finance and Business Services, and the Borough Solicitor. The Corporate Management Team shall be chaired by the Chief Executive.

3.2 Each member of the Corporate Management Team (“CMT Member”) is accountable to the Chief Executive for leading the Services within his or her area of responsibility and ensuring that the Services are managed in accordance with the objectives, plans, policies, programmes, budgets and processes of the Authority.

3.3 Within these arrangements powers are delegated to CMT Members who will establish, operate and keep under review schemes of internal delegation to cascade powers and responsibilities to Heads of Service and other subordinate Officers.

3.4 Heads of Service are accountable to the Chief Executive and the appropriate CMT Member for effectively and efficiently managing the Services for which he or she is responsible, in accordance with the objectives, plans, policies, programmes, budgets and processes of the Authority. This includes responsibility for the proper exercise of any delegated powers.

4.0 PRINCIPLES UNDERPINNING THE OFFICER SCHEME OF DELEGATION

4.1 In addition to the delegations set out in this scheme, the Council and Cabinet can arrange for bespoke delegations on specific matters.

4.2 The fact that a function is delegated under these arrangements does not preclude the delegator from exercising the function directly by determining to reserve particular decisions for itself. In respect of Cabinet functions the

¹⁴ Reg. 4

¹⁵ Reg. 5(1)

¹⁶ Reg. 5(1)

power to reserve decisions is exercisable by the relevant portfolio holder or the leader of the Cabinet.

- 4.3** Officers with delegated powers under this scheme may, subject to any limitations imposed in the terms of the delegation to them, delegate further to other Officers. Every such sub-delegation shall be recorded in writing within the internal Service schemes of delegations. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- 4.4** Officers shall devolve responsibility for service delivery and management to the nearest practicable point to the service user.
- 4.5** In some circumstances, a delegatee (whether officer or committee/sub-committee) may consider a matter to be of such importance that their delegated authority should not be exercised. In these circumstances the delegatee may refer the matter back to the delegator for determination.
- 4.6** Any power delegated under this scheme can be exercised by the relevant CMT Member and in any case by the Chief Executive personally (which power shall not be capable of further delegation).
- 4.7** Each Officer with power to act under this section is authorised to do so only in relation to the budgets, resources and policies within their areas of responsibility.
- 4.8** Before taking decisions, Officers are under a duty to satisfy themselves that they have the duly delegated power to do so and that they have undertaken any appropriate consultation. Appropriate advice must be taken where the matter in question involves professional or technical considerations that are not within the Officer's sphere of competence.
- 4.9** Officers are under a duty to ensure that they take decisions in accordance with:-
 - 4.9.1** Principles of natural justice.
 - 4.9.2** Professional standards.
 - 4.9.3** Statutory powers and requirements, guidance and Codes of Practice.
 - 4.9.4** This Constitution.
 - 4.9.5** The approved budget and policy framework including contract and financial procedure rules.
 - 4.9.6** Any other approved policies, procedures and practices.

4.10 The scheme of delegation does not delegate to Officers:-

4.10.1 Any matter specifically reserved by law or by this Constitution to the Council or to any committee or sub-committee of the Council.

4.10.2 Any matter in respect of which specific provision is made elsewhere in this constitution.

4.10.3 Any matter which in law may not be delegated to an Officer.

4.10.4 Any Key Decision other than those in respect of which specific provision has been made for delegation to Officers.

4.11 Any decision made under this scheme of delegation may be called-in in accordance with the appropriate decision making procedure rules from time to time in force.

5.0 POWERS TO IMPLEMENT DECISIONS OF THE COUNCIL AND CABINET

5.1 Once Cabinet and Council decisions come into effect, CMT Members (and Officers duly authorised by them to act on their behalf) have, in accordance with this scheme of delegation, the power to take all necessary actions (including the letting of contracts and incurring expenditure) to implement those decisions, without further reference to the Cabinet or Council, to ensure that all matters of day to day management and administration of the Authority's affairs are carried out effectively and efficiently.

5.2 In implementing Cabinet and Council decisions CMT Members are empowered to undertake statutory processes and carry out, consider and act upon the outcome of statutory and non statutory consultations on service provision in consultation with the relevant Portfolio holder(s) providing that this is consistent with the overall Policy and Budgetary Framework of the Council.

5.3 The powers and responsibilities in the following paragraphs are set out to assist clarity and are without prejudice to the generality of the power set out above.

5.4 The general delegation above and the delegations below include the power to do anything ancillary or incidental to, arising from, or necessary or desirable to give effect to or facilitate the exercise of the powers and functions delegated to Officers including, where not specifically prohibited or available within the Authority, the engagement or retention of any external source of expertise to advise, represent or act for or on behalf of the Officer or Authority.

5.5 References to legislation include any amendments or re-enactments in addition to, where appropriate, any subordinate legislation, regulations, statutory codes of practice or guidance.

6.0 GENERAL FINANCIAL RESPONSIBILITIES

6.1 CMT Members are responsible for financial management within their Departments. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council

6.2 CMT Members shall establish, operate and keep under review schemes of internal financial delegation in consultation with the Director of Finance and Business Services to ensure that:-

6.2.1 The day to day financial management of Services within their Departments is carried out in a secure, efficient and effective manner and in accordance with Financial Procedure Rules and Codes of Practice on Financial Management.

6.2.2 Budgetary problems are contained wherever possible within the Department and if necessary specific in year approval for the transfer of resources between budgets is sought.

6.2.3 Reports are made to the appropriate bodies on the management of resources and performance against targets set out in the business plan.

6.2.4 Risks are appropriately assessed, reviewed and managed.

6.2.5 All members of staff are fully trained, aware and comply with the requirements of the Financial Procedure Rules, the Code of Practice on Financial Management and the Contract Procedure Rules.

6.2.6 All allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Director of Finance and Business Services and Borough Solicitor and that any local investigations are undertaken thoroughly, consistently and impartially.

7.0 BAD DEBTS

7.1 CMT Members shall decide whether to write off debts (other than local taxation) in accordance with Financial Procedure Rule.

8.0 CASH IMPRESTS ACCOUNTS

- 8.1 CMT Members shall authorise the establishment and administration of individual cash imprests accounts in accordance with the Financial Procedure Rules.

9.0 FEES AND CHARGES

- 9.1 CMT Members shall determine the level of fees or charges payable in respect of any chargeable goods or services supplied, work undertaken, or the loan or use of plant, equipment or machinery whether authorised by specific statutory provision or local authority powers at large.

10 PERSONNEL

- 10.1 CMT Members are authorised deal with the full range of employment and staff management issues including but not limited to appointments, terms and conditions, training, discipline, dismissal, performance, progression, promotion, shifts and working hours, grievance, grading, emoluments, expenses, allowances, sick pay, leave, equal opportunities and health and safety in accordance with the Authority's approved policies and procedures.

11.0 CHANGES TO STAFFING STRUCTURES

- 11.1 CMT Members are authorised, subject to the prior notification of the Head of Human Resources and Organisational Development and prior consultation with all appropriate parties affected by the decision including any Trade Union, to implement changes to staffing structures except where the restructure:

11.1.1 Involves the loss of one or more posts not currently vacant.

11.1.2 Involves the re-grading of posts or the grading of new posts.

11.1.3 Involves changes to existing National or Local Agreements and policies.

11.1.4 Cannot be achieved within delegated powers in respect of budgets.

- 11.2 Decisions in respect of restructures which do not fall within the preceding paragraph are delegated to the Head of Human Resources and Organisational Development.

- 11.3 Proposals which involve expenditure outside approved budgets or issues outside approved policy will be referred to the Council or appropriate committee.

12.0 MANAGEMENT OF LAND PREMISES VEHICLES EQUIPMENT AND STORES

- 12.1 CMT Members are authorised to manage all land, premises, vehicles, plant, equipment, machinery, stock, stores, supplies, materials, furniture, appliances, and uniforms necessary for the provision of services. For the avoidance of doubt this includes a power to make arrangements for the cleaning, maintenance, hire and letting of the same and authorising the write-off, loss or disposal of the same where obsolete or surplus to operational requirements.
- 12.2 The power in the preceding paragraph in respect of acquiring and disposing of interests in and rights over land or premises is only exercisable in respect of arrangements not exceeding 7 years in duration and on terms negotiated and recommended by the Assets Manager, subject to there being sufficient budgetary provision and in accordance with the Finance and Contract Procedure Rules.
- 12.3 CMT Members are authorised to make application for planning permission pursuant to the Town and Country Planning General Regulations 1992 and any other necessary applications for any other consent required for the development of land.

13.0 LEGAL AUTHORISATIONS AND COMPLIANCE

- 13.1 CMT Members shall implement and ensure compliance with the Authority's procedures relating to data protection, freedom of information, human rights, and surveillance activities.
- 13.2 CMT Members shall authorise¹⁷ Officers (and such other persons where permitted by law) possessing such qualifications as may be required by law, in accordance with the Authority's policy or where CMT Members are satisfied that appropriate training has been undertaken, to:-
- 13.2.1 Take samples, carry out inspections or surveys, enter land and premises and generally perform the functions of and/or act as a duly authorised or Proper Officer of the Authority (however described).
- 13.2.2 to issue any necessary certificates of authority or certify copies of documents.

¹⁷ which shall include a power to issue such letters or warrants of authorisation and/or identification as is considered necessary or appropriate

13.2.3 To enforce the requirements of legislation including by way of fixed penalty notice.

13.3 CMT Members shall with the approval of the Borough Solicitor:-

13.3.1 Authorise the issue and service of requisitions for information, any notice, order, or direction.

13.3.2 Approve or issue any licence or regulations which may be required or authorised by or under any legislation or byelaws.

13.3.3 authorise the institution of legal and quasi-legal proceedings and/or other action (including debt recovery) whether in respect of any default in compliance with anything so served or authorised, approved or issued or otherwise as is considered necessary to protect the interests of the Authority.

13.3.4 Sign certificates for contracts pursuant to the Local Government (Contracts) Act 1997.

14.0 SAFEGUARDING CHILDREN

14.1 CMT Members shall ensure that arrangements are in place to discharge the responsibilities of the Department in respect of the need to safeguard and promote the welfare of children as required under Section 11 of the Children Act 2004.

15.0 POWERS AND RESPONSIBILITIES OF THE CHIEF EXECUTIVE

15.1 The Chief Executive is the Head of the Authority's Paid Service.

15.2 The Chief Executive is responsible to the Council for:-

15.2.1 Being the Authority's principal Officer representative and point of contact and to promote its good image and reputation.

15.2.2 Exercising the powers and responsibilities of any CMT Member in his or her absence.

15.2.3 Leading and directing the strategic management of the Authority

15.2.4 Ensuring the effective pursuit and achievement of the Authority's objectives

- 15.2.5 Ensuring the Authority's activities are carried out with maximum effectiveness and efficiency
- 15.2.6 Ensuring the efficient and effective discharge of the decision making and scrutiny functions of the Authority
- 15.2.7 The general supervision of this scheme of delegation
- 15.2.8 Monitoring and reviewing the Authority's management and general sufficiency of staffing arrangements (including this Scheme of Delegation) and reporting periodically to the Council on the effectiveness of the arrangements and any need for change pursuant to his duty as Head of the Paid Service under the Local Government and Housing Act 1989.
- 15.2.9 Invoking disciplinary processes for CMT Members.
- 15.2.10 Discharging the Authority's responsibilities under its emergency planning and civil protection functions subject to any constraints/restrictions imposed by the Council.

DIRECTOR OF PUBLIC HEALTH (PENDING)

The Director has four key roles:

- Health Improvement
- Health protection
- Health care, Commissioning and service planning
- Reduction of health inequalities

16.0 STRATEGIC DIRECTOR (PLACES AND ORGANISATIONAL CAPACITY)

The Strategic Director (Places and Organisational Capacity) is the nominated Deputy Chief Executive

Highways, Traffic and Street Management

- 16.1 The Strategic Director (Places and Organisational Capacity) shall be responsible for discharging the operational day to day functions of the Authority in respect of the maintenance and improvement of highways, traffic and street management including but not limited to:-
 - 16.1.1 Granting consents and imposing requirements in connection with works in highways or adjacent premises.

- 16.1.1 Determining, subject to conditions, applications for the placing of plant, structures, trees and equipment in, over or under highways or highway land.
- 16.1.2 Construction of carriageway crossings over footways and verges, erection of fences, boundary posts, cattle grids and the carrying out of works for the drainage of highways.
- 16.1.3 Exercising the Authority's responsibilities under the New Road and Street Works Act 1991 and, where appropriate, waiving charges under the provisions of Section 74 of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) Regulations 2001.
- 16.1.4 Authorising urgent repair of private streets under Section 230 of the Highways Act 1980 and the passing of exemption resolutions and the giving of exemption notices on behalf of the Street Works Authority under Section 219 of the Highways Act 1980.
- 16.1.5 Authorising minor improvements to roads including grass verges, street furniture etc not exceeding £30,000 for which provision has been made in the budget and capital programme.
- 16.1.6 Setting charges for work and maintenance carried out by the Authority for which the costs are to be met by third parties.
- 16.1.7 Authorising the installation of sound insulation.
- 16.1.8 Nominating safety supervisors.
- 16.1.9 Making observations on planning applications consultations.
- 16.1.10 Taking of traffic censuses.
- 16.1.11 On the advice of the Assets Manager or District Valuer, settling claims for borehole damage up to £1,500.
- 16.1.12 Approving routine traffic management orders, highway stopping-up and alley gating orders and variations to pedestrian crossing schemes under the Road Traffic Regulations Act 1984 and Highways Act 1980.
- 16.1.13 Accepting blight notices on properties affected by an approved scheme, where all the conditions on the establishment of blight are satisfied.

- 16.1.14 Determining, in appropriate cases, the manner in which the requirements of Schedule 14 to the Highways Act 1980 relating to the serving of notice of application shall be carried out.
 - 16.1.15 Taking emergency measures to protect persons and property from escapes of water from reservoirs.
 - 16.1.16 Granting licences under Sections 142, 176, 177 and 181 of the Highways Act 1980.
 - 16.1.17 Exercising the Highway Authority's powers and duties under Part VIIA of the Highways Act 1980 – Provision of Amenities on certain highways.
 - 16.1.18 Exercising the Authority's powers and duties under the Traffic Management Act 2004 and in particular the appointment from time to time of a Traffic Manager to perform such tasks as are considered will assist the Authority to perform its Network Management duty under that Act.
 - 16.1.19 Accepting land for road improvements by dedication subject to the total consideration whether in works or otherwise not exceeding £30,000.
 - 16.1.20 Entering into agreements for the construction and adoption of estate roads.
 - 16.1.21 All other functions of the Authority as set out in the Schedule to the Local Government (Committees and Political Groups) Regulations 1990 (as amended) and in particular the functions conferred by the Countryside Act 1968, Local Government (Miscellaneous Provisions) Act 1976, Highways Act 1980, Cycle Tracks Act 1984, Road Traffic Regulation Act 1984 and Road Traffic Act 1988.
- 16.2 Without prejudice to the powers and responsibilities delegated in the preceding paragraph the Strategic Director (Places and Organisational Capacity) shall in consultation with the appropriate Cabinet Portfolio Holder undertake all necessary external consultation and advertisement associated with the exercise of powers to implement schemes of maintenance of and improvement to the highways infrastructure and in the discharge of the following functions:-
- 16.2.1 Traffic Management and Regulation Orders
 - 16.2.2 Stopping Up and Alley-gating Orders
 - 16.2.3 Street naming proposals

- 16.3 The Strategic Director (Places and Organisational Capacity) shall be responsible in consultation with the appropriate Cabinet Portfolio Holder for all matters appertaining to the strategic management of the highways network
- 16.4 The Strategic Director (Places and Organisational Capacity) shall maintain operational oversight in respect of the discharge of the following functions relating to transportation:-
- 16.4.1 Tendering, applications to Traffic Commissioners and other relevant functions under the provisions of the Transport Act 1985.
 - 16.4.2 Negotiations in respect of terms with service operators in respect of concessionary fare/travel and dial-a-ride schemes.
 - 16.4.3 The organisation of (special and non-special) school transport services, including the issue of scholars' passes, and Social Services transport services.
 - 16.4.4 The issuing of minibus permits under the Public Passenger Vehicles Act 1981.
 - 16.4.5 The administration of Car Contract Hire Schemes.
 - 16.4.6 The Management of the client side of vehicle maintenance contracts under the Local Government Act 1988.
 - 16.4.7 The Organisation of School Crossing Patrols.
 - 16.4.8 The holding of Operators Licence(s) on behalf of the Authority and all associated functions and responsibilities.

Waste

- 16.5 The Strategic Director (Places and Organisational Capacity) shall be responsible for the discharge of the functions of the authority relating to waste, waste collection and waste disposal including but not limited to:-
- 16.5.1 Taking any action under the Refuse Collection (Amenity) Act 1978 and the Removal and Disposal of Vehicle Regulations 1986 and to generally manage the refuse collection, disposal, and recycling system of the Authority.
 - 16.5.2 Functions relating to the provision of litter/dustbins and wheeled bins including functions relating to the recovery of charges, expenses and fines

Burial Grounds, Cemeteries and Crematoriums

- 16.6 The Strategic Director (Places and Organisational Capacity) shall be responsible for exercising functions in relation to the general management and operation of the Authority's burial grounds, cemeteries and crematoriums including but not limited to:-
- 16.6.1 The grant of exclusive rights of burial under Section 2 of the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970.
 - 16.6.2 Determine licence conditions and operating licensing arrangements of memorial stonemasons.

Housing

- 16.7 The Strategic Director (Places and Organisational Capacity) shall be responsible for discharging the following functions in relation to housing.
- 16.7.1 To enforce the functions of the 'local housing authority' within the meaning of the Housing Act 1985 and other housing legislation.
 - 16.7.2 To authorise the awarding and payment of grants in accordance with the Authority's Private Sector Housing Renewal Policy.
 - 16.7.3 To authorise designated Officers, signatories and administrators.
 - 16.7.4 To exercise the powers and duties of the Authority in the development of strategies and policies for Assessment of housing need the provision of social housing private sector housing duties, including condition, improvement and enforcement private tenancy relations advice and assistance to enable people to stay in their own home.
 - 16.7.5 Energy conservation advice to residents of the Borough Operational management to Head of Service and Section Manager.
 - 16.7.6 To co-ordinate the preparation of the Authority's Housing Strategy Statement prior to its submission to the Government in connection with the annual Housing Investment Programme
 - 16.7.7 To meet the Regional Controller of the Government Office and Housing Officials to review the annual Housing Investment Programme submission and resources allocation
 - 16.7.8 To liaise with the Homes and Communities Agency as appropriate

- 16.7.9 To advise the Council on the Housing Needs of the Borough and to recommend how to fulfil those needs in accordance with a defined Housing Strategy
- 16.7.10 To work in partnership with other housing providers to meet the housing needs of the Borough and to recommend any financial arrangements to be made between the Authority and other housing providers to carry this out.
- 16.7.11 To act as consultee on issues of acquisition and disposal of land (including interests in land) for the purposes of providing social housing in partnership with Registered Social Landlords
- 16.7.12 To liaise with Housing Associations on the Right to Buy sharing agreement.
- 16.7.13 To administer the Authority's responsibilities for the homeless including the provision of hostels, in accordance with the Housing Act 1996.
- 16.7.14 To administer the Authority's duty to make available accommodation for the homeless, in accordance with the Housing Act 1996.
- 16.7.15 To administer a Housing Advice Service
- 16.7.16 To administer the Authority's Housing and Social and Welfare Policies and initiatives such as Care and Repair
- 16.7.17 To maintain the Housing Waiting List and to make nominations to registered Social Landlords in accordance with the Authority's Allocation Policy.
- 16.7.18 To approve applications for all types of grants other than those specifically delegated to the Cabinet within the policies of the Council.

Assets

- 16.8 The Strategic Director (Places and Organisational Capacity) shall be responsible for exercising the following Assets functions
 - 16.8.1 to produce and implement the Corporate Asset Management Plan for the Council's portfolio of land and buildings.

- 16.8.2 To manage the Council's Estate in accordance with the Corporate Asset Management Plan and serve all notices, contractual or statutory as required.
- 16.8.3 Subject to prior consultation with the relevant Portfolio Holder and in accordance with the Asset Management Plan
- to authorise and negotiate terms and complete the development and appropriation of land and buildings, together with the granting or taking, assignment, surrender or termination of leases, tenancies, licences, easements, way leaves and variations of rent, in accordance with approved budgets
- to authorise and complete the acquisition of land and buildings or any estate or interest in any land or buildings. in accordance with approved budgets
- to authorise and complete the disposal of land and buildings or any estate or interest in any land or buildings subject to the requirements and consents of the Director of Finance and Business Services
- 16.8.4 To take such actions as are considered appropriate in relation to advance payments, blight notices, home loss payments under the Land Compensation Act 1973, notices to quit, purchase notices and other notices and to pay all necessary compensation and complete the necessary land acquisitions.
- 16.8.5 To seek planning permission for the development of land where such land is not required for the statutory functions of the Council.
- 16.8.6 To establish and maintain a corporate database of the Council's land and buildings, including details of liabilities, and to perform any responsibilities placed on the Council under the Local Government Planning and Land Act 1980.
- 16.8.7 To take appropriate action on behalf of the Council with regard to rating issues, including the conduct of appeals.
- 16.8.8 To fulfil the Corporate Landlord function and in doing so determine and issue general guidelines to Officers for the management of land resources and the maintenance of buildings.

- 16.8.9 To certify or make arrangements for the certification of authorisation and identity cards and passes for Officers and Members.
- 16.8.10 To let, licence and complete land and premises agreements and leases for not more than fifteen years in accordance with the Council's Asset Management Plan.
- 16.8.11 In accordance with the Council's Asset Management Plan to sell and complete the sale of land and buildings surplus to requirements subject to prior consultation with the Monitoring Officer and relevant Portfolio Holder and consultation with relevant Ward Members and requirements and consents of the Director of Finance and Business Services.
- 16.8.12 To deal with and complete all matters in connection with the management and leasing/licensing of the Council's industrial land and retail, premises and the Council farm's estate in accordance with the Council's Asset Management Plan.
- 16.8.13 In consultation with the Monitoring Officer to deal with and complete all matters in connection with the Council entering into way leaves and easements.
- 16.8.14 In consultation with the Monitoring Officer and relevant Portfolio Holder to enter into and complete leases of land where the Council is to construct a public amenity or provide or reacquire the freehold of land.
- 16.8.15 In consultation with the Monitoring Officer and Ward Members to take decisions on applications by electricity, gas, water, telephone, broadcasting or cable companies to place any apparatus in, on, over or under any land or building owned by the Council.
- 16.8.16 To assess each application for release from restrictive covenants on its own merits and to negotiate and complete compensation payable to the Council where such release is requested in order to facilitate speculative development or some other profit making exercise.
- 16.8.17 To exercise the provisions of any authorised guarantee agreement, such provisions to always be enforced except where there are commercial or operational reasons not to do so.

- 16.8.18 To serve the required legal notice (Section 17 Notice) on original tenants where the tenant (Assignee) is in arrears in order to protect the Council's rights to pursue original tenants for the debt if it is considered viable.
- 16.8.19 To negotiate and complete the grant of way leaves for the purposes of Town Centre Enhancement Schemes, new developments or Closed Circuit Television Schemes.
- 16.8.20 To undertake and complete maintenance, repairs, alterations, demolitions and new developments in respect of the Council's operational and non-operational property.
- 16.8.21 In consultation with the Monitoring Officer and Ward Members to determine and complete licences to erect and site public notice boards and advertising hoardings throughout the Borough of Cheshire East..
- 16.8.22 To approve, complete and enter into property investments and joint venture property investments, management and development partnerships, including un/conditional contracts and complete such legal contracts as are necessary in accordance with the Asset Management Plan.
- 16.8.23 To authorise and complete the transfer of freehold land at nil value to Voluntary Aided, Voluntary Controlled and Trust Schools and 125 year leases to Academy Schools, where it is a statutory requirement to do so.
- 16.8.24 To authorise and complete all asset transfers, freehold or leasehold, under the Devolution Agenda or Localism or "Quirk" recommendations. In consultation with the Portfolio Holder, Monitoring Officer and Ward Members.
- 16.8.25 To authorise the Borough Solicitor to institute legal proceedings in cases of breach of covenant.
- 16.8.26 To manage the Cheshire East property portfolio in accordance with the maximum values and authorised transactions above for all matters in connection with the acquisition, disposal, leasing and licensing, statutory notices and permissions and any other matters and transactions in accordance with the above responsibilities and in accordance with the Council's Asset Management Plan.

16.8.27 To make planning applications where necessary to establish the potential of land or property or to facilitate the better management of land or property.

16.8.28 With the consent of the Director of Finance and Business Services to undertake urgent work to repair, replace or reinstate vehicles, buildings or equipment where the work is fully funded from insurance monies.

In exercising these delegations the Strategic Director (Places and Organisational Capacity) shall consult with and where appropriate gain the consent of the Director of Finance and Business Services and the Borough Solicitor in accordance with the requirements of the Constitution and the Finance Procedure Rules

HEAD OF HEALTH AND WELLBEING

17.1 The Head of Health and Wellbeing Shall be responsible for the following services relating to libraries, archives and culture:-

17.1.1 Opening and closing of library, information and archive service points including their hours of opening.

17.1.2 Establishing and varying of mobile library schedules.

17.1.3 Promoting cultural activities in libraries and other locations, subject to the cost not exceeding £1,000 for any one event in any one place.

17.1.4 Maintaining the Register of Commons pursuant to the Commons Registration Act 1965.

17.1.5 Acting as lead Officer on behalf of the Authority in relation to the Data Protection Act 1998 and Freedom of Information Act 2000.

17.2 The Head of Health and Wellbeing shall be responsible for making grants, under schemes and financial limits approved by or on behalf of the Authority and in accordance with Finance Procedure Rules:-

17.2.1 towards the cost of cultural projects and commissions

17.2.2 for the provision of, and improvements to community recreation facilities

17.2.3 for the improvement of the environment

17.2.4 for the promotion of sport and recreation

- 17.2.5 towards the cost of cultural projects and commissions
- 17.2.6 towards the cost of voluntary adult sports projects
- 17.2.7 to other appropriate statutory or voluntary organisations
- 17.2.8 for archaeological excavations
- 17.3 The Head of Health and Well being shall discharge the following functions¹⁸ in relation to public rights of way¹⁹:-
 - 17.3.1 To keep a register of information with respect to maps, statements and declarations (S31A)
 - 17.3.2 To keep a register with respect to applications under sections 118ZA, 118C, 119ZA, and 119C of the Highways Act 1980 (S121B).
 - 17.3.3 To take all necessary action to assert and protect the rights of the public to the use and enjoyment of public paths (S130)
 - 17.3.4 To exercise all powers in relation to highways delegated to the Head of Environmental Services (in place of the same) where the highway in question is a public right of way.
 - 17.3.5 To serve notice of proposed action in respect of obstructions on public paths (S130A).
 - 17.3.6 To apply for the variation of orders issued under S130B of the Highways Act 1980 (S130B(7))
 - 17.3.7 To authorise the temporary disturbance of a public path (S135)
 - 17.3.8 To discharge functions in respect of the making good of damage and the removal of obstructions from public paths. (S135B HA)
 - 17.3.9 To discharge functions in respect of the removal of things so deposited on public paths so as to be a nuisance. (S149 HA)
 - 17.3.10 To keep a register of prescribed information with respect to applications under S53(5) of the Wildlife and Countryside Act 1981. (S53B Wildlife and Countryside Act 1981)

¹⁸ References to Section numbers in this paragraph are to Sections of the Highways Act 1980 unless otherwise stated.

¹⁹ Footpaths, Bridleways, Restricted Byways, and Byways Open to All Traffic and other such ways that are within the remit of the Head of Health and Wellbeing

- 17.3.11 Power to prepare a map and statement by way of consolidation of the definitive map and statement. (S57A of the Wildlife and Countryside Act 1981).
- 17.3.12 To grant permission for provision of services, amenities, recreation and refreshment facilities on public paths. (S115A – S115K)
- 17.3.13 Authorising the use of footpaths and bridleways for motor vehicles and cycle trials. (S33 Road Traffic Regulation Act 1988)
- 17.3.14 Certifying extracts from the Definitive Map under the provisions of Section 56 of the Wildlife and Countryside Act 1981.
- 17.3.15 Making temporary diversion orders for footpaths and bridleways under the Highways Act 1980.
- 17.3.16 Serving notices to require the removal of obstructions from public rights of way, the restoration of public rights of way following ploughing, cropping or other disturbances and the maintenance of stiles, gates or other structures across public rights of way.
- 17.3.17 Granting permission to extend the period of restoration following disturbance of the surface of a right of way and the granting of orders that a right of way shall be subject to a condition that the surface may be disturbed by excavation or operations.
- 17.3.18 Issuing notices under the provisions of Schedule 12A of the Highways Act 1980.
- 17.3.19 Authorising the erection of stiles and gates across any public right of way.
- 17.3.20 The making of Traffic Regulation Orders in respect of any public right of way.
- 17.3.21 Managing Tatton Park in relation to the terms of the Lease from the National Trust.
- 17.4 The Head of Health and Wellbeing shall be responsible for the general management, hire and letting of sports and leisure facilities for public use, including (but not limited to) sports centres, athletics stadium, swimming pools, sauna suites, community centres, community halls, theatres, parks, lakes, waterways, playing fields, recreation grounds, caravan parks and allotments.

18 HEAD OF SAFER AND STRONGER COMMUNITIES

18.1 The Head of Safer and Stronger Communities shall discharge the following functions in respect of trading standards and consumer protection:-

18.1.1 To undertake or appoint to the role of the Authority's Chief Inspector of Weights and Measures under Section 72 of the Weights and Measures Act 1985.

18.1.2 To appoint and authorise Officers of the Authority to act as duly authorised persons, proper Officers, inspectors, or similar (howsoever statutorily described) to discharge the statutory functions devolving upon the Authority under the legislation²⁰ listed in the Appendix to this section including but not limited to the functions of registration, enforcement, inspection or any associated action or granting, amending, varying, refusing, revoking, suspending or transferring any licences, approvals or consents.

18.1.3 To enter into reciprocal arrangements for the authorisation and appointment of Officers for the purposes set out in the preceding paragraph to facilitate cross-border co-operation in the discharge of the said functions with any other local authority.

18.1.4 To Amend the functions listed in the Appendix to this section (and any associated Officer authorisations) in accordance with legislation from time to time in force:-

18.1.4.1 without reference to elected Members in respect of functions which the authority is obliged by legislation to discharge (mandatory functions); or;

18.1.4.2 Following approval from elected members in respect of functions which the authority has discretion to discharge (discretionary functions).

18.2 Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-

18.2.1 Power to licence hackney carriages and private hire vehicles and suspend licences (including suspension pending inspection).

18.2.2 Power to issue and suspend operators licences

²⁰ Which shall include any Statute extending or amending the same or incorporated therewith, or any re-enactment thereof, or any Statutory Instruments, Regulations, Byelaws or Orders made there under or continued in force thereby and also such other powers and duties under such other Statutes, Statutory Instruments, Regulations, Byelaws or Orders as may from time to time be conferred upon said officers by the Council.

- 18.2.3 Power to licence and suspend hackney carriage and private hire drivers
- 18.2.4 Power to licence street and House to House collections
- 18.2.5 Power to renew or transfer licences for sex establishments where:-
 - 18.2.5.1 there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and
 - 18.2.5.2 no objections have been received, or those that have been received have been withdrawn.
- 18.2.6 Power to issue street trading consents
- 18.2.7 Power to licence performances of hypnotism
- 18.2.8 Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)
- 18.2.9 Sanctioning the use of buildings for the storage of celluloid
- 18.2.10 Licensing employment of children
- 18.3 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to the body set out below:-
 - 18.3.1 The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Authority's vehicle conditions or does not pass the vehicle inspection be referred to the General Licensing Sub-Committee.
 - 18.3.2 The determination of applications for operators licences where the Council's requirements are not met be referred to the General Licensing Sub-Committee.
 - 18.3.3 The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the General Licensing Sub-Committee.
 - 18.3.4 The determination of applications for the renewal or transfer of licences for establishments where objections have been received and have not been withdrawn shall be referred to the General Licensing Committee.

- 18.3.5 The determination of requests for waiver of the Authority's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the General Licensing Sub-Committee.
- 18.3.6 The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the General Licensing Sub-Committee.
- 18.3.7 The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the General Licensing Committee.
- 18.3.8 The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex establishments and street trading shall be reserved to the General Licensing Committee.
- 18.4 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of Licensing Functions (Licensing Act 2003 and Gambling Act 2005) shall stand referred to body set out below.
 - 18.4.1 Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e. the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act).
 - 18.4.2 With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003, the determination of an application under the Licensing Act 2003 or the Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Act Sub-Committee.
 - 18.4.3 The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.
 - 18.4.4 The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Act Sub-Committee.
 - 18.4.5 The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.
 - 18.4.6 The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Act Sub-Committee.

- 18.4.7 The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Act Sub-Committee.
- 18.4.8 The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Act Sub-Committee.
- 18.4.9 The decision to give a counter notice to a temporary use notice (section 224 of the Gambling Act 2005) shall be referred to the Licensing Act Sub-Committee.
- 18.4.10 The decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises where representations have been made by the licensee shall be referred to the Licensing Act Sub-Committee.
- 18.4.11 The decision to revoke a personal licence where convictions come to light after grant or renewal (under section 124 of the Licensing Act 2003) shall be referred to the Licensing Act Sub-Committee.
- 18.4.12 The decision to set fees under the Gambling Act 2005 shall rest with the Licensing Committee.
- 18.4.13 The power to institute criminal proceedings under the Gambling Act lies with the Borough Solicitor.
- 18.5 The Head of Safer and Stronger Communities is authorised to discharge the following functions in relation to environmental health:-
 - 18.5.1 Power to issue licences authorising the use of land as a caravan site
 - 18.5.2 Power to licence the use of moveable dwellings and camping sites
 - 18.5.3 Power to license premises for acupuncture, tattooing, ear piercing and electrolysis
 - 18.5.4 Power to licence pleasure boats and pleasure vessels
 - 18.5.5 Power to licence scrap yards
 - 18.5.6 To register motor salvage operators
 - 18.5.7 To register and licence premises for the preparation of food
 - 18.5.8 Power to licence premises for the breeding of dogs

- 18.5.9 Power to licence pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business
- 18.5.10 To register animal trainers and exhibitors
- 18.5.11 Power to licence zoos
- 18.5.12 To licence dangerous wild animals
- 18.5.13 To grant consent for the operation of a loudspeaker
- 18.5.14 To approve meat product premises
- 18.5.15 To approve premises for the production of minced meat or meat preparations
- 18.5.16 To approve dairy establishments
- 18.5.17 To approve fish products premises
- 18.5.18 To approve dispatch or purification centres
- 18.5.19 Power to register fishing vessels on board which shrimps or molluscs are cooked
- 18.5.20 Power to approve factory vessels and fishery product establishments
- 18.5.21 To register auction and wholesale market
- 18.5.22 To keep a register of food business premises
- 18.5.23 To enforce Chapter 1 (Health Act 2006) and regulations made under it
- 18.5.24 Power to authorise Officers
- 18.5.25 Functions relating to fixed penalty notices
- 18.5.26 Power to transfer enforcement functions to another enforcement authority
- 18.5.27 Functions relating to health and safety at work (to the extent that those functions are discharged otherwise than in the authority's capacity as an employer)

19 HEAD OF PLANNING AND HOUSING

- 19.1 Apart from the matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the Head of Planning & Policy.
- 19.2 Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use & development, enforcement, listed buildings and conservation areas.
- 19.3 The planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.
- 19.4 Where legislation is amended or replaced by new provisions or where new development control provisions are enacted, then the relevant authority delegated in this Scheme applies to those new provisions.
- 19.5 The Head of Planning and Housing is authorised to exercise all the powers and duties conferred on the Authority in relating to Building Control and without limitation upon those general matters, to be responsible for:-
 - 19.5.1 The passing or rejection of plans of proposed work deposited in accordance with Building Regulations or passing them subject to conditions, under the provisions of Section 16 of the Building Act 1984, subject to any other section of this Act or any other Act that expressly requires or authorises the rejection of such plans in certain cases.
 - 19.5.2 The declaration by notice that the deposit of plans is of no effect under the provisions of Section 32 of the Building Act.
 - 19.5.3 The dispensation with the requirements of the Building Regulations in appropriate cases.
 - 19.5.4 Dealing with applications for regularisation certificates in respect of unauthorised building work.
 - 19.5.5 The serving of notice to open up work in cases where a person carrying out building work neglects to notify the Authority of the

stages of work referred to in Regulation 14 of the Building Regulations 1985.

- 19.5.6 Dealing with dangerous structures by:- (i) Taking action under Section 77 of the Building Act 1984 to secure the removal of dangerous conditions in buildings or structures including application to Magistrates Court for an order to remove such dangerous conditions.
- 19.5.7 Take emergency action under Section 78 of the Building Act in such cases where immediate action is necessary to remove danger.
- 19.5.8 Dealing with ruinous and dilapidated buildings and neglected sites by taking action under Section 79 of the Building Act 1984.
- 19.5.9 Dealing with private demolitions of the whole or part of a building or buildings by taking action under Section 81 of the Building Act 1984
- 19.5.10 The taking of enforcement action in cases where the provisions of the Building Regulations and other related legislation have not been complied with, including instituting proceedings in the Magistrates Court for contraventions of the Building Regulations
- 19.5.11 Supervision of Building Work etc Otherwise than by Local Authorities
- 19.5.12 The receipt and acceptance or rejection, on prescribed grounds AND, where appropriate, of the various notices referred to in Part II of the Building Act 1984 and the Building (Approved Inspectors) Regulations 1985 in connection with the supervision of plans and work by approved inspectors
- 19.5.13 Variation of the standard fee scales of the Local Government Association model scheme by plus or minus 10% (by a percentage greater than 10% - to portfolio holder)
- 19.6 The Head of Planning and Housing is authorised to exercise all the powers and duties conferred on the Authority relating to Local Land Charges and without limitation upon those general matters, to be responsible for:-
 - 19.6.1 The maintenance of the Local Land Charges Register
 - 19.6.2 The issuing of official searches of the Local Land Charges Register
 - 19.6.3 The issuing of responses to Con 29 R and O Enquiries of a Local Authority

20 ASSETS MANAGER

- 20.1 The Assets Manager shall be responsible for oversight of the day to day control and management of land and buildings in the ownership of the Authority, to ensure compliance with all relevant statutory requirements (including the Health and Safety at Work Act 1974), fitness for purpose, service delivery, maximum asset value and in particular:-
- 20.1.1 Corporate landlord management
 - 20.1.2 The provision of fixtures and fittings.
 - 20.1.3 Matters relating to energy conservation.
 - 20.1.4 Architecture, Estates, Building Maintenance and security services.
 - 20.1.5 Promotion of responsibilities relating to improved access and mobility within the built environment with particular reference to people with disabilities under relevant legislation and codes of practice.
 - 20.1.6 May maintain an Approved Select List of Building/Engineering Contractors and Suppliers to the Authority.
 - 20.1.7 Maintaining an up-to-date terrier of all land and buildings held by the Authority.
 - 20.1.8 Undertaking a periodic review of property owned by the Authority.
 - 20.1.9 Recommending policies for the acquisition, management and disposal of land and interests in land.
 - 20.1.10 Design, preparation and contract management (including Health and Safety issues) of building work (whether new build or restoration) of all corporate property and professional services provided under the Local Authorities (Goods and Services) Act 1970.
 - 20.1.11 Technical recommendations relating to derelict land.
 - 20.1.12 Co-ordinating land management with economic development.
 - 20.1.13 Accepting of title to existing open space land where there is a history of maintenance by the Authority.

- 20.1.14 Authorising of deeds of rectification with Housing Associations
- 20.2 The Assets Manager shall be responsible for managing the Farms estate including the service of all statutory notices and granting consent to farm estate tenants for:-
 - 20.2.1 The provision of fixtures.
 - 20.2.2 Ploughing out permanent pasture
 - 20.2.3 Investment in improvements to farms up to a maximum value of £20,000
 - 20.2.4 The acquisition and sale of Milk Quota.
 - 20.2.5 Negotiating and approving tenant right settlements on changes to tenancy.
- 20.3 The Assets Manager is authorised to:-
 - 20.3.1 Approve valuations of the Authority's property assets for all purposes
 - 20.3.2 Negotiate and approve (including any subsequent modifications or renewals) the terms of all property transactions entered into by the Authority and to recommend such terms for approval at the appropriate level
 - 20.3.3 Negotiate and approve, on the advice of the Borough Solicitor, the content and format of any documents to be entered into by the Authority to give effect to an approved property transaction
- 20.4 The Assets Manager shall be responsible for the general management of markets run or promoted by the Authority and in particular:-
 - 20.4.1 The letting of market stalls consistent with maintaining a balanced mix of trades in accordance with the Authority's policy.
 - 20.4.2 The determination of and application of the Market Rules and Regulations.
 - 20.4.3 The maintenance and letting of Community stalls on both markets.
 - 20.4.4 The fixing of market stall charges in accordance with the Authority's approved scale of charges.
 - 20.4.5 To grant leave of absence to regular market traders (of a minimum of two years standing) for medical reasons without financial penalty and without the loss of their regular status.

- 20.4.6 To allocate market stalls to charities and local fund raising organisations without charge on up to 12 occasions annually, being no more than once per month.
- 20.4.7 To determine future applications for concessionary waiver applications of market stall charges due to weather conditions up to a limit of £500 per occasion
- 20.5 The Assets Manager shall be responsible for the general management of the Authority's car parks including all signage, planting, maintenance, lay out, the giving of consent for alternative uses or events, the reservation of car parking spaces and the collection of fees and charges.
- 20.6 The Assets Manager shall be responsible for the management of the Authority's vehicle fleet for the acquisition and disposal of vehicles and for their maintenance.

21 HEAD OF POLICY AND PERFORMANCE

- 22.1 Shall be responsible for monitoring the performance of the Authority, for promoting business quality, public relations and for involving and developing the Authority's employees.
- 22.2 Shall promote the efficiency and effectiveness of the Authority, through the Business Quality Programme.
- 22.3 Shall oversee the Authority's response to "Best Value", including recommendation of targets/service standards, performance indicators and consultation.
- 22.4 Shall consider all formal service reviews and to make recommendations to individual Committees and Council.
- 22.5 Shall advise Council on service changes and to recommend an Annual Performance Plan.
- 22.6 Shall oversee the formal administration of the Authority's Quality System, Risk Management and EFQM.
- 22.7 Shall promote customer care and equality in service delivery and access.

23 STRATEGIC DIRECTOR (CHILDREN, FAMILIES AND ADULTS)

Children's and Family Services

- 23.1 The Strategic Director (Children, Families and Adults) will provide a professional focus and lead for children's and family services ensuring that the needs of children, young people and families are met in the locality.

The Strategic Director has three key roles in this regard:-

- 23.1.1 Professional accountability for the effectiveness, availability and value for money of all local authority children's services;
- 23.1.2 A leadership role to secure any necessary changes to culture and practice, so that services are organised around children and young people's needs; and
- 23.1.3 Building and leading effective partnerships with and between those local bodies who also provide children's services, in order to focus resources jointly on improving outcomes for children and young people.
- 23.2 The Strategic Director (Children, Families and Adults) is appointed to discharge Children's Services functions in four areas:
- 23.3.1 Education services. The Authority's functions in its capacity as a local authority under the Education Acts, except those certain functions relating to further education, higher education and adult education.
- 23.3.2 Children's social care. The authority's social services functions within the meaning of the Local Authorities Social Services Act 1970 insofar as they relate to children and young persons, and the local authority's functions for children and young people leaving care.
- 23.3.3 Health services. Any health related functions exercised on behalf of an NHS body, insofar as they relate to children.
- 23.3.4 Inter-agency co-operation. The new functions of Children's Services set out in the Children Act 2004, in particular building and leading the arrangements for inter-agency co-operation and safeguarding.
- 23.4 The Strategic Director (Children, Families and Adults) will in addition be responsible for new functions conferred on Children Services Authorities under the Children Act 2004 and by any subsequent legislation or Regulations.
- 23.5 The Strategic Director (Children, Families and Adults) or the duly nominated Officer in respect of Children's Services, is required to observe all policy decisions taken by the Council and its relevant bodies and shall exercise all

functions of a Strategic Director (Children, Families and Adults) (DCS) specified in relevant legislation and Government Guidance.

23.6 The Strategic Director (Children, Families and Adults) shall:-

23.6.1 Bring forward strategic plans and policies and to develop partnership and commissioning arrangements to ensure the provision of children's services.

23.6.2 Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of the early years and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.

23.6.3 Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation, effectiveness and quality of post early years children's education and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.

23.6.4 In relation to persons under 19 years of age, to bring forward proposals and implement all necessary decisions, as appropriate, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of all the children services for which the Director is responsible and which are statutorily covered by Acts of Parliament and related Regulations.

23.6.5 Bring forward strategic plans and policies and implement all necessary decisions, including the allocation of resources within approved estimates, so as to maintain the operation and effectiveness of the children's social care and related services for which the DCS is responsible and which are statutorily covered by Acts of Parliament and related Regulations.

23.6.6 Institute and defend proceedings in relation to the care of children, the exercise of parental responsibility, provision of secure accommodation and wardship proceedings and to intervene, where appropriate, in matrimonial, guardianship and special guardianship proceedings or any other proceedings pursuant to its functions relating to children and young persons, and to undertake the functions of the Authority as an adoption and fostering agency.

23.6.7 Ensure the provision and quality of statutory youth and related Services, and the development of associated strategic plans and partnership arrangements for youth and related services.

- 23.6.8 Jointly with the relevant members of Management Team and on behalf of the Authority to take leasehold interests in appropriate property in order to provide accommodation for the Surestart Partnership subject to prior confirmation from the Partnership that it will reimburse the Authority in respect of its liabilities in relation to any such property.

Adult Services

- 23.7 Except where specifically provided for elsewhere in this constitution or precluded by statute the Strategic Director (Children, Families and Adults) shall exercise of the powers and duties of the Authority under the enactments listed in Schedule 1 of the Local Authority Social Services Act 1970 (excluding Children and Young Persons).
- 23.8 The Strategic Director (Children, Families and Adults) shall:-
- 23.8.1 Apply for orders of receivership under the legislation relating to mental health and for grants of representation in respect of the estates in cases of intestacy arising under the appropriate provisions of the National Assistance Act 1948, non-recoverable expenses to be defrayed by the Authority.
- 23.8.2 Authorise the removal of parts of the body of a deceased resident in accordance with the wish expressed by the resident during his/her lifetime.
- 23.8.3 On terms approved by the Director of Finance and Business Services and Borough Solicitor, authorise adaptations to property and the provision of assistance and aids in accordance with the Chronically Sick and Disabled Persons' Act 1970, within the overall budget and policies set by the Authority.
- 23.8.4 Act as trustee or appointee for the assets of service users for whom the Authority has a statutory responsibility.
- 23.8.5 Exercise powers to purchase domiciliary, residential and nursing home services vested in the Authority under the National Assistance Act 1948 as amended by subsequent legislation.
- 23.8.6 Except where therein otherwise provided, exercise the powers and duties of the Social Services Authority under the legislative provisions relating to mental health, including those relating to Guardianship and the institution of Court proceedings.

24 DIRECTOR OF FINANCE AND BUSINESS SERVICES

- 24.3** The Director of Finance and Business Services is:-

- 24.3.1 The financial adviser to the Council, the Cabinet and Officers

24.3.2 The Authority's 'responsible financial Officer' under the Accounts and Audit Regulations

24.3.3 Responsible for the proper administration of the Authority's affairs as specified in, and undertake the duties required by, Section 151 of the Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, the Local Government and Housing Act 1989, the Local Government Act 2003, and all other relevant legislation.

24.4 The Director of Finance and Business Services will:-

24.4.1 Establish, keep under review and operate (including the reporting of any non-compliance) any such guidance and policy documents in relation to the administration of the Authority's financial affairs as is considered to be necessary or desirable to ensure the proper administration of the Authority's financial affairs so that resources are used in the most efficient and effective manner in order to meet the Authority's objectives.

24.4.2 For the avoidance of doubt the guidance and policy documents referred to in the preceding paragraph shall incorporate or apply any national requirements from time to time in force and shall include but not be limited to Financial Procedure Rules, Financial Schemes of Delegation, and any other relevant codes of practice on financial Management.

24.4.3 To monitor the Authority's capital and revenue budgets, investments, and financial position generally and maintain an efficient and effective internal audit of the Authority's financial affairs.

24.4.4 Secure effective treasury management, including taking all action necessary in relation to all debts, payment of accounts, loans (including guarantees and indemnities), grants, advances, investments, financing and banking generally.

24.4.5 Take all action necessary to ensure the safeguarding of assets, the appraisal and management of risk generally, including the taking out and administration of appropriate insurances and approving requests to postpone legal charges.

24.4.6 Agree the format of capital appraisals for schemes as required under the Finance Procedure Rules.

24.4.7 Exercise discretion to apply interest charges against service budgets, where avoidable cash flow losses have been incurred.

24.4.8 Agree specific ring-fencing of certain provisions as part of the annual budget setting process.

- 24.4.9 Give consent for urgent work to repair, replace or reinstate vehicles, buildings or equipment where the work is fully funded from insurance monies.
- 24.4.10 Agree in consultation with Corporate Management Team and the Chief Executive circumstances where normal procurement requirements and or requirements for quotations or tenders should be waived.
- 24.4.11 To take all necessary action in respect of the Authority's role in relation to the administration and operation of the Cheshire Pension Fund.
- 24.4.12 Administering the supply of goods and services to other public authorities and bodies under the Local Authorities (Goods and Services) Act 1970 and all other enabling legislation and setting of prices and collecting and recovering any charges made.
- 24.4.13 To make recommendations to the Council on Council Tax requirements, determine the Council tax base and to administer and manage generally all matters relating to Council Tax, Non Domestic Rates, Community Charge and General Rates including the awarding of discounts, relief, and exemptions and the levying, collection, recovery, and disbursement of all sums due to the Authority in respect of the same in accordance with all governing Regulations.
- 24.4.14 To receive and determine applications for Housing Benefit including rent restrictions, rebates, allowances, backdating requests and overpayment recovery and otherwise exercising all powers and responsibilities of the Authority under legislation relating to Housing Benefit
- 24.4.15 To negotiate, enter into arrangements and act generally on behalf of the Authority in respect of continuing financial matters arising from arrangements and obligations existing between the former Cheshire County and six District Councils.
- 24.4.16 Take all action necessary to ensure the safeguarding of assets, the appraisal and management of risk generally, including the taking out and administration of appropriate insurances.

25 BOROUGH SOLICITOR AND MONITORING OFFICER

- 25.3 The Borough Solicitor is the Authority's Monitoring Officer pursuant to Section 5 and 5A of the Local Government and Housing Act 1989 (as amended) and is responsible for exercising the functions of that role.
- 25.4 After consulting with the Chief Executive and the Director of Finance and Business Services the Monitoring Officer will report to the full Council (or to

the Executive in relation to an Executive function), if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- 25.5 The Borough Solicitor shall be responsible for settling of actual or potential uninsured claims or Local Government Ombudsman cases as follows:-

25.5.1 Up to £20,000 the Borough Solicitor may authorise settlement

25.5.2 Above £20,000 and below £50,000 the Borough Solicitor and Director of Finance and Business Services may jointly authorise settlement

25.5.3 £50,000 and above - approval by Executive

- 25.6 The Borough Solicitor shall be responsible for:-

25.6.1 Conducting and appearing on behalf of the Authority any legal proceedings authorised by or on behalf of the Authority before any court or tribunal and similarly defending the Authority where any proceedings are instituted against it and taking all other action (within such proceedings or otherwise) considered by him or her to be necessary to protect and/or further the Authority's interests.

25.6.2 Save when specifically referred to in this Constitution, to act as the Authority's proper Officer for the purposes of Section 234 of the Local Government Act 1972 (Authorisation of Documents).

25.6.3 Lodging objections to any proposal affecting Borough interests.

25.6.4 To act as Proper Officer under the Access to Information Procedure Rules and in particular for the purposes of the Access to Information provisions of the Local Government Act 1972.

25.6.5 Determining applications for the display of the crest or logo of the Authority.

25.6.6 Determining applications for Certificates of Lawful Development or Interim Development Orders.

25.6.7 Taking all action including the completion of agreements, the service of notices, giving of directions, obtaining or issuing orders, authorising the execution of powers of entry, and the institution and defence of legal proceedings necessary or desirable to protect and advance the interests of or discharge the roles, functions and responsibilities of the Authority.

25.6.8 Making orders for the temporary closure of highways and regulation of traffic.

25.6.9 To make any Statutory and discretionary payments under Land Compensation Act 1973.

25.6.10 To be responsible for the overall monitoring of the operation of the Regulation of Investigatory Powers Act 2000.

25.6.11 To exercise such functions as are conferred on to the authority by agreements or instruments made pursuant to the provisions of the Registration Service Act 1953 (Registration Schemes)

25.6.12 To exercise such functions as are necessary to effectively discharge the Authority's duties in respect of the provision of a Coroners Service

25.6.13 To make minor and consequential amendments to the constitution on account of drafting anomalies and authorised revisions.

26 SOLICITORS, BARRISTERS, LEGAL EXECUTIVES AND TRAINEE SOLICITORS

26.3 Are authorised to:

26.3.1 appear in, and conduct legal proceedings in, any Court or Tribunal on behalf of the Authority; and

26.3.2 prove debts owed to the Authority in bankruptcy and liquidation proceedings.

27 DEMOCRATIC AND REGISTRATION SERVICES MANAGER

27.3 To act as Proper Officer in respect of functions conferred upon the Authority in respect of the registration of births, deaths, and marriages.

27.4 To act as Proper Officer in respect of functions conferred upon the Authority in respect of the overview and scrutiny function.

28 HEAD OF HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT

28.1 The Head of Human Resources and Organisational Development shall be responsible for discharging the following functions:-

28.1.1 To be responsible for the effective implementation and maintenance of Equal Opportunities in Employment Policy.

- 28.1.2 To apply, in consultation with the Director of Finance and Business Services the terms of the early retirement/redundancy scheme in those cases where the post is to be deleted.
- 28.1.3 To determine and pay honoraria in accordance with the NJC Scheme subject to a report to appropriate Members the next available meeting
- 28.1.4 In consultation with the portfolio holder and chair of the appropriate Scrutiny Committee and the Director of Finance and Business Services to determine annually the recruitment requirements for trainee positions at a level that can be met within budgetary provisions.
- 28.1.5 To approve the Management Structure of each Directorate below Head of Service level after undertaking appropriate consultations.
- 28.1.6 To approve Job Descriptions/Person Specifications for all employees other than members of Management Team.
- 28.1.7 To recommend to Council, the development of policies on the full range of Personnel issues, after appropriate consultation with Members.
- 28.1.8 To approve Codes of Conduct in support of Personnel policies as set out in the Authority's Performance Strategy.
- 28.1.9 To have regard to issues relating to the Local Government Pensions Scheme and the Authority's Early Retirement Scheme except where they are applied to individual employees.
- 28.1.10 To monitor staffing information reports.
- 28.1.11 To consider recommendations in respect of the use of the powers in Section 13(4) and 13(5) of the Local Government Act 2000 to place staff at the disposal of other local authorities to facilitate joint arrangements or joint working.
- 28.1.12 Take responsibility for the health and safety of the Authority's employees.

Note: pending completion of the senior management review, all existing delegations remain effective and will accrue to the relevant new post holder as appropriate.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Borough Solicitor
Subject/Title: Delegated Decisions – Waiver of Contract Procedure Rules

1.0 Report Summary

- 1.1 This report outlines the interim procedure and revised process for the waiver of the Councils Contract Procedure Rules under the Delegated Decision Process and seeks Members views on whether any further amendments are necessary.

2.0 Recommendations

- 2.1 That the Committee note the revised interim procedure for the Waiver of Contract Procedure Rules under the Delegated Decision Process.
- 2.2 Member's views are sought on the scope of the fundamental review of the Delegated Decision process, timescale for review and the suggested increase of Member involvement in the procedures within the Contract Procedure Rules.

3.0 Reasons for Recommendations

- 3.1 As a result of concerns arising from the use of Delegated Decisions an interim procedure has been implemented which strengthens the original process for signing off such decisions pending review of the process by elected Members. At its meeting on the 14 June 2012 members of the Audit and Governance Committee approved an action plan indicating a fundamental review of the application of Delegated Decisions would be undertaken, the results of which would be reported to that Committee. This report forms part of that fundamental review process.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications (including carbon reduction and health)

6.1 N/A

7.0 Financial Implications (authorised by Director of Finance and Business Services)

7.1 There are no direct financial implications associated with the decisions in this report.

8.0 Legal Implications (authorised by Borough Solicitor)

8.1 This report does not deal with general Delegated Decisions under the Council's Officer Scheme of Delegation and is solely in connection with the waiver of the competition rules under E.23 and E.24 of the Contract Procedure Rules.

8.2 Under the Contract Procedure Rules in a number of limited circumstances exemptions to the normal requirements for the procurement of goods, works and services may be permissible. The Rules requires a Delegated Decision countersigned by both the Borough Solicitor and Director of Finance and Business Services to waive the normal competition requirements. The detailed requirements are set out in E.23 – E.26 of the Rules.

9.0 Risk Management

9.1 The Action Plan approved by the recent meeting of the Audit and Governance Committee recognises that in practice the current DD process has not been sufficiently robust and requires a fundamental review to ensure that the proper checks and balances are in place to safeguard and ensure proper processes are followed.

10.0 Background and Options

10.1 At their meeting on 14 June 2012 members of the Audit and Governance Committee resolved that the Council's Contract Procedure Rules be submitted to the next meeting of the Constitution Committee to further review with a view to increasing the level of Member involvement in decision – making. The Contract Procedure Rules form part of the Council's Constitution and were last reviewed and approved by this Committee on 22 September 2011 and subsequently approved by full Council in October 2011. The Rules set out a framework for the procurement of goods, works and services with a view to achieving value for money and an open and transparent process which complies with best practice and the Council's Procurement Strategy. Detailed guidance on the Contract Procedure Rules can be found on the Council's Procurement Knowledge Map on the centranet site.

10.2 The Rules require different procedures dependent upon the contract value and sets out the various advertising and competition requirements. There are a number of specified exceptions to the normal requirements laid out in the Contract Procedure Rules and these are set out in full at E.23 – E.26 inclusive (see Appendix 1).

10.3 In summary E.23-E.24 provides that an exemption may be sought to waive the Council's internal requirements in the following circumstances;

- Goods, services or works are obtainable from one source or contractor and no reasonably satisfactory alternative is available
- Products need to be compatible with existing installations and procurement from another source would be uneconomic
- Instructions to Counsel or external solicitors
- Special education or social care contracts
- Exercise of statutory grant aid powers delegated to a Chief Officer
- Circumstances warranting an exception to the normal requirements for competition including emergencies or in the efficient management of the service
- Any other circumstances up to the EU threshold as agreed by the Borough Solicitor and Director of Finance and Business Services.

The procedure requires that where a Chief Officer or his representative intends to seek an exemption he or she must arrange for a Delegated Decision (DD) to be prepared which must be countersigned by the Borough Solicitor and Director of Finance and Business Services.

10.4 The process for the signing of DD's was reviewed and strengthened by the Borough Solicitor and Director of Finance and Business Services in 2011 as follows:

- Review and relaunch of the DD form so that the information was set out fully and the circumstances and reasons for the waiver made clear
- Improvements to the Knowledge map to clarify and explain fully the DD process
- Officers in Procurement, Legal and Finance to advise on process, check and sign off the DD form with any comments prior to being submitted for countersignature by the two statutory officers
- Scheduled weekly meetings of the two statutory officers to discuss and sign off any DD's
- All DD's scanned and kept as a record by the Director of Finance and Business Services

10.5 As a result of concerns arising from the submission of two DD's in connection with the development of a Waste Transfer Station at Lyme Green it was considered appropriate to further review and revise the DD procedure on an interim basis pending the fundamental review of the

process as approved by the Audit and Governance Committee at its meeting on the 14 June 2012.

10.6 The new revised interim process now requires;

- The decision taking officer to draft an initial DD to be sent to officers within procurement, legal services and finance for approval.
- The DD to be redrafted in line with any resulting comments from the three approving officers
- Decision taking officer to send the completed DD to their Portfolio Holder for approval
- If Portfolio Holder agrees and supports the DD it will be submitted for consideration at the weekly CMT meeting
- The decision taking officer and three approving officers to attend CMT to discuss and provide justification for the DD
- CMT will discuss the DD and either approve or reject the DD
- Signed DDs will be scanned in and kept as a record by the Director of Finance and Business Services and will be available on sharepoint
- A copy of the signed DD will be sent to the appropriate Strategic Director to be forwarded to the decision taking officer
- Decision taking officer to liaise with legal services to ensure a contract is signed and all recommendations within the DD are actioned

A copy of the revised process is attached at Appendix 2

10.7 In addition the DD form has been further reviewed and specifically requires details of the contract value and funding to be clearly endorsed on the face of the DD (Appendix 3).

10.8 A separate form has been devised for those circumstances where there has been non compliance with the requirements of the rules (Appendix 4).

10.9 Revised guidance has been issued and amendments made to the process within the Centranet (Appendix 5).

10.10 Members' views are sought on the scope of the fundamental review of the DD process and on the timescale of the review. Views are particularly sought on any further Member involvement in the DD process and in the procedures as set out under the Contract Procedure Rules.

11.0 Access to Information

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

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Designation: Borough Solicitor

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Email: caroline.elwood@cheshireeast.gov.uk

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Introduction

- E.1 All Council employees and third parties/contractors engaged to act in any capacity to manage or supervise a contract must comply with these Rules, and each Head of Service must ensure such compliance in the Service for which they are responsible. Any breaches should be reported to the relevant Chief Officer. Failure to comply with these Rules or the associated detailed guidance may be considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the officers or third parties concerned.

All Council employees and third parties engaged on the Council's behalf must ensure that any conflicts of interest are avoided. Any conflict of interest must be declared to appropriate line managers in the Council as defined and in line with the Officer Code of Conduct.

These Rules set a clear framework for the procurement of goods, works and services for the Council. Detailed guidance on these Rules can be found by accessing the Procurement Knowledge Map which can be found on the Council's intranet site. The aim is to ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. Working within the Rules in turn leads to better value for money and gives confidence to all concerned that the Council is fulfilling its fiduciary responsibilities. These Rules apply to all quotations (informal procurement with a value up to £75,000 and tenders (formal procurement over £75,000)

- E.2 Any dispute or difference as to the interpretation of these Rules shall be resolved by the Borough Solicitor in consultation with the Director of Finance and Business Services.
- E.3 There is a clear requirement for the Council to achieve value for money in its purchase of goods, works or services. These Contract Procedure Rules have been written to ensure that this requirement is achieved on behalf of the whole Council. Any procurement decision by a Service must therefore be made in the context of this overall value for money aim of the Council. It is a requirement that in all cases these Rules will be applied.
- E.4 These Rules will ensure that the Council will:
- get value for money;
 - keep within the law;
 - maintain standards of conduct;
 - be fair to suppliers;
 - protect officers;
 - demonstrate accountability for public money ;
 - meet its corporate and directorate aims and policies; and

- comply with the Council's Procurement Strategy.

E.5 Officers must procure goods and services in the first instance through Corporate Contracts, where these have been awarded. Details of current Corporate Contracts can be obtained from the Director of Finance and Business Services. Failure to comply with this Rule may be considered a breach of the Officer Code of Conduct.

Compliance and Officer Responsibilities

E.6 Every contract made by or on behalf of the Council must comply with these Rules and the associated detailed guidance on the Knowledge Map.

E.7 All Council employees and third parties/contractors engaged to act in any capacity to manage or supervise a contract must comply with these Rules and each Head of Service must ensure such compliance in the Service for which they are responsible. Failure to comply with these Rules or the associated detailed guidance may be considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the officers or third parties concerned. All Council employees and third parties engaged on the Council's behalf must ensure that any conflicts of interest are avoided. Any conflict of interest must be declared to appropriate line managers in the Council as defined and in line with the Officer Code of Conduct.

E.8 Prior to the start of the relevant procurement process where a Chief Officer or his designated representative intends to seek an exception to these Rules, as they apply to contracts and tenders, he shall arrange for a Delegated Decision (DD) to be prepared.

DD's are not available if the proposed exception will breach national or EU legal requirements. A DD can only waive the Council's internal rules.

The main areas where it may be appropriate to request a DD are set out within Sections E.23 to E.26. Before a DD is prepared the Chief Officer or his delegated representative must seek authorisation to proceed from the Procurement Service. The draft DD must then be signed off by Procurement, Legal and Finance before being considered by the Borough Solicitor and the Director of Finance and Business Services.

All attempts to waive the Rules will be subject to very close scrutiny and may be reviewed by the Corporate Management Team. The DD must clearly set out the exemption or the exception from the Rules that is being relied upon.

E.9 All such exceptions should be recorded in the delegated decisions register and be available for inspection as required.

E.10 National and European Union legislation overrides the Finance and Contract Procedure Rules.

- E.11 Where it becomes apparent that a Service has failed to comply with these Rules then the Chief Officer or his designated representative shall issue a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence. The Chief Officer or his designated representative will be required to submit the report to the Director of Finance and Business Services and Borough Solicitor before reporting to the Audit and Governance Committee.
- E.12 When any employee either of the Council or of a service provider may be affected by any transfer arrangement. Officers must ensure that Transfer of Undertaking (Protection of Employment) Regulations (TUPE) issues are considered and obtain legal advice before proceeding with inviting tenders and quotations.

Appointment of Consultants

- E.13 Any appointment of a consultant or consultancy body is subject to these Rules and any detailed guidance. Advice should be sought from the Director of Finance and Business Services prior to entering into any such arrangement.

Pre Contract Requirements

- E.14 The Council's Service Schemes of Delegation set out the approvals necessary for different types of contract.
- E.15 Before beginning a purchase, the authorised officer responsible for letting the contract must:
- make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate Scheme of Delegation;
 - make sure that there is enough money in the budget to cover the total whole-life financial commitment being made (including any consultant's or other external charges or fees);
 - make sure that the Forward Plan requirements have been followed where the purchase is a Key Decision.
- E.16 The authorised officer must ensure when entering into supply agreements that the requisition order and payment processes to be provided by the supplier are in accordance with Section D (Ordering and paying for work, goods and services) of these Finance and Contract Procedure Rules.
- E.17 For procurements above £10,000 advice should be sought from the Borough Solicitor's Department as to the relevant form of contract to be employed for the procurement.

General Requirements

E.18 Before beginning a purchase, the authorised officer responsible for it must also:

- Where the proposed value of the procurement is estimated to be over £75,000 the appropriate officer should seek advice from The Director of Finance and Business Services and where appropriate enquire whether the service is able to be provided by an 'in-house' provider;
- Carry out an options appraisal, to decide what procurement method is most likely to achieve the purchasing objectives, in a form specified by the Director of Finance and Business Services;
- Assess the risks associated with the purchase and how to manage them;
- Prepare a procurement plan where the value of the purchase exceeds £75,000 or where the purchase poses a significant risk to the Council and send a copy to the Director of Finance and Business Services;
- If the procurement is subject to European Procurement Rules, advice should be sought from the Director of Finance and Business Services;
- Ensure that all bid evaluation criteria have been determined in advance; and
- Ensure that these Rules and the detailed guidance contained in the Procurement Knowledge Map have been complied with, and that the proposed contract represents value for money.

Contract Procedures

E.19 The table below sets out which procedures must be followed for different contract values.

The Total Value of the contract is determined by considering the annual cost of the goods/services and multiplying by the number of years that the contract is required for including any optional extensions.

	Total Value	Procedure to follow where no Contract exists
Informal	Below £10,000	Compare at least 3 quotes on the Chest, by e mail or by telephone with a written record See E 32
	Above £10,000 but below £75,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders on the Chest. See E33

Formal	Above £75,000 but below the EU threshold for goods, services and works.	Formal tender process from at least 3 suppliers. See E35.
	Above the EU threshold for goods, services and works. See Procurement Knowledge Map for up to date current thresholds.	Tender process in accordance with EU Procurement Rules. See E38

Exceptions to Requirements of Competition

Framework Agreements

- E.20 Only Central Government, Local Government, consortia and other legally procured Framework Agreements may be used for the procurement of goods or services. The framework agreement must allow the Council to participate in such an agreement and must adhere to the principles of these Rules and the specification must encompass the Council's requirements. Before starting any procurement guidance should be sought from the Director of Finance and Business Services.
- E.21 Examples of Central Government Frameworks can be found on the Government Procurement Service website. Advice on the process should be sought from the Director of Finance and Business Services.
- E.22 Framework agreements must be for a maximum of four years. If there is any doubt about their duration advice should be sought from the Director of Finance and Business Services.

Other Exceptions to Requirements of Competition

- E.23 Where a Chief Officer or his designated representative intends to seek an exception to these Rules as they apply to contracts and tenders, he shall arrange for a Delegated Decision (DD) to be prepared in accordance with the detailed guidance on DDs on the Knowledge Map. DDs are not available if the proposed exception would breach National or EU legal requirements. A DD can only waive the Council's internal rules.
- E.24 Provided that a proposed contract award complies with national and EU legislation and any other Finance and Contract Procedure Rule and subject to the Chief Officer or his designated representative having a DD signed by the Borough Solicitor and the Director of Finance and Business Services, then the competition requirements may not apply to:

- The purchase of goods or services or the execution of works which in the opinion of the appropriate Chief Officer or his Authorised Officer and the Director of Finance and Business Services is certain are obtainable only from one source or contractor, and where no reasonably satisfactory alternative is available;
- The purchase of a product required being compatible with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure as approved by the Chief Officer;
- The instruction of, advice from, or service provided by Counsel or, by exception, Solicitors to act on the Council's behalf;
- Special education or social care contracts if, in the opinion of the Chief Officer, following consultation with the Borough Solicitor and the Director of Finance and Business Services, it is considered the Council's interests are best met if there is exemption from the competition rules;
- The exercise of statutory grant aid powers delegated to a Chief Officer or his authorised officer (which shall be specified by that Chief Officer or his designated representative in each case);
- Circumstances which in the opinion of both the Director of Finance and Business Services and Borough Solicitor warrant an exception to the requirements for competition, to include, but not limited to when an emergency requires an immediate contract (which should in any event be procured from an approved list of suppliers where available) or when exceptionally the Chief Officer his authorised officer considers that is inappropriate in the interests of the efficient management of the service;
- Any other general circumstances, up to the EU threshold, as agreed by both the Director of Finance and Business Services and the Borough Solicitor.

E.25 In those circumstances where only 3 quotations or tenders are required, and these cannot be obtained due to lack of suitable contractors prepared to quote/tender then a record of the reasons for this action must be kept and be reported annually to the Director of Finance and Business Services.

E.26 The Chief Officer or his authorised officer must be satisfied that if three quotations/tenders have not been received that the offer accepted offers the Council best value and the prices are competitive. Advice from the Director of Finance and Business Services should be sought as to the most appropriate form of Contract to employ for the procurement.

Variations and Contract Extensions

E.27 All variations must be in the form of written instruction to the contractor. Any such variation should be agreed, documented and signed by both parties.

E.28 The Contract term cannot be extended where this would result in the value of the contract exceeding the European Procurement threshold. In such

circumstances the advice of the Director of Finance and Business Services should be sought.

- E.29 The term of a Contract may be extended with the approval of the Chief Officer or his authorised officer if there is provision within the Contract terms and conditions to extend and the budgetary provision allows. If the contract has already been extended to the full extent provided in the contract it cannot be extended further.
- E.30 If there is no provision within the contract terms and conditions for the Contract to be extended the approval of the Borough Solicitor and the Director of Finance and Business Services must be sought to any proposed extension of the term of contract, and a record kept by the Chief Officer and the reasons why.

Advertising of Procurement Opportunities

- E.31 To determine the market for each procurement in excess of £10,000 the Chief Officer or his authorised officer should identify the most appropriate method of advertisement including but not restricted to local press, relevant trade journals, council websites and other websites. The Director of Finance and Business Services will facilitate advertisement in the OJEU.

Competition Requirements below £10,000

- E.32 Officers must seek quotations so as to demonstrate value for money. Procurement of goods and services below £10,000 must be in accordance with guidance in the Knowledge Map and 'Ordering and paying for work, goods and services' (D.19 – D.43). It is the responsibility of the officer to retain written notice of all the quotes for audit purposes (See E19)

Competition Requirements for Procurements between £10,000 and £75,000

- E.33 Procurement of goods and services must not be split to avoid a formal tender award procedure, or to have the effect by such a split that the value of the goods or services would if not split would breach the European Procurement Rules threshold. At least three written quotes must be obtained on the Chest.
- E.34 Records required to be kept under Rules E.20 – E.26 and E.32 – E.53 shall be in a format to be determined by the Director of Finance and Business Services.

Competition Requirements for Procurements over £75,000 but below the EU Procurement threshold

- E.35 Where contracts have an aggregate value over the life of the contract estimated at £75,000 or more, a formal tendering procedure must be undertaken in a format to be approved by the Director of Finance and Business Services. The invitation to tender must be advertised in an

appropriate manner and tenders received must be dealt with and evaluated in accordance with these Rules. Subject to E37, either the Open or Restricted Procedures, described below, should be used as practicable. The full European Procurement Regime does not apply below the financial threshold (shown below which is subject to change and should be verified by accessing the Knowledge Map) it is not imperative to publish an OJEU notice in these circumstances, however advertising in the OJ may be a consideration. Further advice can be sought from the Director of Finance and Business Services.

Competition requirements under European Procurement Rules apply to contracts and must be observed. Advice on the current thresholds can be obtained from the Council's Procurement Unit.

- E.36 The procedures set out below follow the model set out in the European Procurement Rules. They represent best practice and should be adopted as the norm for all exercises over the threshold values. Either the Open or Restricted Procedure must be used as practicable. The Negotiated Procedure and Competitive Dialogue Procedure may only be used in exceptional circumstances and with the approval of the Borough Solicitor. Advice on the appropriate procedure to apply may be obtained from the Director of Finance and Business Services or the Borough Solicitor.

Negotiated and Competitive Dialogue Tendering Procedure

- E.37 The Negotiated and/or the Competitive Dialogue procedure should only be used in exceptional cases where advice has been sought from the Director of Finance and Business Services and the Borough Solicitor.

General Procedure

- E.38 Contracts that are subject to the EU procurement rules (and other contracts where that is appropriate) generally follow a three-stage process:

Stage 1 – PQQ

This stage uses a Pre-Qualification Questionnaire (PQQ) to short-list those tenderers to be invited to submit a tender. Templates are available from the Director of Finance and Business Services and;

Stage 2 – Tender

This stage involves the preparation of a detailed tender specification and instructions which explain what is required to be provided and how tenders will be managed and evaluated. Bidders will submit their tenders based on the information provided in this document and give contract specific proposals (including as to delivery and price) and;

Stage 3 – Evaluation

This will usually lead to the award of the contract. It is at this stage that

any contract specific proposals (e.g. price and how the contract will be delivered) are assessed. Evaluation is dealt with in more detail below.

- E.39 Stage 1 PQQ - the only considerations are those matters which are relevant to the performance of the contract in question (e.g. financial standing, expertise, experience and technical capacity). There can be no consideration of the suppliers' proposals as to *how* the contract would be delivered.
- E.40 Once an organisation has been selected through the PQQ stage, they are deemed to be suitable to undertake the contract and they cannot be failed on the same criteria at the Tender and Evaluation stage (Stage 2 & 3) unless relevant changes occur during the later stages of the procurement process (e.g. a change in a supplier's financial standing).
- E.41 A minimum number of short-listed suppliers are then invited to submit tenders within a strict timetable. At the close of the period of time allowed for tender submission, each tender is evaluated against the criteria identified in the tender instructions/specification document sent out at Stage 3. (See paragraph E.42 below).
- E.42 If following the PQQ stage less than 3 organisations meet the selection criteria consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required to achieve a better response and more tenderers.
- E.43 The Chief Officer or his authorised officer must keep a record of the reasons for this action and report these annually to the Director of Finance and Business Services.

Open Tendering Procedure

- E.44 All companies expressing an interest will receive an invitation to tender. There is no restriction or selection process prior to the dispatch of tenders.
- E.45 Public Notice must be given in relevant trade journals, newspapers, websites and the Official Journal of the European Union (OJEU) if the EU threshold is breached or exceeded, and where appropriate on the Council's Web-Site. At least 52 days public notice must be given in one or more local newspapers or trade journals circulating amongst such firms who undertake such contracts, and on the Council's Web-Site, setting out details of the proposed contract, inviting tenders from applicants and stating the last date on which tenders will be received. Tenders must be sent out within 6 days of a request. The OJEU must state the date and time of the opening of tenders whether or not the supplier is to be allowed to attend the tender opening.

- E.46 The time limits referred to in E.45 may be reduced by 5 days where electronic versions of the contract documents are made available or be reduced to a shorter period of generally not less than 36 days and in any event not less than 22 days where a prior information notice has been published in accordance with the EU Regulations. These two reductions in the periods of time may be combined. No decision to reduce those time limits must be taken without consulting the Director of Finance and Business Services and the Borough Solicitor.
- E.47 If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted.
- E.48 Evaluation of tenders submitted through the Open Procedure must be undertaken in accordance with the EU Procurement Regulations. All tenders submitted must be evaluated. The Open Procedure does not allow any negotiation with bidders.
- E.49 The Open Procedure may not be suitable where it is anticipated that there may be a large number of potential contractors interested in bidding for the contract. The Open Procedure is the most suitable for the procurement of non specialist goods such as stationary. The selection stage and the award stage can be undertaken simultaneously.

The Restricted Procedure

- E.50 This is a two stage process involving the invitation of expressions of interest from interested bidders. A contract notice must be published in the OJEU if the EU threshold is exceeded and where appropriate on the Council's website allowing at least 37 days for receipt of expressions of interest from prospective bidders. A shortlist of bidders is then drawn up in accordance with qualification criteria. At least 5 bidders must be selected at this stage, based on economic standing and professional or technical ability. If an alternative (variant) bid is to be permitted, the OJEU must say this. The instructions for tendering and specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted.
- E.51 Those bidders on the shortlist must be invited to tender, allowing at least 40 days for receipt of completed tenders. Tenders are evaluated at the end of the 40 day period. No negotiation with bidders is allowed.
- E.52 The contract will be awarded in accordance with the criteria specified in the OJEU notice. An award notice must be published within 48 days. Unsuccessful tenderers must be de briefed.
- E.53 In circumstances of urgency, the time limits can be reduced. The 37 day period for expressions of interest may be replaced by a period of not less

than 15 days. The time for inviting short listed suppliers to tender can be reduced from 40 to 10 days. No decision to reduce the time limits must be taken without first consulting with the Director of Finance and Business Services and the Borough Solicitor.

Despatch of Tenders

- E.54 If an invitation to tender is required such invitations can be made using any available form of communication providing all invited parties receive identical information despatched at the same time.

Submission and Receipt of Tenders

- E.55 Tenders should be submitted as instructed in the tender documentation. The tendering process can be undertaken using an electronic tendering system and shall be opened by the Borough Solicitor or her authorised officer. The authorised officer will be given 'Verifier' status for the purpose of this task by the system administrator. The task of opening the tender should be performed when the authorised officer opens the electronic seal facility within the system. Following this action the authorised officer shall release the received tender to permit access by the Procurement Unit. Tenders received electronically shall be recorded as received when the authorised officer opens the electronic seal facility within the system. Non compliance with this requirement will result in the tender not being considered. Electronic tenders should only be sought following advice from the Director of Finance and Business Services.
- E.56 The tender must be submitted to the location, and by the time and date specified in the invitation to tender as being the last time and date for the receipt of tenders in the envelope provided bearing " Tender " or carrying any tender label supplied with the invitation to tender.
- E.57 Where the Council estimates the tender value to be £75,000 or more, all tenders must be submitted to the Borough Solicitor.
- E.58 Unless it forms part of an electronic tender process tenders will be submitted in hard copy in the first instance and must bear no details of name, mark, slogan or logo of the contractor on the tender envelope. Non compliance with this requirement may result in the tender not being considered. The Director of Finance and Business Services will in such circumstances determine whether it is in the interests of the Council to consider the relevant tender. Electronic versions of tenders must not be delivered or opened before the opening of hard copy tenders.
- E.59 The Council is not bound to accept the lowest (see E.83) or any tender.
- E.60 Each hard copy tender submitted in accordance with the procedures detailed in E.64 – E.66 will remain in the custody of the Borough Solicitor until the time appointed for opening.

- E.61 Upon receipt of a hard copy tender the receiving officer must indicate on the envelope the date and time of its receipt.
- E.62 Tenders received after the date and time indicated for the receipt of tenders will not normally be considered except with the agreement of the Borough Solicitor and Director of Finance and Business Services. Such tenders will be opened and returned to the tenderer if they are not to be considered.

Opening of Electronic Tenders

- E.63 The majority of tenders are now submitted via the Due North System. These electronic tenders are verified by The Borough Solicitor or her delegate and released to the Procurement Department.

Opening and Registration of Hard CopyTenders/Quotations

- E.64 Hard copy tenders shall be opened at one time by the Borough Solicitor or her authorised officer, in the presence of the purchasing Chief Officer or his designated representative and Director of Finance and Business Services or his designated representative.
- E.65 The authorised officer must at the time non electronic tenders are opened, record on the Register:
- the type of goods or materials to be supplied or disposed of, or the work or services to be carried out;
 - the name of each contractor submitting a tender;
 - the amount of each tender where appropriate
 - the date of the opening of a tender
 - the signatures of all persons present at the opening of each tender
 - the reason for any disqualification of any tender
 - the name of each contractor invited to tender but who did not submit a tender.
- E.66 Every written quotation obtained for each proposed contract must be opened at one time and details recorded by the Chief Officer or his/her Authorised Officer.

Errors in Tenders

- E.67 Errors in Tenders shall be dealt with in one of the following two ways:
- the tenderer shall be given details of the error(s) found during the examination of the tender and shall be given the opportunity of confirming without amendment or withdrawing the tender; or
 - Amending the tender to correct genuine error(s) provided that in this case, apart from these genuine errors, no other adjustment, revision

or qualification is permitted.

- E.68 Tender documents must state which method will be used for dealing with errors in tenders. Any request for an extension to the tender period must (in normal circumstances) be no later than 5 working days before the tender closing date. If the date is to be extended the revised date must be advised to all tenderers.

Exclusions of Tenders

- E.69 No valid tender received should be excluded from the tender process without the approval of the Borough Solicitor and the Director of Finance and Business Services.

Evaluation of Tenders and criteria for selecting a supplier

- E.70 All the procedures, with the exception of the Open Procedure, anticipate a selection process which involves at least two stages. The first stage is to draw up a shortlist of candidates who will be invited to submit tenders, and a second stage when the contract is awarded to one (or more) of the bidders. Where the procedure is a Negotiated Procedure or Competitive Dialogue Procedure there may be an intermediate stage which allows further refinement of the shortlist.

- E.71 The following criteria (set out in Public Contracts Regulations 23, 24, 25 and 26) may be used to draw up the shortlist of those who are to be invited to tender:

- Suppliers who have, or whose directors have been convicted of certain offences listed in Public Contracts Regulation 23 are ineligible to submit bids and must not be included in the short list;
- A public authority can (but does not have to) refuse to shortlist businesses which are insolvent, have been convicted of a criminal offence relating to the running of the business, or committed grave misconduct in the running of the business. Advice should sought from the Borough Solicitor in the event that you do not wish to exclude on this basis.
- Businesses can be excluded if they have not paid all their taxes or social security contributions. Advice should sought from the Borough Solicitor in the event that you do not wish to exclude on this basis.
- Businesses can be excluded if they are not included on the appropriate trade register in their home state
- Public authorities are allowed to request evidence from prospective bidders to allow them to assess whether any of the above factors apply.
- Public authorities may make an assessment of bidders' economic and financial standing by taking into account all or any of the following:-
- statements from the bidders' bankers or evidence of relevant

- professional indemnity insurance;
- published accounts where publication of such accounts are a legal requirement;
- a statement covering the 3 previous financial years setting out the overall turnover of the bidder's business and the turnover in respect of the goods or services being provided.
- Technical or professional ability which can only be assessed against the criteria set out in the Regulations.

Acceptance of Tenders/Quotations

- E.72 The award of a contract to the successful tenderer must be conditional upon the tender costs being within budgetary limits and subject to any prior Member decision making procedures.
- E.73 For goods and services procured in accordance with EU Procurement Rules notification to the successful tenderer of the award of the contract is subject to the 10 day "Alcatel" standstill period, (the Director of Finance and Business Services can provide advice), and may, if a decision by Cabinet Members was required, involve the 5 working day 'call in' period. (see E.84)

Criteria for Awarding the Contract

- E.74 There are only two possible criteria:
- Lowest price; or
 - Most economically advantageous tender

NB where the selection is based on price the contract must be awarded to the bidder offering the lowest price unless it is made clear in its invitation to tender that it reserves the right not to award the contract at all.

- E.75 Where the winning bid is to be selected on the basis of the most economically advantageous tender, this is assessed from the point of view of the contracting authority. Usually quotes will be selected for the lowest price however they can be selected on the basis of the most economically advantageous quote if this is made clear in the request for quote and sufficient detail is submitted to enable an evaluation. Criteria linked to the subject matter of the contract must be used to determine the most economically advantageous tender. These might include:
- quality;
 - price;
 - technical merit;
 - aesthetic and functional characteristics;
 - environmental characteristics;
 - running costs;
 - cost effectiveness;
 - after sales service;
 - technical assistance;
 - delivery date;

- delivery period;
- period of completion

E.76 The criteria to be used to evaluate bids and the weightings to be attached to them, or if weightings cannot be established, their relative importance, must be set out in the invitation to tender. However, it is not possible to take into account tenderer's experience, staffing levels, equipment or ability to perform the contract within a set timescale. These factors can only be considered at PQQ stage.

Specifications

- E.77
- Any technical specifications to be met by the goods, services or works to be provided must be set out in the contract documentation.
 - Technical specifications can include requirements relating to quality, environmental performance and accessibility or usability by the disabled (among others)
 - Any reference to British Standards in the specification must be followed by the words "or equivalent"
 - A public authority is only allowed to consider bids which vary from the requirements set out in the specification if the OJEU notice states that variants are permissible
 - Where variants are to be permitted the public authority must set out its minimum requirements.

E.78 Subject to E.72 and E.73 above:

- in the case of a tender the Chief Officer or his authorised officer authorise the acceptance of the tender on behalf of the Council, such acceptance to be notified in writing to the successful tenderer in a manner specified by the Borough Solicitor; or
- in the case of a quotation the Chief Officer or his authorised officer may accept the quotation by issuing either an official order (which should be signed by the Chief Officer or his authorised officer (as set in the Scheme of Delegation) or an Agreement signed by the Borough Solicitor or his/her Authorised Officers, as set out in E.98 - E.111.

E.79 If a decision is taken to abandon or to recommence a tender process in respect of which a contract notice has been published, each tenderer must be informed of the decision and the reasons for it, as soon as possible after it has been made.

Post Tender Negotiations (Open and Restricted Procedure)

E.80 Providing clarification of matters in the Invitation to Tender to potential or actual bidders or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, the discussion with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender

negotiations) must not be conducted. There are special rules relating to procurements using the Negotiated and Competitive Dialogue Procedures.

- E.81 Negotiations post-award of the contract are only permissible in exceptional circumstances and should only be commenced after the Director of Finance and Business Services and the Borough Solicitor have given written approval of the procedure(s) to be adopted in any negotiation. The Director of Finance and Business Services or the Borough Solicitor must be involved in the negotiation process and any consequent amendments to the contract terms and conditions must be approved by the Borough Solicitor.
- E.82 Where post-tender negotiation results in a fundamental change in specification (or contract terms) the contract must not be awarded but re-tendered.

Best Offer

- E.83 As a rule the award of a contract will be made to the organisation offering the lowest price, or in the case of a sale the highest price. The lowest price may not then be the “best offer” and may not merit award of the Contract. In assessing the tender however consideration may be given to quality, service and other determining factors as well as price. Where this is intended then this must be clearly set down in the tender documentation and the evaluation criteria. The Chief Officer or his/her Authorised Officer will record the detail of the contract award where the basis of the award is “best offer” rather than lowest price, which should then be reported to the appropriate Member. Advice should always be sought from the Director of Finance and Business Services as to whether the “best offer” approach is appropriate in the circumstances.

Disclosure of Tender information and debriefing Tenderers

Procedure for Notification of Contract Award for EU Contracts

- E.84 All participants in a tender procedure must be notified in writing as soon as possible after the successful bidder has been chosen.
- Content of Standstill Notice

- The criteria for the award of the contract
- The reason for the decision, including the characteristics and relative advantages of the successful tender
- The score (if any) obtained by the tenderer to whom the notice is addressed and that of the successful tenderer
- Any reason why the unsuccessful tenderer did not meet the technical specifications.
- The name of the successful tenderer:
- A precise statement setting out the date on which the standstill period ends or before which the contract will not be let. If a precise date cannot be given the notice should explain when it is expected to

end, including anything which might affect the date.

- A contract award notice must be published in OJEU within 48 days of the award of the contract
- Information may be withheld if disclosure would :

- a) impede law enforcement;
- b) otherwise be contrary to public interest;
- c) prejudice the legitimate commercial interests of any economic operator or
- d) might prejudice fair competition.

Challenging the award of a Contract

E.85 Any person who was eligible to bid for the contract (even if they did not bid) or actually bid for the contract can challenge the award of the contract on the basis that the Regulations have not been complied with:

- A person proposing to bring proceedings must notify the public authority concerned of that fact;
- The proceedings must be brought promptly, and in any event within 30 days from the date when the grounds for bringing proceedings first arose unless the Court considers there is good reason for extending the period;
- There are two possible remedies available to a party who wishes to challenge the award of a contract. The remedies available for a successful challenge are setting aside of the contract and the award of damages. Where the contract is set aside it may be necessary to carry out a further procurement process to award the contract.

E.86 Advice as to the extent and detail necessary for debriefing tenderers should be sought from the Director of Finance and Business Services.

Keeping Written Records

E.87 The Chief Officer or his/her designated representative must keep proper written records of:

- the different stages of the tendering process including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers;
- the awarding of the contract;
- any information provided to tenderers or contractors; and
- any decisions made, together with the reasons for those decisions.

E.88 Records must be kept for the periods set out in E.91.

Contracts Register

E.89 The Chief Officer or his designated representative must record on the Contracts Register held by the Director of Finance and Business Services details of all contracts it has awarded with a total value of £10,000 or

above including contracts above the EU threshold for goods and services.

Changes to Contracts

- E.90 Contract Extensions/Variations which take place must be consistent with the term specified in the OJEU notice. Any extension provision must be consistent with the OJEU notice, otherwise it is a breach of the Regulations. Similarly any substantial variation of the contract may amount to a breach of the Regulations, such as a change to include the provision of additional services.

Storing Documents

- E.91 All documents relating to a tender award must be kept at least 12 years. Officers must consider confidentiality when storing contracts and other information relating to tenders and agreements.

Requests for Information under the Freedom of Information Act

- E.92 Before making any disclosures to third parties on any element of a procurement following a request under the Freedom of Information Act advice should be sought from the Director of Finance and Business Services and the Borough Solicitor.

Contracts where the Council is the supplier

- E.93 Any Service, where such exists whose goods, works or services have been subjected to competition and who has now been approved as a nominated supplier, or are included on the Council's electronic marketplace, or where there is a Corporate Contract in place, in accordance with the Procurement Strategy, for those particular goods or services must be the first choice for that particular procurement.

Collaborative, Consortia and Partnership working

- E.94 Collaborative, consortium and partnership arrangements are subject to all UK and EU procurement legislation and must also follow the Finance and Contract Procedure Rules (Section F).
- E.95 Collaborative, consortium and partnership arrangements include joint working where one partner takes the lead and awards contracts on behalf of the other partners, long term collaborative partnerships, pooled budgets and joint commissioning.
- E.96 Further guidance can be obtained from the Director of Finance and Business Services and the Borough Solicitor.

E Procurement

- E.97 The use of e-procurement technology does not negate the requirement to comply with all elements of these Finance and Contract Procedure Rules, particularly those relating to competition and value for money.

Written Contracts and Signing of Contracts

- E.98 Every contract must be in writing and advice should be sought from the Borough Solicitor.
The table below sets out which procedures must be followed for different contract values:

Total Value	Form of Contract
Below £10,000	As per Section D – Ordering and paying for work, goods and services (D.19 – D.28).
Above £10,000	As for Below £10,000, plus: The advice of the Borough Solicitor must be sought to agree an appropriate form of contract or written agreement which must be signed by the successful third party and on behalf of the Council by the Borough Solicitor and/or one of his/her authorised signatories, or by two of his/her authorised signatories.
Above £50,000	Formal contract executed under seal and attested by the Borough Solicitor or her authorised signatory.

Content of Contracts

- E.99 The appropriate Chief Officer or her authorised officer must ensure that in addition to terms and conditions set out in E.103 every contract details:
- The goods, works and services, materials, matters to be carried out or supplied;
 - The price to be paid and/or the amounts and frequency or the method of calculation of contract payments including the treatment of inflation, with a statement of discounts or other deductions including terms of payment and settlement periods;
 - The time(s) within which the contract is to be performed.
- E.100 Every contract with an estimated value of £75,000 or more must state that if the third party fails to comply with its contractual obligations in whole or in part, the Council may:
- cancel all or part of the contract
 - perform the contract
 - recover from the firm any additional costs in completing the contract
 - take other legal action against the contractor

Contract Terms and Conditions

- E.101 A glossary set out in Annex 1 defines the terms used throughout this Section.
- E.102 The Rules set out below will apply to all contracts entered into by the Council involving goods, works or services, with the exception of contracts of employment and contracts relating to the purchase or disposal of land and property. They will also apply to contracts entered into as where the Council acts as agent for another body, subject to the specific terms of the agency agreement.
- E.103 Advice should be sought from the Borough Solicitor, prior to taking action to secure quotations and tenders referred to in the following paragraphs, on the specific Conditions of Contract, in addition to any standard terms and conditions, appropriate in each individual case. They may include some or all of the following:
- Form of Contract
 - Authorised Officer
 - Modifications
 - Bonds and Guarantees
 - Contractors Obligations
 - Contractors Employees
 - Control and Supervision of Staff
 - Complaints
 - Confidentiality
 - Health and Safety
 - Agency
 - Standards
 - Observance of Statutory Requirements
 - Gratuities and Inducements
 - Indemnities and Insurance
 - Use of Authority's Premises and Facilities
 - Security
 - Equipment and Materials
 - Freedom of Information and Data Protection
 - Royalties and Patent Rights
 - Certificates and Payments
 - VAT
 - Equality and Diversity
 - Fluctuations
 - Review of Prices
 - Assignment and Sub-Contracting
 - Emergencies
 - Default
 - Termination
 - Recovery of Sums Due (set off)
 - Notices

- Waiver
- Special Conditions

All contracts must also include appropriate clauses referring to:

- Prevention of Corruption
- Assignment or sub-contracting without the Council's agreement
- Quality Standards
- Indemnities and Insurance
- Compliance with Council policies and procedures where appropriate (see E.105 to E.111)
- Where possible application of TUPE or a successor provision could apply then the Personnel and Pensions Services must be consulted.
- Transparency
- Anti Bribery

E.104 Unless the Borough Solicitor and the Chief Officer or his designated representative considers it to be unnecessary or impractical, every contract must provide that:

- Where under any contract, one or more sums of money are to be received by the Council, the contracting party responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
- In the performance of the contract, the contractor must not act incompatibly with the rights contained within the European Convention on Human Rights or the Disability Discrimination Act; or the Bribery Act 2010
- The contractor must provide any information reasonably requested relating to the performance of the contract to ensure that the Council meets its statutory obligations including under: Section 71 of the Race Relations Act 1976; Race Relations Amendment Act 2000; Best Value Legislation; Transfer of Undertakings and Protection of Employment Regulations; Code of Practice on Workforce Matters in Local Authority Service Contracts;
- In the performance of the contract, the Contractor must comply with the requirements of the Health and Safety at Work Act 1974, and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety;
- without prejudice, and subject to any other condition of the contract, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the contract;
- the contractor must not sub-contract the contract or any part of the contract, without the prior written consent of the appropriate Chief Officer or his Authorised Officer who will take advice from the Borough Solicitor where appropriate.

- E.105 The contractor is responsible to the Council for the proper performance and observance of all sub-contractors of all the Contractor's obligations under the contract as if references in the contract to "the contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the contractor;
- E.106 The contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Chief Officer or his authorised officer (following consultation with the Borough Solicitor and the Director of Finance and Business Services);
- E.107 All goods, works and services must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation;
- E.108 The Council is entitled to cancel the contract and to recover from the contractor the amount of any direct loss resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):
- does anything improper to influence the Council to give the contractor any contract;
 - commits an offence under the Bribery Act 2010 or under Section 117(2) of the Local Government Act 1972;
- E.109 Whenever under the contract any sum of money is recoverable from or payable by the contractor, this sum may be deducted from any sum due or which at any time may become due to the contractor under this or any other contract with the Council. Exercise by the Council of its rights under this clause will be without prejudice to any other rights or remedies available to the Council under the contract.
- E.110 The contractor must provide evidence of adequate insurance to cover both Public Liability and Employers' Liability. Indemnity Levels to reflect the risk to the Council which typically will be £10m for both public and employer liability policies. In some cases where the contract is of low risk this may be reduced to £5 million but advice should be sought from the Insurance team on indemnity levels before the issue of Invitations to Tender have been despatched.
- E.111 Any standard terms and conditions of contract submitted by contractors must not be accepted without advice from the Borough Solicitor. Proposed payment arrangements under a contract must be discussed with and agreed by the Director of Finance and Business Services in advance of any contract being entered into.

E.112 Advice of the Director of Finance and Business Services whether a parent company guarantee or performance bond is needed in cases where;

- there is doubt about the suppliers financial standing
- the contract poses a high risk to the Council

Performance Monitoring

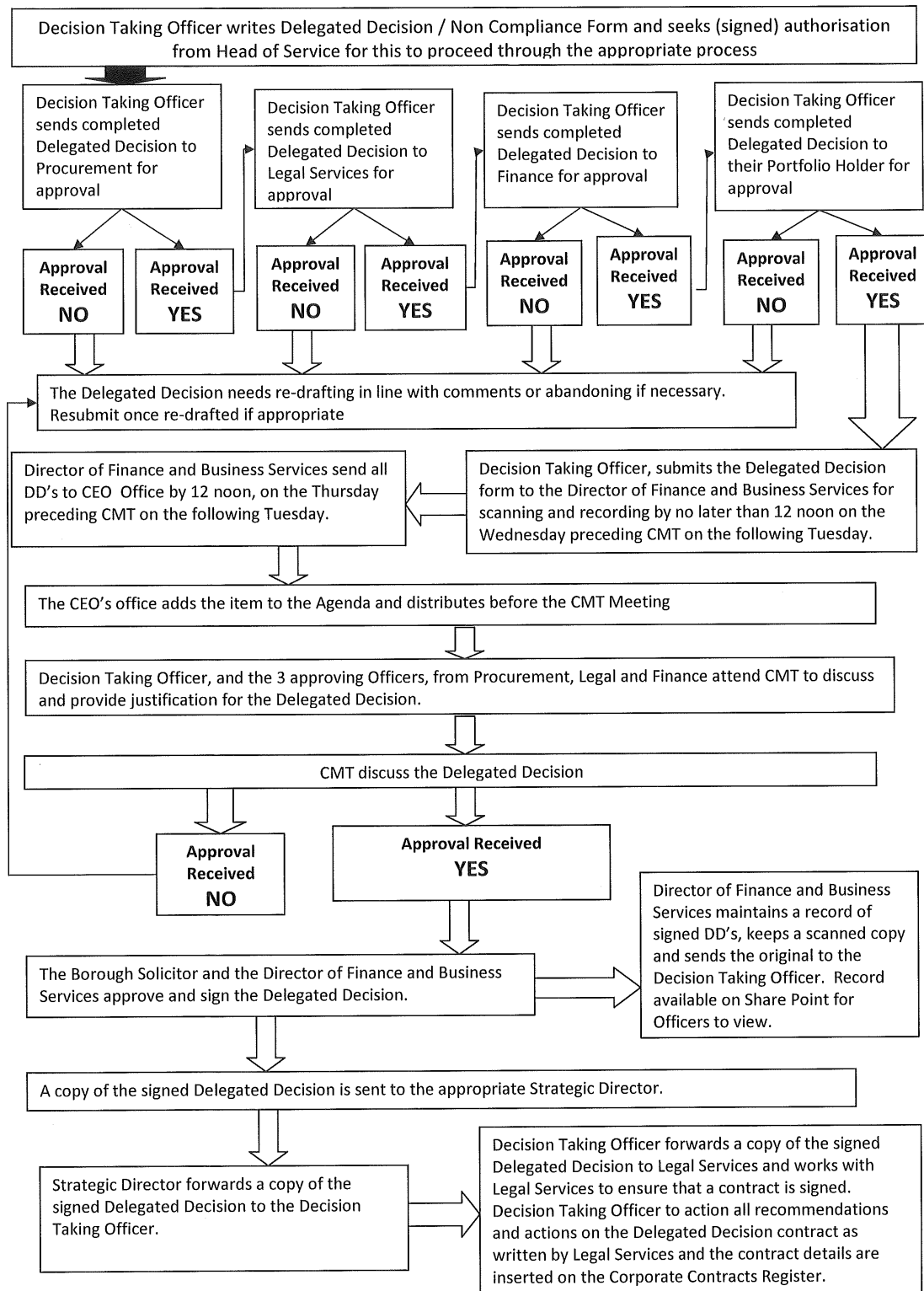
E.113 During the life of the contract, the authorised officer should monitor the contract in respect of the following:

- Performance;
- Compliance with specification and contract;
- Cost;
- Any Best Value requirements;
- User satisfaction; and
- Risk management

E.114 Where the contract is to be re-let this information should be available early enough to inform the approach to re-letting the subsequent contract.

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APPENDIX 2



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Council

Constitution**RECORD OF DELEGATED DECISION TAKEN BY AN OFFICER UNDER THE COUNCIL'S CONSTITUTION****Matter decided:****Decision Date:**.....**Decision Taking Officer:**.....**Finance and Contract Procedure Rule No(s) to waiver [Please set out the Rule/Rules]:****THE DECISION**

Within this section, detail the decision that is required. Where the decision involves the award of a contract it is important to complete the following table: -

Contract Title	
Contract Period (include any potential extension options and start and end dates)	
Total Contract Value	
How is the contract to be funded	
Provider Name(s)	
Brief Description of the goods / services required	
Is a contract being drafted by Legal Services	

NB: Once a contract has been completed in accordance with **Rule E.98** (which sets out the requirements for written forms of contract by value) **Rule E.89** stipulates that its details are added to the Council's Corporate Contracts Register which can found by clicking on this link: [**Contracts Register**](#)

REASONS FOR THE DECISION:-

ALTERNATIVE OPTIONS CONSIDERED IN ARRIVING AT THE DECISION

Signed by the Decision Taking Officer

.....

Designation

.....

Date

.....

Signed by the Head of Service

.....

Designation

.....

Date

.....

Approved by Portfolio Holder

For **Name:**

.....

Signature: **Date:**

.....

**Approved by
(if needed)
See Note (1)**

.....
**Director of Finance and
Business Services**

.....
Borough Solicitor

Date

.....

.....

APPROVALS:

APPROVED / REJECTED BY	NAME	DATE
PROCUREMENT OFFICER		
Comments:		
LEGAL OFFICER		
Comments:		
FINANCE OFFICER		
Comments:		

Guidance for Signing Officers – Officers should ensure that Rule E4 is satisfied, namely that the Council will;

- **Get value for money;**
- **Keep within the law;**
- **Maintain standards of conduct;**
- **Be fair to suppliers;**
- **Protect officers;**
- **Demonstrate accountability for public money;**
- **Meet its corporate and directorate aims and policies; and**
- **Comply with the Council's Procurement Strategy.**

NOTES

(1) Decisions taken under Finance and Contract Procedure Rule E.23 also need to be approved by the Director of Finance and Business Services and the Borough Solicitor and this form completed accordingly, which shall include the sign off the above approvals box by the relevant officers.

(2) If an officer is unsure about his/her powers to take the decision, he/she should seek advice from the relevant officer in their Senior Management Leadership Team.

(3) A copy of this document must be kept in the Register of Delegated Decisions (held in your Directorate) which must be available for inspection at any time during normal office hours by Members of the Council , the Director of Finance and Business Services and Borough Solicitor

(4) The decision must be made in accordance with the requirements of the Finance and Contract Procedure Rules.

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**Record of Non Compliance / Breach of Finance and
Contract Procedure Rules
Decision Request to CMT**

Name and Department of Officer declaring the breach:

.....

- 1. Background (State rules breached, date of breach and reasons for the breach)**
- 2. Contract Title (e.g. Contract for the Provision of XXX)**
- 3. Contract Value (if appropriate)**
- 4. Contract Length (Include start and end dates if appropriate)**
- 5. Contracted Suppliers (if appropriate)**
- 6. Action Requested**
- 7. CMT Decision (to be completed by officer requesting decision)**
- 8. Steps to be taken to avoid recurrence as advised by CMT (to be completed by officer requesting decision)**
- 9. Instructions to Legal / Procurement / Finance (to be completed by officer requesting decision)**

Signed by the Decision Taking Officer

.....

Designation

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Date

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Signed by the Head of Service

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Designation

.....

Date

.....

Approved by Portfolio Holder

For

.....

Name:

Signature:

.....

Date:

**Approved by
(if needed)
See Note (1)**

.....

**Director of Finance and
Business Services**

.....

Borough Solicitor

Date

.....

.....

ADVISING OFFICERS COMMENTS AND RECOMMENDATIONS (WHERE APPROPRIATE)

COMMENTS RECOMENDATIONS	/	NAME	DATE
PROCUREMENT OFFICER			
Comments:			
LEGAL OFFICER			
Comments:			
FINANCE OFFICER			
Comments:			

NB For the avoidance of doubt the purpose of this Authorisation is to limit and manage far as possible any adverse implications falling on the Council, as a result of an officer not complying with the Councils own Finance and Contract Procedure Rules, and not to regularise any action which is illegal. Officers should also be aware that that failure to comply with the Council's rules may be considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the officers concerned.

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IMPORTANT GUIDANCE – RE: REVISED PROCESS FOR WAIVER OF CONTRACT PROCEDURE RULES

The waiver of the Contract Procedure Rules should only be used in exceptional circumstances and in line with Rules E4 and E23 of the Council's Constitution which set the context for the use of Delegated Decisions (DD).

Delegated Decisions are not to be used as a matter of course for approving procurement decisions although it is recognised that there may sometimes be exceptional circumstances where this might be necessary.

It is inappropriate to use Delegated Decisions to approve retrospective procurement activity where budget has already been spent or where a “contract” is already in place. Such eventualities are in effect breaching Contract Procedure Rules and need to be dealt with as an issue of “Non-compliance”.

Following several instances of inappropriate use of Delegate Decisions the overall approach for dealing with procurement decisions via this route has been revised. The new approach will bring more rigour to the process by the involvement of the Head of Service, Corporate Management Team and the appropriate Portfolio Holder. It aims to encourage greater compliance in the procurement of goods and services going forward.

This guidance provides the following:

- A flowchart outlining the revised process for Delegated Decisions and issues of Non Compliance
- A guidance note on the Contract Procedure Rules and appropriate use of Delegated Decisions
- A Delegated Decision template to be completed and processed in line with the flow chart.
- A Non Compliance template to be completed and processed in line with the flow chart.

The revised process is to be used with immediate effect

If you are in any doubt about the new process or which route to follow please contact the Procurement Helpdesk 01270 686440 or e mail

Procurement@cheshireeast.gov.uk



Flow Chart.doc



Delegated Decision
Guidance.doc



Delegated Decision
Form.doc



Non Compliance
Form.doc

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Democratic and Registration Services Manager
Subject/Title: Review of the Constitution

1.0 Report Summary

- 1.1 To consider the Committee's approach to the review of the Council's Constitution.

2.0 Recommendation

- 2.1 That the Committee consider the content of the report and determine its work programme for the current municipal year.

3.0 Wards Affected

- 3.1 All Council Wards are affected by the Constitution, which has application across the Borough.

4.0 Local Ward Members

- 4.1 All local Ward Members are affected for the reasons set out in paragraph 3.1.

5.0 Policy Implications

- 5.1 The Constitution sets out the procedures by which Council policy is set. Any proposed changes to the Constitution would need to align with the requirements of legislation which often stipulates the Council decision-making route associated with the adoption of policies.

6.0 Financial Implications

- 6.1 There are no financial implications associated with the proposed review.

7.0 Legal Implications

- 7.1 Any changes to the Constitution would need to be agreed by Council, following a recommendation from the Constitution Committee. Proposed changes would need to align with any statutory requirements.

8.0 Risk Management

- 8.1 There would appear to be no risks associated with this element of review of the Constitution. The review will provide an opportunity to ensure that all elements of the document are consistent with one another.

9.0 Background

- 9.1 Since vesting day, the Council has approved a number of amendments to the Constitution. As new legislation comes into force, and as the Council finds better ways of doing things, building upon experience and best practice, the Constitution needs to be amended.
- 9.2 The Constitution Committee has agreed to review different parts of the Constitution to ensure it remains fit for purpose and has developed a work programme to support this task.
- 9.3 At its meeting on 17th November 2011, the Committee resolved that a task group of five members be appointed (3 Con; 1 Lab; 1 Ind) to consider and make recommendations on detailed changes to the Constitution.
- 9.4 The Committee then agreed to suspend its work programme pending the outcome of the work of the Governance Review Joint Member Working Group that was established to review potential changes to the Council's governance arrangements under the Localism Act.
- 9.5 More recently, the Audit and Governance Committee has considered a report on Lyme Green and approved an action plan of improvements, some of which will require changes to the Constitution. In particular, the Committee has recommended that this Committee undertake a further review of the Officer Scheme of Delegation and Contract Procedure Rules with a view to increasing the level of Member involvement in decision-making.
- 9.6 In the light of the information above, the Committee is asked to consider how it wishes to proceed with its review of the Constitution.
- 9.7 Set out below is an updated work programme.

Scheme of Delegation	The Scheme of Delegation needs to be further updated to reflect final changes in the officer structure of the Council. This will include some 'staffing' matters* arising from the review of Staff Employment Procedure Rules. The work is ongoing.
Budget and Policy Framework	The Budget and Policy Framework is a list of plans and strategies, including the Local Development Framework, that must be approved by full Council. The list of plans that comprise the Local Development Framework is being reviewed by the LDF Panel.
Scrutiny Procedure Rules	The Overview and Scrutiny Chairmen are reviewing the Scrutiny Procedure Rules. The work is ongoing.
Staff Employment Procedure Rules	The Head of HR and Organisational Development has completed a review of the staffing elements of the Constitution.*
Petitions Scheme	Potential changes to the Petitions Scheme have been drafted and Cabinet is being consulted.
Size and Layout of the Constitution	The Constitution Task Group appointed by the Committee has given preliminary consideration to the size and layout of the Constitution to make it as 'user friendly' as possible.

10.0 Access to Information

- 10.1 The background papers relating to this report can be inspected by contacting the report writer:
 Name: Brian Reed
 Designation: Democratic and Registration Services and Manager
 Tel No: 01270 686670
 Email: Brian.reed.@cheshireeast.gov.uk

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