

Constitution Committee

Agenda

Date: Thursday, 20th September, 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 disclosable pecuniary and non-pecuniary 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 - 6)

To approve the minutes of the meeting held on 5th July 2012.

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

5. **Crewe Community Governance Review - Final Outcome** (Pages 7 - 52)

To consider the final recommendations to Council on the Crewe Community Governance Review.

6. **Notice of Motion - Motions to Council** (Pages 53 - 56)

To consider the motion referred by Council.

7. **Notice of Motion - Right to Speak at Meetings** (Pages 57 - 60)

To consider the motion referred by Council.

8. **Notice of Motion - Confidentiality** (Pages 61 - 78)

To consider the motion referred by Council.

9. **Notice of Motion - Venue for Meetings of the Strategic Planning Board** (Pages 79 - 82)

To consider the motion referred by Council.

10. **Decisions Taken in the Absence of a Portfolio Holder** (Pages 83 - 86)

To consider the arrangements for executive decisions to be taken in the absence of the relevant Portfolio Holder.

11. **Key Decisions - Definition and Thresholds** (Pages 87 - 102)

To consider revised definitions with regard to key decisions.

12. **Review of Contract Procedure Rules** (Pages 103 - 134)

To propose amendments to the Council's Contract Procedure Rules.

13. **Proposed Amendments to the Council's Finance and Contract Procedure Rules/Project Gateway** (Pages 135 - 146)

To consider proposed amendments to Sections A and B of the Council's Finance and Contract Procedure Rules and the creation of a 'Project Gateway' to provide a strong quality assurance model for major projects and programmes in Cheshire East.

14. **Special Responsibility Allowance: Local Service Delivery Committees for Crewe and Macclesfield** (Pages 147 - 150)

To consider the Independent Remuneration Panel's recommendations regarding the award of a Special Responsibility Allowance to the Chairmen and Vice Chairmen of the Local Service Delivery Committees for Crewe and Macclesfield.

15. **Petitions - The Local Democracy, Economic Development and Construction Act 2000, the Local Authorities (Petitions) (England) Order 2010 and the Localism Act 2011** (Pages 151 - 164)

To consider proposed amendments to the Council's Petition's Scheme.

16. **Review of the Planning Protocol of Conduct and the Planning Public Speaking Protocol** (Pages 165 - 192)

To consider proposed amendments to the Council's Planning Protocol of Conduct and Planning Public Speaking Protocol.

THERE ARE NO PART 2 ITEMS

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 5th July, 2012 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

Councillors Rhoda Bailey, G Baxendale, S Hogben, S Jones, F Keegan,
W Livesley, A Moran, B Murphy, D Topping and P Whiteley

In attendance

Councillor D Brickhill

Officers

Caroline Elwood, Borough Solicitor and Monitoring Officer
Brian Reed, Democratic and Registration Services Manager
Paul Mountford, Democratic Services Officer
Cherry Foreman, Democratic Services Officer

Apologies

Councillors P Groves, D Newton, A Thwaite and G Wait

1 DECLARATIONS OF INTEREST

There were no declarations of interest.

2 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

3 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 11th May 2012 be approved as a correct record.

4 NOTICE OF MOTION ON CHANGES TO THE ARRANGEMENTS FOR SCHEDULED COMMITTEE MEETINGS

The Committee considered the following motion, proposed by Councillor D Brickhill and seconded by Councillor P Edwards, which had 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.”

Councillor Brickhill attended the meeting and spoke in relation to the motion.

The Committee procedure rules currently provided that where it was necessary to cancel or change the arrangements for a scheduled meeting, the chairman of the committee in question could agree this following consultation with the relevant group spokesmen on the committee. Any such changes would then be notified to all members of the Council.

The introduction of a procedure whereby all Members of the Council had to be consulted before a committee meeting could be changed or cancelled, and which would require more than 60 Members to agree any such change, would make the operation of the Council's committee system unwieldy, cumbersome and unresponsive to any genuine need for change. Members felt, however, that it would be reasonable and appropriate for all members of the committee concerned to be consulted. It was also felt that any cancellation should allow sufficient time for public notice to be given.

RESOLVED

That Council be recommended to approve a change to the Committee Procedure Rules to provide that a scheduled meeting of a decision-making body may be cancelled or changed by the Chairman following consultation with the whole membership of that body, provided that such cancellation or change takes place at least five clear working days before the scheduled date of the meeting to enable sufficient public notice to be given.

5 AUDLEM EDUCATION FOUNDATION

The Committee considered a request by the Audlem Educational Foundation that the Council approve changes to the size and membership of the Foundation's Awards Committee.

RESOLVED

That the matter be referred to the Outside Organisation Sub-Committee for consideration.

6 CHANGES TO OUTSIDE ORGANISATIONS APPOINTMENTS

The Committee considered proposed changes to the Council's representation on a number of Category 2 outside organisations.

The officers reported at the meeting that Councillor P Groves had been nominated to the Macclesfield Chamber of Commerce and Business Link in

place of Councillor Macrae. The Conservative Group had been unable to submit a nomination for a vacancy on the Cheshire County Playing Fields Association.

RESOLVED

That

- (1) the changes of representation set out in the Appendix to the report and the additional nomination reported at the meeting be approved, 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;
- (3) the nomination of a representative to fill the vacancy on the Cheshire County Playing Fields Association be referred to the Outside Organisations Sub-Committee; and
- (4) notwithstanding the appointments now made, the Council retains the right to review its representation on any outside organisation at any time.

7 THE CHESHIRE AND WIRRAL COUNCILS JOINT SCRUTINY COMMITTEE

The Committee considered a report proposing the withdrawal of the Council from the Cheshire and Wirral Councils Joint Scrutiny Committee with immediate effect.

Cheshire West and Chester Council had already withdrawn from the Joint Scrutiny Committee which meant that the Committee could no longer hold legally constituted meetings. In light of Cheshire West's decision, the Scrutiny Chairmen's Group at its meeting on 1st June 2012 had concluded that it would not be possible for the Joint Committee to continue and that Cheshire East Council should now concentrate on how it could best influence mental health provision locally. The scrutiny of mental health provision in Cheshire East could be accommodated within the Council's own scrutiny arrangements.

RESOLVED

That the Council's nominations to the Cheshire and Wirral Councils Joint Scrutiny Committee be formally withdrawn with immediate effect and the Borough Solicitor be authorised to make any consequential amendments to the Constitution.

8 LOCALISM ACT 2011: PROPOSED AMENDMENT TO AUDIT AND GOVERNANCE COMMITTEE'S TERMS OF REFERENCE AND THE COUNCIL'S PROCEDURE RULES

The Committee considered the proposed 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. The proposed terms of reference were set out in the Appendix to the report and included the establishment of three ad hoc panels and sub-committees to consider, at different stages, alleged breaches in the Member Code of Conduct. The membership of the bodies would be drawn from a pool of 15 members comprising the members of the Audit and Governance Committee and five others.

The Borough Solicitor advised that a revised Member Code of Practice, together with proposed assessment criteria and procedure rules for the new bodies, would be submitted to Council for approval alongside the proposed terms of reference.

The Committee was also asked to consider a proposed amendment to the Council's Constitution which would require a Member to withdraw from a meeting after declaring a disclosable pecuniary interest.

RESOLVED

That

- (1) 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) the proposed pool of 15 Members be constituted on the basis of political proportionality and the political groups be invited to submit nominations to the five additional places as appropriate; and
- (3) Council be recommended to agree that the Council Procedure Rules be amended to require a Member who declares a disclosable pecuniary interest in an item of business to withdraw from the meeting at the appropriate juncture, the Borough Solicitor being authorised to make such changes to the Constitution as she considers appropriate to give effect to the wishes of Council.

9 DRAFT MEMBER / OFFICER CODE OF PRACTICE - DELEGATION AND COMMUNICATION

Prior to consideration of this matter, the Democratic and Registration Services Manager reported receipt of an email from a member of the public asking that the powers currently delegated to officers to approve the renewal of licences for sexual entertainment establishments in certain circumstances be rescinded and that such matters be dealt with by the relevant licensing committee.

The Committee considered a report in response to a 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.

Appendix 1 to the report contained a draft Code of Practice which sought to address the issues of concern to the Audit and Governance Committee. The Code of Practice sought to strengthen the exchange of information between Officers and Members and improved and clarified current practice and procedures around decision-making, including the use of officer delegations.

Members felt that the draft Code formed a useful basis for further work alongside a review of the Officer scheme of delegation, and that the Code, as an improvement on the current arrangements, should be used on an interim basis whilst further work was undertaken by a Member task and finish group appointed for that purpose. The Borough Solicitor referred to authority delegated to her by Council to make consequential amendments to the officer scheme of delegation to reflect changes to the senior management structure; she would make such necessary changes to the document prior to its consideration by the task and finish group to ensure that the document accurately reflected the current delegation arrangements.

RESOLVED

That

- (1) a task and finish group of five members of the Committee (3 Conservative; 1 Labour; 1 Independent) be appointed to give further detailed consideration to the draft Officer Code of Practice, and to the officer scheme of delegation (Powers and Responsibilities of Officers) as set out at Appendix 2 to the report, and report back to the Committee's next meeting;
- (2) a Liberal Democrat Group member be invited to attend meetings of the task and finish group on a non-voting basis in order to participate in the work of the group; and
- (3) in the meantime, the draft Officer Code of Practice be used on an interim basis.

10 DELEGATED DECISIONS - WAIVER OF CONTRACT PROCEDURE RULES

The Committee considered a report outlining the interim procedure and revised process for the waiver of the Council's Contract Procedure Rules under the Delegated Decision Process.

As a result of concerns arising from the use by officers of delegated decisions, an interim procedure had been implemented which strengthened the original process for signing off such decisions pending review of the process by Members.

At its meeting on 14th June 2012, the Audit and Governance Committee had approved an action plan which included a fundamental review of the application

of delegated decisions. The report now before Members formed part of that review process. The report did not deal with general delegated decisions under the Council's officer scheme of delegation but solely with the waiver of the competition rules within the Contract Procedure Rules. The relevant procedures had now been reviewed and strengthened by the introduction of further controls and enhanced Portfolio Holder involvement and the revised procedures were now in operation. Details of the revised procedures and associated documentation were set out in Appendix 2 to the report.

RESOLVED

That

- (1) the revised interim procedure for the Waiver of Contract Procedure Rules under the Delegated Decision Process be noted; and
- (2) the task group previously appointed by the Committee to review detailed changes to the Constitution be asked to undertake a further review of the Contract Procedure Rules and report back to the Committee's next meeting.

11 REVIEW OF THE CONSTITUTION

In light of recent events, in particular the Audit and Governance Committee's consideration of the Lyme Green review and the need to review the Council's scheme of delegation and contract procedure rules, the Committee was asked to review the priorities within its work programme for reviewing the Constitution. An updated work programme was set out in the report.

RESOLVED

That the updated work programme be noted and the officers give priority to work on the scheme of delegation.

The meeting commenced at 2.00 pm and concluded at 4.40 pm

Councillor A Martin (Chairman)

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Crewe Community Governance Review – Final Outcome
Portfolio Holder: Councillor L Gilbert

1.0 Report Summary

- 1.1 The draft recommendation of the Council for the outcome of the review, as agreed at the Council meeting held on 16th May 2012, was as follows:

“RESOLVED

1. *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 (see map below) 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:*

<i>St Barnabas</i>	<i>2</i>
<i>Crewe Central</i>	<i>2</i>
<i>Crewe North</i>	<i>2</i>
<i>Crewe South</i>	<i>3</i>
<i>Crewe East</i>	<i>4</i>
<i>Crewe West</i>	<i>3</i>
<i>TOTAL</i>	<i>16</i>

- c. that the electors of the unparished part of the Borough ward of Leighton 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 final stage of the 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:*

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

- 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.”*

- 1.2 Further to the above decision of Council, the Sub Committee carried out consultation on these proposals and conducted a ballot of electors in the unparished part of the Leighton Borough Ward, where electors were asked whether they wished to be part of the existing Minshull Vernon and District Parish Council or the new Crewe Town Council.
- 1.3 Nine responses were received to the third stage of consultation, which were noted – but the Sub Committee agreed that a decision on the warding arrangements and the number of parish councillors for Crewe be deferred to the Constitution Committee. A copy of the representations received and the result of the ballot, considered by the Sub Committee on 18 July, are attached

as **Appendix A**. The result of the ballot showed that 85% of respondents were in favour of being part of Minshull Vernon and District Parish Council.

- 1.4 A re-organisation Order is required to be approved by the Council to bring any new arrangements into effect, following the final outcome of the Review. Within this Order, for the purposes of regulation 3 of the Local Government Finance (New Parishes) (England) Regulations 2008, a sum must be included, which is the budget for the first year of operation of the new Town Council, which cannot be exceeded. The Sub Committee has therefore done further work on preparing a draft budget. A copy of the draft re-organisation Order and the draft budget are attached as **Appendices B and C** to this report for consideration. In developing the budget figure, consideration has been given to the transfer of assets to the new Town Council, having taken into consideration advice from Counsel. As such, the Sub Committee proposes that Allotments and Public Conveniences in Lyceum Square are assets which should transfer as part of the re-organisation order.
- 1.5 The minutes of the meetings of the Sub Committee held on 18th July 2012 and 4th September 2012 are attached as **Appendices D and E** to this report.

2.0 Recommendations

2.1 To recommend to Council

- 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) To confirm, or amend, the draft recommendation on the warding arrangements and number of parish councillors for Crewe, taking into account representations received.
- c) That, having considered the results of the ballot of electors in the unparished part of the Borough ward of Leighton, to agree the sub- Committee's recommendation that the unparished part of the Borough ward of Leighton be included as part of the Leighton Urban ward of Minshull Vernon and District Parish Council.
- d) That elections to the Crewe Parish Council be held on 4th April 2013.
- e) That the public conveniences in Lyceum Square be transferred to the new parish council with effect from 1st April 2013 but Cheshire East Council continue to manage the facilities for the first three months; a sum of £30,000 be included in the budget for the first year of the parish council to cover the cost of managing these assets.
- f) That the allotments within the unparished part of Crewe be transferred to the new parish council with effect from 1st April 2013 on

the basis of a 150 year lease; a sum of £30,000 be included in the budget for the first year of the parish council to cover the cost of managing these assets.

g) That the draft budget be approved, as attached to the report, totalling £342,000.

h) That the draft re-organisation order be approved, as attached to the report and the above sum be added to paragraph 11.

2.2 To resolve

i) That the terms of reference of the Community Governance Review Sub-Committee be extended to enable the Sub-Committee to take all necessary actions in preparation for the new Crewe parish council.

3.0 Reasons for Recommendations

3.1 The Sub Committee has conducted the review in accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 and the Government's guidance on conducting community governance reviews.

3.2 In considering the results of the consultation and formulating recommendations, Members have ensured that the proposed community governance arrangements within the area under review are reflective of the identities and interests of the community in that area; and are effective and convenient.

3.3 Key considerations taken into account in conducting the review include:

- The impact of community governance arrangements on community cohesion
- The size, population and boundaries of local communities or parishes
- The proposed arrangements reflecting the distinctive and recognisable communities of interest with their own sense of identity
- The degree to which the proposals offer a sense of place and identify for residents
- The ability of the proposed Crewe Town council to deliver quality services economically and efficiently whilst providing users with a democratic voice
- The degree to which the proposed Crewe Town Council would be viable in terms of a unit of local government providing some local services that are convenient and accessible to local people

3.4 In accordance with the Government Guidance, the review has also considered and reviewed other options (such as maintaining existing arrangements, multiple parish councils, Neighbourhood management, Community Forums, Residents and tenant's associations , Community

Associations/ community development trusts) for community governance, and determined, following public consultation, that they did not represent better options in terms of addressing the criteria.

4.0 Wards Affected

- 4.1 Wards covering the unparished area of Crewe.

5.0 Local Ward Members

- 5.1 As Above

6.0 Policy Implications

- 6.1 None

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

- 7.1 The Council has a statutory duty to conduct and meet the costs associated with undertaking the Community Governance Review.
- 7.2 For the purposes of regulation 3 of the Local Government Finance (New Parishes) (England) Regulations 2008, a sum must be identified for inclusion in the Re-organisation Order. This is sum, for the first year of operation of the new Town Council, which cannot be exceeded.
- 7.3 The Council's policy is for the cost of any parish elections, which do not fall on an ordinary day of election for which other elections are being administered, are met by the parish councils concerned. This has been taken into account in determining the sum for inclusion in the re-organisation order.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The review has been conducted in accordance with the provisions of the Local Government and Public Involvement in Health Act 2007

9.0 Risk Management

- 9.1 The review has been conducted with due regard to the Government's Guidance on the conduct of Community Governance Reviews.

10.0 Background and Options

- 10.1 The background to the review and options are detailed earlier in the report.

11.0 Access to Information

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

Name: Mrs Lindsey Parton

Designation: Registration Service and Business Manager

Tel No: 01270 686477

Email: Lindsey.parton@cheshireeast.gov.uk

**CREWE COMMUNITY
GOVERNANCE REVIEW**

**REPRESENTATIONS RECEIVED IN
RESPONSE TO STAGE 3
CONSULTATION**

18 Holly Mount
Basford
CREWE
CW2 5AZ
27 June 2012

Democratic Services
Cheshire East Council
Westfields
Sandbach
CW11 1HZ

CREWE COMMUNITY GOVERNANCE REVIEW

Thank you for the opportunity to comment on this stage of the Governance Review.

By way of background I have lived in the Crewe area since 1966. In 1983 I was elected as a Borough Councillor for the Delamere Ward of Crewe, a position I held until the abolition of the authority in 2009. For several years I was Chairman of the Authority's Community Scrutiny Committee. In 2009 I was accorded the honour of Honorary Alderman in recognition of my service.

I fully support the creation of a Town Council for Crewe. However, I cannot support the warding arrangements proposed by Cheshire East Council as they would lead to significant variations in electoral representation. As an alternative I would propose the creation of ten two-member wards as follows:

Crewe Central, Crewe North & Crewe St Barnabas would remain as proposed by Cheshire East.

Crewe South and Crewe West would each be divided into two two-member wards [in the case of Crewe South the first ward could be based on the newer property in the western part of the Ward, the second on the older property north of Nantwich Road and in the south-eastern part of the ward; Crewe West could be easily divided between the communities around Queens Park, and the community based on the Ruskin Park area].

Crewe East Ward would be divided into three two-member wards [probably based on a) the Maw Green area; b) the Sydney area; c) the Earle Street – Hungerford Road area].

The creation of these relatively smaller wards would create stronger community links between town councillors and those they represent, and create a more varied – and representative – council by making it more practical for independent and others outside the party machinery to achieve election.

Yours sincerely,



Gwyn Griffiths

MOUNTFORD, Paul

From: captainhastings@orange.net
Sent: 30 June 2012 11:29
To: COMMUNITY GOVERNANCE REVIEW
Subject: crewe town council

Dear Sir/Ms,

I am in favour of 16 councillors and strongly opposed to any greater number.
D P Hughes

MOUNTFORD, Paul

From: TIMPSON, Edward [TIMPSONE@parliament.uk]

Sent: 28 June 2012 15:10

To: COMMUNITY GOVERNANCE REVIEW

Subject: Crewe Community Governance Review

Crewe finds itself in an interesting predicament following a lengthy period of rather cumbersome consultation from Cheshire East Council, the outcome of which will, I am sure, be a new town council for Crewe.

In the first referendum of Crewe taxpayers on the issue, some people found the questions overly complex, but on the other hand proper information was provided to voters about what a town council is, what it will do, and how much it might cost.

Conversely, in the second referendum, a simpler question was, quite rightly, put - yes or no. However the educational material explaining what people were voting for was not sent out.

The difference is that when taxpayers were told what it might cost, they voted against. When taxpayers were not told, they voted for.

So my concern is this: will this town council help make Crewe a better place to live and work, and will it provide value for money?

This is not to suggest that it won't - I very much hope it does. And that is the challenge to those 16 people who are elected in April.

But if it doesn't deliver for the people of Crewe, and address the key problems the town is facing, then they will have the people of Crewe to answer to.

Some of those who have shown interest in standing for the town council are always very quick to criticise Cheshire East Council. Some are Cheshire East councillors themselves, and want a second job.

But very soon, the boot will be on the other foot. They too must be prepared to be held to account for their actions and how they spend our residents' money.

I am not currently convinced that they have properly thought this through, but I hope that in the end they do it wisely.

Edward Timpson
MP for Crewe and Nantwich

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4.

MOUNTFORD, Paul

From: Linda Davenport [lindadavenport@chalc.org.uk]
Sent: 21 June 2012 11:48
To: COMMUNITY GOVERNANCE REVIEW
Subject: Response to Lindsey Parton's email of 12 June - final stage consultation re. Crewe CGR
Follow Up Flag: Follow up
Flag Status: Red

Good morning Lindsey

Thanks for sending over the two documents. I note from the Stakeholder briefing note that elections are planned for April 2013, but thereafter "synchronised with the ordinary date of elections" so I'm assuming the 2013 councillors will serve for two years only then have to stand for re-election in 2015. Please let me know if I have misunderstood Cheshire East's intentions.

You may recall that ChALC, both directly and via Mike Flynn, was involved with the implementation of the Order creating Wilmslow, Styal & Handforth local councils, eg. advising on elements of expenditure to be included in the first precept, supporting candidates with information about the practicalities, powers and duties of being a local councillor and drafting agendas/ providing model documents for the new council's first meeting, and we are equally as happy to provide a service to Crewe if this would assist Cheshire East Council's aims for its new local council.

With best regards, Linda

Linda Davenport
Development Officer
Cheshire Association of Local Councils (ChALC)
Blue Bache Barn
Burleydam
Whitchurch
SY13 4AW
Tel: 01948 871314

MOUNTFORD, Paul

From: peterakent@tiscali.co.uk
Sent: 18 June 2012 00:20
To: COMMUNITY GOVERNANCE REVIEW
Cc: GRAVES, Rachel
Subject: RE: Crewe Community Governance Review
Follow Up Flag: Follow up
Flag Status: Red
Attachments: 2012-06 submission to CEC.doc

Thank you for your invitation to comment on the final stage of the review. Please find attached the response from the "A Voice for Crewe" campaign.

Peter Kent

From: GRAVES, Rachel [mailto:Rachel.Graves@cheshireeast.gov.uk]
Sent: 12 June 2012 08:13
To: 'peterakent@tiscali.co.uk'
Subject: Crewe Community Governance Review

Dear Sir/Madam

The review of Community Governance Arrangements in Crewe is now entering the final stage.

I am contacting you as the Council would welcome your views on this important issue which will be taken into account in reaching any decisions.

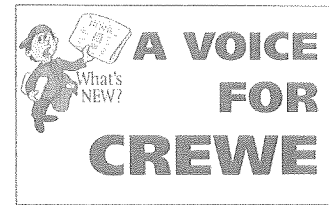
Please find attached a letter and a briefing note which provide information about the final stage of the Review. Further information can be found on the Cheshire East website at www.cheshireeast.gov.uk/crewegovreview

You can respond by email to communitygovernance@cheshireeast.gov.uk or by post to The Registration Service and Business Manager, Democratic Services, Cheshire East Council, Westfields, Sandbach, Cheshire, CW11 1HZ. **Please respond by Monday 2 July 2012.**

Kind regards

Lindsey Parton
Registration Service and Business Manager
Cheshire East Council
Westfields, Sandbach

Tel: 01270 686477



Thank you for the invitation to comment on the final stage of the review of Community Governance Arrangements in Crewe.

There remains really just one point of contention and that is the number of councillors and warding arrangements. The campaign has always argued in favour of 20 members (see our submission in September 2009), based on the existing Borough wards, and with two town councillors for each Borough councillor. In the event of further borough ward boundary changes as populations and electorates change, this is a robust principle that can be maintained, with the least possible administrative cost falling on your council.

Democratic equality

The wards in Crewe are of different sizes and the numbers of Borough councillors have been adjusted appropriately, so that there is broad equality of representation throughout the town.

However, the current proposal of 16 town councillors is achieved by simply adding on 1 for every Borough councillor and this destroys that principle of equality. To be precise, if there are 16 members along the lines of the current suggestion, the number of electors per councillor would be:

- Central 1862 20% below the average, so over-represented
- East 2715 17% above the average, so under-represented
- North 1842 21% below
- St Barnabas 1929 17% below
- South 2458 6% above
- West 2579 11% above

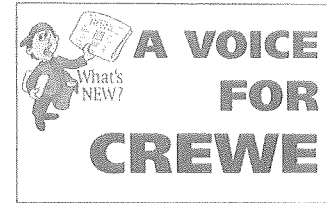
The average number of voters is 2327 and, as you can see, the variation is considerable.

But if there are 20 members, then the figures are:

- Central 1862 Exactly matching the average
- East 1810 3% below
- North 1842 1% below
- St Barnabas 1929 4% above
- South 1844 1% below
- West 1935 4% above

Here the average is 1862 per councillor. And given the Boundary Commission's usual advice of there being no more than 5% deviation from the norm, it fits nicely, as one would expect.

These figures are based on the current electorate as supplied by your own council. The figure for Crewe South excludes that part of the ward lying in Shavington parish. The figures also exclude the 403 residing in the currently unparished area of Leighton, since its future depends on the ballot currently being undertaken. If it were to be



included in the St Barnabas ward for town council purposes, this is clearly an area that would be examined in the next boundary review.

Effectiveness

Our proposal gives a reasonable number of councillors overall, in comparison with other parts of the Borough. Examples abound on this, but the most relevant is probably the one from the most recent review elsewhere in the Borough. Only last year, Cheshire East set up new town councils in Wilmslow, Handforth and in Styal. Wilmslow Town Council has an electorate of 19,088 and 15 council seats – this gives an average of 1272 electors per member. The numbers are lower for Handforth and Styal. Of course, there is a maximum practicable size so if we had the same ratio as Wilmslow it might be thought to be unworkable (though there were 32 on the old Crewe Borough Council). But whilst 15 for Wilmslow is reasonable, 16 for a town almost twice the size is not. We would also draw your attention to the recent decision of Sandbach Town Council, representing 14600 electors, to increase its numbers to 20 because of the workload falling on its members.

Most of these points were advanced at a recent Council meeting and the only point that was raised against was that if you have too many councillors it impedes progress. However, there was no response to the logical response that other councils like Wilmslow, for instance, should therefore look to a reduction in their numbers. I do hope that your members are not so firmly wedded to the idea of 16 members that they will not be prepared to give reasonable consideration to the case for 20.

Yours faithfully,

PETER KENT

Co-ordinator, Campaign for "A Voice for Crewe"

6,

MOUNTFORD, Paul

From: D CANNON [cannon380@btinternet.com]
Sent: 27 June 2012 20:01
To: COMMUNITY GOVERNANCE REVIEW
Subject: CREWE COMMUNITY GOVERNANCE REVIEW
Attachments: CrewWard.pdf; TownCoun2.doc

Lindsey Parton,
Registration Service and Business Manager.

Dear Lindsey,

The two files which are attached to this message together contain the submission by the Liberal Democrats Crewe & Nantwich constituency party to the final stage of public consultation in the Crewe Community Governance Review.

The main text is in "TownCoun2". "CrewWard" is an appendix which suggests how the existing polling districts in Crewe could be grouped to make smaller wards for the proposed Town Council.

Yours sincerely,

David Cannon
for Crewe & Nantwich Liberal Democrats

PROPOSED TOWN COUNCIL FOR CREWE

The Executive Committee of Crewe & Nantwich Liberal Democrats discussed the recommendations from the review of community governance in Crewe at our May meeting.

Members welcome the prospect of a Town Council for Crewe, which we supported in our submission to the earlier stage of public consultation.

One reason for supporting a Town Council was our concern at the size of the job taken on by a Cheshire East councillor representing a Crewe ward. They must be willing to take a strategic view of issues that affect the whole of Cheshire East but also engage with the minutiae of issues that affect only their ward. We also expressed the hope that a Town Council in Crewe would make it easier for people to stand for election for the first time, and thus increase the number of people actively involved in local democracy.

The present proposals for a Town Council only partly address our original hopes and concerns. If the Council is restricted to 16 members, then each councillor will represent many more electors than is the case with existing town and parish councils in Cheshire East. The effect is made worse by the use of multi-member wards based on those used for Cheshire East elections at present. Anyone considering standing for election for the first time faces the daunting prospect of seeking support from a large area, maybe beyond the part of the town for which they have an affinity. Another objection is the variable size of the Cheshire East wards. Voters face the potential confusion of having differing numbers of votes depending on where they live. “First Past the Post” elections, are also often in practice “Winner Takes All” elections when multi-member wards are used. When wards vary in size the party with the most support gains disproportionately.

Liberal Democrats advocate a Town Council of 20 members, so that in effect, each representative of Crewe on Cheshire East Council would be supported by two town councillors. We wish to see the multi-member Cheshire East wards subdivided for the purpose of Town Council elections, to create ten equal sized, two member wards. These wards would correspond more closely with localities that are recognised within the town. The appendix shows how this could be done, using the existing Polling Districts. It is no less feasible to create smaller, equal sized wards for Town Council elections, based on the 16 member council that is proposed in the consultation documents.

APPENDIX

The purpose of this appendix is to show that for Town Council purposes, Crewe may be divided into ten wards, each electing two councillors, using existing polling districts. This requires that the Cheshire East wards of Crewe South and Crewe West be split into two parts, and that Crewe East be split into three parts. These wards could be divided in other ways. Liberal Democrats are not advocating this division more strongly than any alternative: our purpose is to show that splitting the wards is feasible. Numbers of electors are taken from the 2011 register.

CREWE POLLING DISTRICTS

Division of CREWE EAST into three Town Council wards:

Brierley Street area	1AC1	855	
Lea Ave est + part Poets est	1DF1	2114	
Crewe Road estate	1DG1	307	
University	1DG2	60	
"Waldron" Total			3336
Lower Middlewich St	1AD1	1014	
Broughton Rd/ Stoneley Rd	1CC1	412	
Upper Middlewich St	1CD1	1602	
Trees estate west	1CF1	1226	
"Maw Green" Total			4254
Trees estate east	1CE1	1075	
Sydney + part Poets estate	1DF2	2155	
"Sydney" Total			3230
Crewe East	Total		10820

Division of CREWE SOUTH into two Town Council wards:

Bedford St/ Gresty Rd	1DA1	1864	
Brookhouse Dr/ Collinbrook Av	1DB1	1555	
Claughton Ave	1DC1	537	
"Alexandra" Total			3956
Edleston Road area	1DE1	2097	
Rosehill estate	1BD2	416	
Ruskin Park	1BD3	793	
"St John's" Total			3306
Shavington Parish (excluded)	1GM2		
Crewe South	Total		7262

Division of CREWE WEST into two Town Council wards:

Wistaston Green estate	1BA1	1948	
Queens Park Gardens	1BB1	253	
Marshfield estate	1BF1	1223	
Victoria Avenue estate	1BB2	575	
"Queen's Park" Total			3999
Alton Street west	1BC1	1659	
Danebank Avenue	1BD1	1226	
Alton Street east	1DD1	907	
"Valley" Total			3792
Crewe West	Total		7791
CREWE CENTRAL	Total		2999
CREWE NORTH	Total		3592
ST BARNABAS	Total		3788

MOUNTFORD, Paul

From: PAM MINSHALL [pam.minshall@btinternet.com]
Sent: 13 June 2012 15:25
To: COMMUNITY GOVERNANCE REVIEW
Subject: Crewe Town Council
Follow Up Flag: Follow up
Flag Status: Red

We are pleased that at last, the wish for a town council, expressed several years ago by the residents of Crewe, is going to be fulfilled. We agree that the existing wards are the obvious structure, and with the suggestion for the minor anomalies. However, the proposal for 16 councillors seems perplexing and arbitrary since it means that the number of electors per councillor varies considerably while the boundary Commission advises no more than 5% deviation from the norm. We believe that it would be much simpler and fairer to give the new Crewe Council 20 councillors, two for each of the existing Borough Councillors. This would even out the number of electors per councillor, be easy to maintain as boundaries changed and would be more appropriate in comparison with other parish councils in Cheshire East where there are much smaller electorates than will be the case in Crewe, while not being so large as to impede progress.

Pam Minshall

Crewe Historical Society
Valley Community Action Project.

MOUNTFORD, Paul

From: Helen Birtles [helen@birtles6000.freemove.co.uk]

Sent: 12 June 2012 21:34

To: COMMUNITY GOVERNANCE REVIEW

Subject: Local Governance review

Follow Up Flag: Follow up

Flag Status: Red

Dear Rachel

Further to your email, I am writing to confirm that on behalf of the members of Union Street Baptist Church we shall be pleased to see the formation of a Town Council for Crewe. Your plans seem very suitable and we look forward to seeing the results of the election. Thank you for including us.

Helen Birtles

Church Secretary.

From: CREWE CHARTER TRUSTEES
Sent: 05 July 2012 18:47
To: COMMUNITY GOVERNANCE REVIEW
Subject: Crewe Community Governance Review

Importance: High
Dear Lindsey,

This representation is submitted by the Charter Trustees of Crewe in response to the consultation letter dated 11th June 2012 which set out the current proposals contained within the Crewe Community Governance Review.

The response of the Trustees is that they are broadly in agreement with the proposals set out in the briefing note which accompanied the letter of 11th June, with the exception that the proposed number of 16 members for Crewe Town Council is too low and that consideration should be given to its increase before the proposals come into effect.

Regards

Tony Lee

Clerk to the Crewe Charter Trustees
Municipal Buildings, Earle Street, Crewe CW1 2BJ

(01270) 537274 (Tuesdays and Thursdays only)

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Final Results

Area	No of voting papers received	Crewe Town Council	Minshull Vernon & District Parish Council	Rejected	Total	Do totals match?
Leighton (1FJ4)	77	11	66	0	77	YES
TOTALS	77	11	66	0	77	YES

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LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

The Cheshire East Borough Council (Reorganisation of Community Governance) (Crewe) Order 2012

Made [.... October 2012]

Coming into force in accordance with article 1(2)

Cheshire East Borough Council ("the Council"), in accordance with section 83 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"), has undertaken a community governance review and after having made recommendations on 16 May 2012 and having undertaken the processes described below, has made a decision dated 11 October 2012 to which this Order gives effect.

In accordance with section 93 of the 2007 Act, the Council has consulted with the local government electors and other interested persons and has had regard to the need to secure that community governance reflects the identities and interests of the community and is effective and convenient:

The Council, in accordance with section 100 of the 2007 Act, has had regard to guidance issued under that section.

The Council makes the following Order in exercise of the powers conferred by sections 86, 98(3), 98(4), 98(6) and 240(10) of the 2007 Act and of all other powers enabling it in that behalf.

1. Citation and commencement

- (1) This Order may be cited as the Cheshire East Borough Council (Reorganisation of Community Governance) (Crewe) Order 2012.
- (2) Subject to paragraphs (3) and (4) below, this Order comes into force on the 1st April 2013
- (3) Article 8 and Schedule 1 shall come into force on 4 April 2013
- (4) For the purposes of:
 - (a) this Article
 - (b) Article 11, and
 - (c) Article 13 – and all proceedings preliminary or relating to the election of parish councillors for the parish of Crewe to be held on 4 April 2013,this Order shall come into force on the day after that on which it is made.

2. Interpretation

In this Order—

"borough" means the borough of Cheshire East

"existing" means existing on the date this Order is made

"map" means the map marked "Map referred to in the Cheshire East Borough Council (Reorganisation of Community Governance) Order 2012" and deposited in accordance

with section 96(4) of the 2007 Act: and any reference to a numbered sheet is a reference to the sheet of the map which bears that number

“new parish” means the parish constituted by article 4

“ordinary day of election of councillors” has the meaning given by section 37 of the Representation of the People Act 1983 and

“electoral registration officer” means an officer appointed for the purpose of, and in accordance with, section 8 of the Representation of the People Act 1983.

3. Effect of Order

This Order has effect subject to any agreement under section 99 (agreements about incidental matters) of the Local Government and Public Involvement in Health Act 2007 relevant to any provision of this Order.

4. Constitution of new parish

- (1) With effect from 1 April 2013, a new parish, comprising the area outlined in yellow on the map, shall be constituted within the borough.
- (2) The name of the new parish shall be Crewe.

5. Parish Council

- (1) There shall be a parish council for the parish of Crewe.
- (2) The name of that council shall be “The Parish Council of Crewe”.

6. Elections for the parish of Crewe

- (1) Elections of all parish councillors for the parish of Crewe shall be held on 4 April 2013.
- (2) The term of office of every parish councillor elected on 4 April 2013 for the parish of Crewe shall be two years until 2015 and thereafter coincide with the ordinary day of election of parish councillors every four years in accordance with s.16 (3) of the Local Government Act 1972.

7. Number of parish councillors

The number of councillors to be elected for the new parish Council shall be 16.

8. Wards of the new parish of Crewe and numbers of parish councillors

- (1) The Parish of Crewe shall be divided into six wards which shall be named as set out in column (1) of Schedule 1.
- (2) Each parish ward shall comprise the area of the borough ward in Crewe specified in respect of each ward in column (2) of Schedule 1 and designated on the map by reference to the name of the ward and demarcated by green lines.
- (3) The number of councillors to be elected for each ward shall be the number specified in column (3) of Schedule 1.

9. Annual meeting of parish council

The annual meeting of the new parish council in 2013 shall be convened by the Chief Executive of Cheshire East Borough Council. The meeting for the new parish council shall take place no later than 14 days after the day on which the councillors elected to the new parish council take office.

10. Variation to the area of Minshull Vernon and District Parish Council

The area of the Minshull Vernon and District parish council shall be varied to include within the Leighton Urban ward of that parish the unparished part of the borough ward of Leighton (polling district 1FJ4) as indicated by the red line on the map.

11. Calculation of Budget Requirement

For the purposes of regulation 3 of the Local Government Finance (New Parishes) (England) Regulations 2008, there is specified in relation to the parish of Crewe the sum of £xxxxxx.

12. Transfer of property, rights and liabilities

The land, property, rights and liabilities described in Schedule 2 shall transfer from the borough to the new parish council on the date specified in column (2) of that Schedule.

13. Electoral register

The Electoral Registration Officer for the borough shall make such rearrangement of, or adaptation of, the register of local government electors as may be necessary for the purposes of, and in consequence of, this Order.

14. Order date

1st April 2013 is the order date for the purposes of the Local Government (Parishes and Parish Councils) (England) Regulations 2008.

Sealed with the seal of the council on the [] day of [October 2012].

Borough Solicitor

SCHEDULE 1 (ARTICLE 8)**WARDS OF THE PARISH OF CREWE****NAMES AND AREAS OF WARDS AND NUMBERS OF COUNCILLORS**

Column 1 Name of parish Ward	Column 2 Area of Ward	Column 3 Number of parish councillors
Crewe St Barnabas	The whole of the borough ward of St Barnabas as shown on the map	2
Crewe Central	The whole of the borough ward of Crewe Central as shown on the map	2
Crewe North	The whole of the borough ward of Crewe North as shown on the map	2
Crewe South	The whole of the borough ward of Crewe South, except for Gresty Brook (Polling District 1GM2), as shown on the map	3
Crewe East	The whole of the borough ward of Crewe East as shown on the map	4
Crewe West	The whole of the borough ward of Crewe West as shown on the map	3

SCHEDULE 2 (ARTICLE 12)**LAND AND PROPERTY TO BE TRANSFERRED**

Column 1	Column 2
Land and property to be transferred	Date
Public Conveniences at Crewe Market	1 April 2013
Allotments holdings on the basis of 150 leases situated at: Alton Street; Brookhouse Drive; Claughton Avenue; Electricity Street; Ford Lane; Henry Street; Hungerford Road; Hulme Street; Manor Way; Ruskin Road; and Walker Street	1 April 2013

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to a decision made by Cheshire East Borough Council for the creation of a new parish and a parish council for Crewe within the borough of Cheshire East.

The new parish will be created with effect from 1 April 2013. The electoral arrangements for the parish council apply in respect of parish elections to be held on 4 April 2013.

Article 6 provides for the first parish elections in the parish of Crewe in 2013, and then in 2015 and every four years thereafter according to the established system of parish elections.

Article 7 specifies the number of parish councillors for the new parish of Crewe.

Article 8 and Schedule 1 establish the names and areas of the wards of the new parish of Crewe (as indicated on the map) and the numbers of councillors for each ward.

Article 10 provides for a consequential amendment to the area of the Minshull Vernon and District parish council.

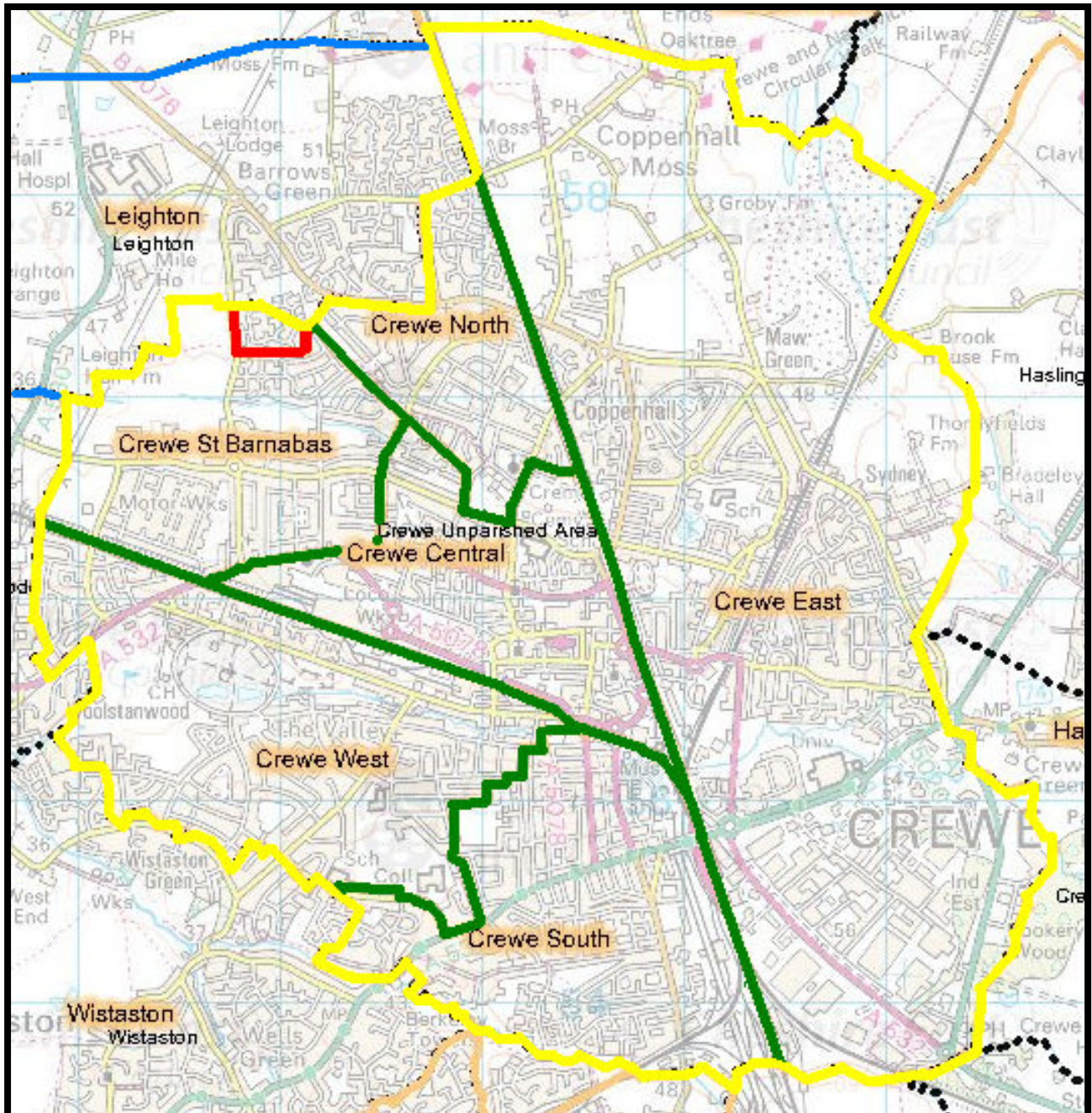
Article 11 specifies the amount of the initial precept for the new parish to be applied in the 2013 – 14 financial year.

Article 13 obliges the Electoral Registration Officer to make any necessary amendments to the electoral register to reflect the new electoral arrangements.

The map defined in Article 2 shows the area comprising the new parish of Crewe and the wards of the new parish, together with the change to the area of Minshull Vernon and District parish. It is available for inspection, at all reasonable times, at the offices of Cheshire East Borough Council.

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**Map Referred to in the Cheshire East Borough Council
(Reorganisation of Community Governance) Order 2012**



Unparished Area
Unparished Area of Leighton
Proposed Crewe Wards
Borough Ward of Leighton



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Draft Budget Year 1 - Crewe Town Council (v.5)

Budget Head	Detail	Amount	Remarks
Staff	Salary (Town Clerk)	£41,616	Full time, Profile of LC3 (SCP 49), depending on qualifications and experience
	Salary (Deputy TC/Ops Offr)	£13,755	Need for this post and hours/week depend on tasks generated by devolved assets/services (assume 20 hours), Profile LC2 (SCP 30 (£25,472 pro rata) depending on qualifications and exp'ce
	Salary (Bookkeeping)	£4,638	Part-time 10 hours/week SCP 18
	Salary (Admin/Mayor's Sec'y)	£16,830	Full time, SCP 17
	Pension	£13,062	If the council wish to offer participation in the Local Government Pension scheme to four staff, this is based on approximately 17% of salaries. Amount calculated using above figures
	Advertising & recruitment	£1,000	Likely to be required for first year only
	Stationery etc.	£4,000	This is to cover the costs of stationery, printing, photocopying and postage, eg. printing & distribution of Newsletters.
Office costs	Rent, rates	£7,000	An office will be required to accommodate both the Clerk and administration
	Energy costs	£2,000	Includes a first year budget for purchasing equipment if necessary (the premises may already have central heating installed, hence this could be less)
	Telephone incl Broadband	£1,000	This includes equipment and initial setup costs and is likely to be lower in future years
	Furniture	£3,000	Amount will increase as more staff are employed.
	PC/Printers	£6,000	Desktop PCs are required for the office and a laptop for the clerk, plus a photocopier/printer capable of producing quality documents. Costs are likely to be lower in future years.
Statutory	Insurance	£3,000	Public/Employer Liability and Fidelity. Plus assets when devolved.
	Audit Fee	£2,500	Internal & External auditor costs
Council costs	Meeting room hire	£2,600	Based upon £100 per meeting [current cost to another CEC Town Council] and 26 meetings (12 full council and three committees - Planning meeting 6 times per year, Finance and one other meeting four times per year). It should be noted that it is possible for Local Councils to meet in schools at cost, ie. heat, light, caretaker wages. However the council is likely to wish to establish its own identity as soon as possible.
	Training	£2,000	Training will be required for both staff and councillors.
	Chairman/Mayor's allowance	£2,500	There are additional costs associated with representing the council and this is usually recognised in a small allowance. This figure excludes mileage or other transport costs.
	ChALC Affiliation Fee	£1,225	Fee 2012/13
Miscellaneous	Christmas Lights	£30,000	Includes provision for the council to spend money to exercise all/any of its powers to benefit the community. Crewe TC may wish to qualify to exercise the General Power of Competence (Localism Act 2011) after having recruited a suitably qualified clerk. Most Local Councils also provide a Grants Scheme for community groups. LGA72 s.137 permits a council to spend money to benefit its community (or part of it) if the council has no other existing power. Size of expenditure must be commensurate with resulting benefit. The s.137 formula to determine the max. expenditure under this section per year = Tariff (for 2012/13 £6.80) x Electorate = £6.80 x 37705 = £256,394.00. As the council will spend time in Year 1 setting itself up, including establishment of requisite procedures, eg. Standing Orders, Financial Regulations, its total expenditure in Year 1 may be unrealistically low compared with its needs in Years 2 onwards.
	Floral Arrangements	£25,000	
	Town Centre Management	£36,000	
	General Grant	£13,000	
	Councillors' allowances	£500	Based on Independent County Remuneration Panel
Elections 2013		£50,000	As this is not a year of ordinary elections
Assets	Allotments	£30,000	Allotment holdings on the basis of 150 lease situated at: Alton Street, Brookhouse Drive, Cloughton Avenue, Electricity Street, Ford Lane, Henry Street, Hungerford Road, Hulme Street, Manor Way, Ruskin Road and Walker Street
	Public Conveniences	£30,000	Public Conveniences in Lyceum Square including two parttime staff.
Total		£342,226	

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the
Community Governance Review Sub-Committee
held on Wednesday, 18th July, 2012 at East Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor D Marren (Chairman)
Councillor P Groves (Vice-Chairman)

Councillors J Jackson, B Murphy and P Whiteley

Absent

Councillor G Baxendale

In attendance

Councillor M Grant

Officers

Lindsey Parton, Registration Service and Business Manager
Mike Flynn, Community Governance Advisor
Chris Allman, Corporate Improvement Project Advisor
Rose Hignett, Senior Electoral Services Officer
Jamie Oliver, Communications Officer
James Morley, Democratic Services Officer

45 DECLARATIONS OF INTEREST

Councillor Janet Jackson declared a personal interest as a Member of the Macclesfield Charter Trustees.

Councillor Brendan Murphy declared a personal interest as a Member of the Macclesfield Charter Trustees.

46 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public who wished to address the Committee.

47 MINUTES OF PREVIOUS MEETING

RESOLVED

- (1) That the minutes of the meeting on the 27th April be approved as a correct record.
- (2) That Councillor J Jackson's abstention from voting on the minutes of the previous meeting be noted.

48 CREWE COMMUNITY GOVERNANCE REVIEW - OUTCOME OF CONSULTATION

The Sub-Committee gave consideration to a report on the outcomes of the third stage of consultation for the Crewe Community Governance Review including the result of the ballot of electors in the unparished part of the Borough ward of Leighton.

The Registration Service and Business Manager presented the report. The report set out the review process so far including the results from the second stage of consultation and draft recommendations proposed by Council on 16th May 2012. Consultation was carried out on these proposals as well as a ballot of electors in the unparished part of Leighton Borough ward who were asked whether they wished to be part of the existing Minshull Vernon & District Parish Council or the new Crewe town council. The Sub-Committee received 8 responses to the third stage of consultation. The results of the ballot and copies of the representations received were appended to the report.

The results of the ballot of electors in unparished part of Leighton showed that 85% of respondents were in favour of being part of Minshull Vernon and District Parish Council.

The Sub-Committee gave consideration to the responses received. The majority of responses commented on the proposed wards for the parish and the number of councillors that would be elected to the parish council. The Sub-Committee agreed that a recommendation to Council on the warding arrangements and number of councillors should be made by the Constitution Committee.

The next phase of the review was to draft a formal Order for the establishment of a parish council for Crewe based on the recommendations of the review. The Order was to be formally made by Council in October 2012. Officers were asked to give consideration to a draft of the Order and present it to the Sub-Committee at a future meeting.

RESOLVED

- (1) That the report and responses to stage 3 consultation of the Crewe Community Governance Review be noted.
- (2) That, having considered the results of the ballot of electors in the unparished part of the Borough ward of Leighton, the Sub-Committee recommend to the Constitution Committee that the unparished part of the Borough ward of Leighton be included as part of the Leighton Urban ward of Minshull Vernon & District Parish Council.
- (3) That a decision on recommendations to Council on the warding arrangements and number of parish councillors for Crewe be deferred to the Constitution Committee.

- (4) That officers be commissioned to carry out work on the drafting of a Reorganisation Order.

49 CREWE COMMUNITY GOVERNANCE REVIEW - DEVELOPING A BUDGET AND TRANSFER OF ASSETS

The Sub-Committee discussed the work required from the Sub-Committee in determining the budget for the parish council's first year of operation. Part of the Reorganisation Order made by Council for the formation of a town council for Crewe would need to include a budget for the first year of operation and precept to be paid by residents of the parish. The Order would also include any assets to be transferred to the parish council from the Borough Council (Cheshire East Council).

The Sub-Committee agreed that the budget needed by the parish council would depend on the level of activity expected and the value and cost of assets to be transferred to the parish council. Consideration was given to the types of assets that may be transferred to the parish council such as public toilets and allotments which are assets which have typically been transferred to town and parish councils in other parts of the Borough. Consideration was also given to the possibility of transferring specific assets relevant to Crewe such as the Market Hall, Lyceum Theatre and Queens Park.

A Special Expenses Levy was a charge made by the Borough Council to residents in an area who benefit from a particular asset (e.g. leisure centre/park) provided by the Borough Council. The purpose of this was to ensure that local people benefiting from an asset were paying for it as opposed to all residents of a Borough covering the cost as part of Council Tax. It was suggested that if a special expenses levy was going to be applied by the Borough Council to an asset then it may be beneficial to residents for the local parish council to receive the asset from the Borough Council and charge a precept to residents to fund the asset. In this case the local residents would still be covering the cost however would have more say in the operation of the asset at a local level.

It was unclear what types of assets could be included in a reorganisation order and which would require negotiation with the parish council once formed and handed over to elected parish councillors. The Sub-Committee required officers to give legal and financial advice on plans and proposals regarding assets.

There seemed to be a consensus that £50-£60 as a precept seemed reasonable when compared to precepts in existing parish councils and considering the potential needs of the Crewe town council. The Sub-Committee agreed that once a budget and precept is proposed by Cheshire East Council it will be necessary to communicate this to residents effectively to explain the reasons for the budget and precept chosen.

RESOLVED

That officers be requested to consider what assets could be transferred to the new town council including the implications on budget requirement so that a budget and precept for 2013/14 can be identified for inclusion in the draft Reorganisation Order. Consideration would need to be given to the effect special expense levies would have on council tax bills for residents of Crewe.

50 COMMUNITY TRUSTS

Item 8 on Community Trusts was moved to Item 6 of the Agenda.

There had been confusion among Councillors, members of the public and Officers about the possibility of a community trust being set up to receive assets and deliver services particularly as part of the options for the Macclesfield Community Governance Review. Clarification had been sought by Councillors from Officers about any powers under legislation that Cheshire East Council had in setting up such a Trust.

Officers confirmed that legal advice had been sought and would report their findings to the Sub-Committee in due course.

51 MACCLESFIELD COMMUNITY GOVERNANCE REVIEW - PROJECT PLAN

The Sub-Committee gave consideration to the proposed project plan for Stage 1 of the consultation for the Macclesfield Community Governance Review including proposed arrangements for public meetings to be held.

A decision had originally been made to fast track the review for Macclesfield to complete the review and produce an Order in time for the February 2013 meeting of Full Council so that if a Parish Council for Macclesfield was recommended it could be created in April 2013. Public meetings for the review had been planned for August during school summer holidays. The Sub-Committee believed that the Council may receive criticism for this due to many members of the public taking vacations during August and being unable to attend the meetings.

This was now considered to be an unrealistic timescale and in order to complete a robust and comprehensive review it was agreed that a new project plan would be needed. The Sub-Committee agreed that lessons needed to be learned and absorbed from the Crewe Community Governance Review and put into practice during the Macclesfield Review. Officers would be given more time to develop the literature for Stage 1 of the review and public meetings could be held once the school summer holidays had ended.

It was originally proposed that two public meetings would be held at Macclesfield Town Hall. It was suggested that several meetings should be held in various locations around the unparished area to improve publicity and coverage of the review.

It was noted that, unlike the Crewe Community Governance Review, there was no requirement for the Macclesfield Community Governance Review to be completed within a period of 12 months as the 12 month deadline only applied to reviews that had been carried out as a result of a petition.

RESOLVED

That the proposed project plan illustrated in the Agenda be rejected and officers be requested to return to the Sub-Committee with a revised longer term project plan for stage 1 of the review at the next meeting.

52 MACCLESFIELD COMMUNITY GOVERNANCE REVIEW - STAGE 1 CONSULTATION

The Item on Macclesfield Community Governance Review – Stage 1 Consultation was deferred to a later meeting due to the rejection of the project plan for the Macclesfield Community Governance Review during the previous item.

53 DATE OF NEXT MEETING

The Sub-Committee discussed possible dates for the next meeting.

RESOLVED

- (1) That the next meeting of the Sub-Committee be held on Wednesday 8th August 2012 at 9am.
- (2) That a tentative date of Wednesday 29th August at 9am be held for the subsequent meeting of the Sub-Committee.

The meeting commenced at 10.04 am and concluded at 11.35 am

Councillor D Marren (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the
Community Governance Review Sub-Committee
held on Tuesday, 4th September, 2012 at East Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor D Marren (Chairman)
Councillor P Groves (Vice-Chairman)

Councillors D Bebbington (for Cllr Baxendale), S Hogben (for Cllr Jackson)
and P Whiteley

In attendance

Councillor R Cartlidge

Officers

Brian Reed, Democratic and Registration Services Manager
Mike Flynn, Community Governance Adviser
Julie Openshaw, Deputy Monitoring Officer
Paul Mountford, Democratic Services Officer
James Morley, Democratic Services Officer
Rose Hignett, Senior Electoral Services Officer

Apologies

Councillors G Baxendale, J Jackson and B Murphy

54 DECLARATIONS OF INTEREST

Councillors D Bebbington, R Cartlidge and S Hogben declared non-pecuniary interests as Crewe Charter Trustees.

Councillors Cartlidge and Hogben also declared disclosable pecuniary interests as holders of allotments in the unparished part of Crewe and signalled their intention of leaving the meeting prior to the matter of allotments being considered.

55 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

56 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting of 18th July 2012 be approved as a correct record.

57 MACCLESFIELD COMMUNITY GOVERNANCE REVIEW

The Sub-Committee considered a revised project plan and timetable for the Macclesfield community governance review.

Councillor Murphy, who had been unable to attend the meeting, had indicated that he had no particular comments to make on the project plan.

RESOLVED

That the revised project plan for the Macclesfield community governance review be approved.

58 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED

That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

59 CREWE COMMUNITY GOVERNANCE REVIEW

The Sub-Committee considered the further advice of counsel relating specifically to the transfer of assets and services to the proposed Crewe parish council.

The Local Government and Public Involvement in Health Act 2007 gave a principal council the power to include within a reorganisation order provisions for the transfer of assets and functions to a new parish council. However, such powers had to be exercised rationally, taking into account all relevant considerations such as the parish council's ability and willingness to manage an asset or provide a service.

Counsel had also commented in particular on the transfer of allotments and public conveniences. It was counsel's view that Cheshire East Council would be required to transfer any allotments it held to the new parish council and to make provision for their administration in the budget for the new council. The position in relation to the transfer of public conveniences was different and the Council would have to make a decision on whether it would be reasonable to make such a transfer. In so doing, the Council would need to take into account the condition and maintenance costs of conveniences.

Having considered the advice of counsel, the Sub-Committee proceeded to consider the implications for the transfer of assets and in particular public conveniences and allotments.

It was noted that the public conveniences in Lyceum Square, Crewe were fairly new and in a good state of repair. It was suggested that these toilets could be transferred on the basis that Cheshire East Council remained responsible for their management for an initial period of three months.

RESOLVED

That it be recommended that the public conveniences in Lyceum Square, Crewe be transferred to the new parish council with effect from 1st April 2013 but Cheshire East Council continue to manage the facilities for the first three months; a sum of £30,000 be included in the budget for the first year of the parish council to cover the cost of managing these assets.

At this point, Councillors Cartlidge and Hogben, having declared disclosable pecuniary interests as allotment holders earlier in the meeting, left the meeting.

Members noted the legal advice that allotments must transfer to the new parish council. Members felt however that there was a need to protect the future use of the sites which could be done by transferring the leasehold only.

RESOLVED

That it be recommended that the allotments within the unparished part of Crewe be transferred to the new parish council with effect from 1st April 2013 on the basis of a 150 year lease; a sum of £30,000 be included in the budget for the first year of the parish council to cover the cost of managing these assets.

In taking this decision, and whilst acknowledging the need to comply with the requirements of the new Member Code of Conduct, the Members present, all being Conservative, expressed concern that the two Labour Members at the meeting had been excluded during the consideration of the allotments and the decision taken thereon.

At the conclusion of the Sub-Committee's consideration of this matter, the Chairman invited Councillors Cartlidge and Hogben to return to the meeting, which they did.

60 PUBLIC AND PRESS RE-ADMITTED

RESOLVED

That the Sub-Committee return to the remaining business under Part 1 of the agenda and the public and press be readmitted to the meeting.

61 CREWE COMMUNITY GOVERNANCE REVIEW

Draft Budget

The Sub-Committee considered a draft budget for the first year of the proposed parish council.

In considering this matter, Members asked what would happen with the bank account and assets held by the Crewe Charter Trustees. Officers undertook to investigate and report back.

Members also sought clarification of the precepting mechanism. Subject to further advice from Finance officers, the officers present advised that once the precept had been included in the order, Cheshire East Council would issue the bills to households.

RESOLVED

That

(1) it be recommended that the draft budget be approved subject to the following amendments:

- (a) the deletion of the budget headings for general grant and councillors' allowances;
- (b) the inclusion of the following additional budget headings and amounts:

Christmas Lights	£30,000
Town Centre Management	£36,000
Floral Displays	£25,000
Councillors' Expenses	£500
Community Grants	£13,000

(2) it be noted that the revised budget will also include the provisions for public conveniences and allotments as approved earlier in the meeting.

This would bring the budget total to £342,000. The Chairman urged Opposition Members present to discuss within their Group whether this amount would be sufficient for the first year of the new parish council.

Draft Order

The Sub-Committee considered a draft reorganisation order for the unparished part of Crewe.

Officers advised that it may be necessary to include in the order reference to the unparished part of Leighton for which separate arrangements were proposed. Officers had arranged a meeting with representatives of

Minshull Vernon and District Parish Council on 12th September to discuss the matter. There was some discussion about whether it would be necessary to hold parish elections in Leighton, given that the 400 or so electors to be added to that parish would not have voted in the parish elections but would presumably be paying a parish precept. Some Members considered this unlikely and that in all likelihood the parish council would co-opt if an additional parish councillor for the enlarged parish was considered necessary.

The Council's Legal Officer at the meeting advised that any decision of the Sub-Committee on the draft order would by implication relate to any relevant assets, including the allotments. Councillors Cartlidge and Hogben, having declared disclosable pecuniary interests as allotments holders earlier in the meeting, left the meeting prior to a decision on this matter.

RESOLVED

That the draft order be recommended for approval subject to the inclusion of reference to the arrangements for the unparished part of Leighton.

Councillors Cartlidge and Hogben were invited to return to the meeting.

Councillor and Warding Arrangements

RESOLVED

That the matter of the number of councillors and distribution of wards within the proposed Crewe parish be left for the Constitution Committee to consider and make recommendations to Council.

Preparatory Role for Sub-Committee

RESOLVED

That the Constitution Committee be recommended to extend the terms of reference of the Community Governance Review Sub-Committee to enable the Sub-Committee to take all necessary actions in preparation for the new Crewe parish council.

The meeting commenced at 2.00 pm and concluded at 3.56 pm

Councillor D Marren (Chairman)

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Democratic and Registration Services Manager
Subject/Title: Notice of Motion - Motions to Council

1.0 Report Summary

- 1.1 This report responds to a motion, referred from Council on 19th July to the Constitution Committee, and seeks a recommendation back to Council.

2.0 Recommendation

- 2.1 That the recommendations contained in paragraph 9 of the report be considered by the Committee, and that if Council is recommended to make changes to the Constitution, the Borough Solicitor be authorised to make such changes to the Constitution as she considers are necessary to give effect to the wishes of Council.

3.0 Wards Affected

- 3.1 There are no direct ward implications and therefore no direct implications for ward members.

4.0 Policy Implications

- 4.1 Any decision by Council to make changes to the way in which motions are dealt with would need to be reflected in changes to the Constitution.

5.0 Financial Implications

- 5.1 No financial implications would appear to directly arise from the issues addressed in this report.

6.0 Legal Implications

- 6.1 If any changes are to be made to the way in which motions are dealt with, these would need to result in a recommendation from the Committee to Council, following which constitutional change would be required.

7.0 Risk Management

- 7.1 No risks would appear to arise directly from the issues addressed in this report although a more focussed and succinct process for dealing with motions would result in fewer risks of motions being overlooked or delayed.

8.0 Background and Options

- 8.1 At the Council meeting on 19th July 2012, the following motion was proposed by Councillor Arthur Moran, and was seconded by Councillor David Brickhill:

“That all motions that are referred by Council to a Committee or Cabinet must be put on the agenda of the next meeting of that body or brought back to the next Council meeting for vote on a final decision.”

- 8.2 As this motion related to a non-executive matter, it stood referred without discussion to the decision-making body in question (in this case the Constitution Committee), in order for advice to be offered to Council on the matter.
- 8.3 The motion would appear to seek to address the need for motions to be dealt with quickly in order to respond to Member concerns. This touches on the speed with which officers respond to motions from Council, and the procedure which applies to motions.

9.0 Procedure

- 9.1 Appendix 2 to the Council Procedure Rules (pg 209 of the Constitution) deals with the procedure relating to motions. Once a motion has been referred to a body for consideration, the mover of the motion is notified of the meeting at which it will be considered and is provided with a copy of the report. The mover is invited to attend the meeting in order to explain the motion. The mover and seconder are informed of the outcome in writing or by email.
- 9.2 Paragraph 1 requires signed notices of motion to be given in writing to the Monitoring Officer seven clear working days before the Council meeting.

Recommendation: it is recommended that these provisions should be retained, except that:

- the Democratic and Registration Services Manager should also be a nominated recipient of notices of motion in order to enable Members to lodge them when the Monitoring Officer is on leave;
- given that Members often need to submit notices of motion by email, a signature should not be a requirement of the process;

- 9.3 Paragraph 2 requires motions to be listed in the Council “summons”.

Recommendation: it is recommended that the Rules should be amended to make it clear that the full text of motions will be reproduced in the agenda papers for each Council meeting.

- 9.4 Paragraph 3: permits the mover of a motion to withdraw it if the seconder consents in writing.

Recommendation: it is recommended that the consent of the seconder to the withdrawal of the motion should be permitted to be given orally at the meeting, rather than being required to be given in writing.

- 9.5 Paragraph 4: says that a motion will be treated as withdrawn if not moved by or on behalf of the Member who gave notice of it.

Recommendation: It is recommended that that a motion should be treated as withdrawn if it is not also seconded.

- 9.6 Paragraph 5: seeks to deal with those motions which refer to non-executive (ie “regulatory” or non-Cabinet/Portfolio matters) functions. This paragraph is complicated by the fact that reference is made to the Cabinet within the text of the paragraph. The Rules go on to require the Mayor to determine which Council body should deal with the motion and says that the views of that body will be sought before a report is brought back to Council on the matter.

The Rule presumes that the matter will stand referred to that body without discussion unless the Mayor considers it “conducive to the despatch of business” for the motion to be determined at the initial Council meeting.

It could be said that the procedure for non-executive functions is problematic in that it results in delay. Unless motions are dealt with at the initial Council meeting (which is very much the exception) the matter must await the research and writing of a report by officers; the presentation of the report to a committee or other body of the Council; the recommendations of that body, and then for the matter to be presented back to Full Council. As is explored in the next piece of commentary relating to Paragraph 6, there is also a question as to why motions should have a different procedure depending upon whether they are “executive” or “non-executive” in nature.

Paragraph 6: seeks to deal with those matters which refer to executive (ie Cabinet/Portfolio matters) functions. These motions stand referred to Cabinet, but are allowed to be debated for up to 15 minutes at the Council meeting, following which the appropriate Portfolio Holder may respond.

Recommendations:

- That there should be no distinction in the Rules between executive and non-executive functions. There should be one Rule, which simply requires

the motion in question to be referred to the relevant decision-making body, which will be announced at Council by the Mayor.

- That each motion, should simply be referred to the relevant decision-making body for determination.
- That the relevant decision-making body determines the issues referred to in the motion rather than these being referred back to Council (in those cases where the existing Rules would currently require this); the only circumstances in which a report being required to be made back to Council would be when Constitutional change was recommended by the Constitution Committee.
- That, following the motion being moved and seconded at Council, the motion stands referred without debate to the appropriate decision-making body.
- That a decision be made upon whether a provision should be built into the Rules that, once moved and seconded, Council could decide to take no further action whatsoever on a motion if this is moved, seconded, and resolved. If it is proposed that this should be built into the Rules, recommendations would be required as to how this Rule should operate eg that debate would be allowed.
- That, unless it is agreed with the Chairman of the appropriate decision-making body that there are good reasons to the contrary (eg the need for extensive research or consultation with other bodies), motions must be referred to the appropriate decision-making body within two meeting cycles (ie to enable the officers to report to two meetings, taking into account reporting deadlines).
- That the existing provision which allows the Mayor to determine that it is conducive to the despatch of business for a motion to be dealt with in full at the initial Council meeting should be retained.

10.0 Access to Information

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

Name: Brian Reed
Designation: Democratic and Registration Services Manager
Tel No: 01270 686670
Email: brian.reed@cheshireeast.gov.uk

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Notice of Motion - Right to Speak at Meetings

1.0 Report Summary

- 1.1 This report responds to a motion, referred by Council on 19th July 2012 to the Constitution Committee, and seeks a recommendation back to Council.

2.0 Recommendation

- 2.1 That the Committee consider the motion and decide what advice to offer to Council.

3.0 Reasons for Recommendations

- 3.1 To offer advice to Council.

4.0 Wards Affected

- 4.1 N/A

5.0 Local Ward Members

- 5.1 N/A

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 arrangements for speaking at meetings may require an amendment to the Constitution.

9.0 Risk Management

- 9.1 There are no risks identified with this matter.

10.0 Background

- 10.1 At the Council meeting on 19th July 2012, Councillor A Moran proposed and Councillor P Edwards seconded the following motion under Council Procedure Rule 12:

“That visiting members to all Cabinet meetings, committees and sub-committees have the right to speak once on each separate item on the agenda before the debate proper commences. This will apply to all items on the agenda including part 2 items.”

The motion was referred to the Constitution Committee for consideration.

11.0 Current Arrangements

- 11.1 Under the current arrangements as set out in the Constitution, any member may attend any meeting and, with the consent of the chairman or person presiding, speak on any matter on the agenda. This includes Part 2 business except where this concerns vulnerable adults or children, or individual members of staff, in which case the member must demonstrate a need to know in accordance with the Access to Information Procedure Rules.
- 11.2 Special circumstances apply to planning meetings and Licensing Act Sub-Committee meetings. Planning meetings are governed by a public speaking protocol which allows non-committee members to speak for a limited period provided they have registered beforehand. Licensing Act Sub-Committee meetings are governed by a statutory procedure which restricts participation by non-committee members.
- 11.3 Certain categories of members already have the right to speak at meetings. These include local ward members where a matter specifically affects their ward, and scrutiny chairmen and spokesmen who may attend and speak at the Cabinet and relevant Portfolio Holder meetings. Members who have submitted a motion at Council under Procedure Rule 12 may speak on that motion at the meeting to which the motion has been referred.

12.0 The proposal

- 12.1 The motion proposes that all visiting members should have the right to speak once on any item on the agenda and that this right should be exercised ‘before the debate proper commences’. The motion does not suggest how long a visiting member should be allowed to speak on a matter.
- 12.2 The proposal would enable visiting members attending a meeting to speak without having to rely on the discretion of the chairman.
- 12.3 It is currently the practice at Cabinet meetings to invite visiting members to speak immediately after the report has been introduced. At other meetings, a less formal approach has been adopted hitherto.

- 12.4 The officers have informally consulted the Chairman and Vice-Chairman of this Committee who are of the view that because of the need to manage the business of the meeting efficiently and effectively, and given the potential for delay if a significant number of visiting members wished to speak on a number of items, the ability of visiting members to speak at meetings should continue to be left to the discretion of the Chairman.

13.0 Access to Information

Background papers:

Cheshire East Council Constitution (available as a public document on the website):

Committee Procedure Rules, paragraph 38

Cabinet Procedure Rules, paragraph 45

Access to Information Act Procedure Rules, paragraph 19

Planning Protocol on Public Speaking

Local Ward Member Protocol

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

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Designation: Democratic Services Officer

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Email: paul.mountford@cheshireeast.gov.uk

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	20 th September 2012
Report of:	Borough Solicitor
Subject/Title:	Notice of Motion - Confidentiality

1.0 Report Summary

- 1.1 This report invites the Committee to consider the following Motion, proposed by Councillor B Murphy and seconded by Councillor P Edwards - "In the light of the ever-growing demand for public accountability in public services and the need to sustain public trust and confidence in democratic governance, this Council calls for a review of its policies and protocols in relation to confidentiality." which has been referred by Council to the Committee for consideration.

- 1.2 Councillor Murphy has provided the following additional comments by way of explanation:

"My aim is to maximise transparency and openness. I believe "confidentiality" is frequently applied when it need not be so and, in the context of the values and attitudes that now prevail, there should be a tighter definition of confidentiality and "need-to-know". I would also like to have consideration of the rules on audio/visual recording of meetings open to the press and public.

Clearly, information about personal affairs or 3rd party commercial information that are not relevant or material to an item under consideration and cannot be redacted or securely "anonymised" or are protected by statutory or judicial rulings against publication or have not been placed in the public domain should always be subject to confidentiality.

Commercial contracts should be open to public scrutiny except for those elements which do not relate to the terms and conditions of the contract or that contain confidential technical information or information that has no bearing on the "value for money" considerations or is likely to restrict the Council's freedom of choice.

Where there is doubt, the first option should be to determine whether the information at issue could be redacted."

2.0 Recommendation

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

3.0 Reasons for Recommendations

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

4.0 Wards Affected

4.1 None

5.0 Local Ward Members

5.1 All Members are affected by this matter.

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 None identified.

9.0 Risk Management

9.1 None identified.

10.0 Background and Options

10.1 On 19th July Council considered a Notice of Motion submitted by Councillor Murphy on a review of its policies and protocols in relation to confidentiality.

10.2 Cheshire East Council is committed to making as much information as possible available to the general public while at the same time protecting the privacy and confidentiality of our citizens. The Council has a compliance unit which ensures that Cheshire East Council abides by the following legislation:-

The Freedom of Information Act 2000 - which entitles the public to ask for any recorded information the Council keeps.

The Environmental Information Regulations 2004 - which gives the public and organisations the right to access environmental information.

The Data Protection Act 1998 - which requires anyone who handles personal information to comply with eight principles regarding privacy and disclosure. It also gives individuals rights over their own personal information.

The Re-use of Public Sector Information Regulations 2005 - which provides a framework for encouraging the re-use of public sector information.

10.3 Every public authority subject to the Freedom of Information Act 2000 (FOI) is required to adopt and maintain a publication scheme. A publication scheme is a commitment to routinely and proactively provide information to the public. A publication scheme contains seven classes of information, they are;

- Who we are and what we do
- What we spend and how we spend it
- What our priorities are and how we are doing
- How we make decisions
- Our policies and procedures
- Lists and registers
- The services we offer

Cheshire East Council provides this information through its website. In addition it also publishes details of:

- Payments over £500 made by the council
- an organisational chart of the staff structure of the local authority
- salaries for staff earning over £55,000 a year,
- the powers and responsibilities of senior officers
- Councillor allowances and expenses
- the democratic running of the Council

10.4 Wherever possible information will be provided on the website. Where it is impracticable to make information available on the website or when an individual does not wish to access the information in this way, the Council will indicate how information can be obtained by other means.

10.5 In certain circumstances information may only be available by viewing in person. Where this is specified contact details will be provided and an appointment can be made within a reasonable timescale.

10.6 The Councils Access to Information rules set out the framework that governs the publication of information in relation to the Councils formal decision making arrangements. These are set out in Appendix 1. Minutes and Agenda and decisions of formal meetings are published on the website.

- 10.7 Within the Council there is a culture of openness and transparency, and this is supported by the amount of information published on the website.
- 10.8 If Committee Members believe that a review is required then Committee might wish to invite officers to review the approaches in other local authorities and consult further with all members of the Council on this matter before submitting a comprehensive report on the matter.

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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Designation: Democratic Services Team Manager
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ACCESS TO INFORMATION PROCEDURE RULES

INTRODUCTION

The access to information rules which apply to Council meetings and committees of the Council are set out in sections 100A-H and Schedule 12A of the Local Government Act 1972. As the Council is functioning under an executive form of governance it is bound by further access to information rules contained in The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended). These rules comply with both statutory provisions.

1.0 SCOPE

- 1.1 These rules cover all meetings of the Council and its Committees, Sub-Committees, Advisory Panels, Cabinet (together called meetings) and (where specified) executive decisions made by individual Members and Key Decisions made by Officers.
- 1.2 These rules also cover Members' rights of access to information.
- 1.3 These rules do not cover public rights of access to information under the Freedom of Information Act 2000, and the Data Protection Act 1998. These can be found on the Council's website or obtained from the Westfields
- 1.4 These rules do not affect any more specific right to information contained elsewhere in this Constitution in any Act.

2.0 PUBLIC ACCESS TO MEETINGS

- 2.1 Members of the public may attend all meetings subject only to the exceptions in these rules.

3.0 NOTICE OF MEETINGS

- 3.1 The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at Westfields, Middlewich Road, Sandbach, CW11 1HZ (the designated office) and on its website. The notice will specify the business proposed to be transacted at the meeting.
- 3.2 Members entitled to attend a meeting, will receive a summons giving five clear working days' notice to attend and specifying the business proposed to be transacted at the meeting. Except in the case of business required by law to be transacted at the annual meeting, or other business brought before the meeting as a matter of urgency in

accordance with the Constitution, no business shall be transacted at a meeting other than that specified in the summons.

4.0 PUBLIC ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

- 4.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least 5 clear working days before the meeting, except that where a meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened.
- 4.2 Where an item is added to the agenda, and the report is open to the public, copies of any report for the meeting relating to the item, and the revised agenda shall be available for inspection from the time the item is added to the agenda.
- 4.3 Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless, by reason of special circumstances, which shall be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

5.0 PUBLIC ACCESS TO COPIES

- 5.1 The Council will supply copies of:
- (a) any agenda and reports which are open to public inspection;
 - (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
 - (c) if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a charge for postage, copying and any other costs.
- 5.2 Copies of the agendas of Cabinet meetings will be circulated to all Members.
- 5.3 The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.

6.0 PUBLIC ACCESS TO MINUTES ETC AFTER THE MEETING

- 6.1 The Council will make available for inspection copies of the following for six years after a meeting:

- (a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information (as defined in Rules 9 and 10);
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public

7.0 PUBLIC ACCESS TO BACKGROUND PAPERS

7.1 List of Background Papers

The author of a report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report

but this does not include published works or those which disclose exempt or confidential information (as defined in Rules 9 and 10), nor in respect of executive reports, does this include the advice of a political advisor, or any draft report or document.

7.2 Public inspection

- (a) A copy of each of the documents listed will be available for inspection at the same time as the report is available for public inspection.
- (b) The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

8.0 EXCLUSION OF PUBLIC ACCESS TO REPORTS

- 8.1 The Proper Officer will exclude access by the public to reports which in his opinion contain confidential information, (as defined in Rule 9).

- 8.2 If the Proper Officer thinks fit, access by the public may also be excluded to reports which in his opinion relate to items during which, in accordance with Rule 10 (Exempt Information) the meeting is likely not to be open to the public.
- 8.3 Such reports will be marked “Not for publication” together with “confidential information” or the exemption relied upon.
- 8.4 Where an exemption is relied upon, any such report must contain the reasons why, as in all in the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

9.0 CONFIDENTIAL INFORMATION – REQUIREMENT TO EXCLUDE PUBLIC ACCESS

- 9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.
- 9.2 Confidential information means
- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
 - (b) information the disclosure of which to the public is prohibited by or under another Act or by Court.

10.0 EXEMPT INFORMATION – DISCRETION TO EXCLUDE PUBLIC ACCESS TO MEETINGS

10. 1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:
- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies;
 - (b) that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below), the description of the exempt information giving rise to the exclusion of the public; and
 - (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.
- 10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.
- 10.4 Exempt information means information falling within the following categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information which is likely to reveal the identity of an individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). "Financial or business affairs" includes contemplated, as well as past or current, activities	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information Information within paragraph 3 is not exempt if it must be registered under (a) the Companies Act 1985; (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992; (d) the Industrial and Provident Societies Acts 1965 to 1978; (e) the Building Societies Act 1986; or (f) the Charities Act 1993.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Category	Condition
<p>officer-holders under the authority.</p> <p>“Labour relations matter” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter</p>	
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>6. Information which reveals that the authority proposes –</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>

EXCEPT THAT

Information falling within any of paragraphs 1-7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.

The following will also be exempt information for some meetings of the Standards Committee or a Sub-Committee of it.¹

¹ Where a Standards Committee is convened to consider a matter referred under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008 or referred under section 58 (1)(c) of the Local Government Act 2000.

Category	Condition
7A. Information which is subject to any obligation of confidentiality.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7B. Information which relates in any way to matters concerning national security.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7C. Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 and 16 to 20 of the Standards Committee (England) Regulations 2008, (referrals to and references from Monitoring Officers) or referred under section 58(1)(c) of the Local Government Act 2000 (failure to comply with Code of Conduct).	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

10.5 Procedure at Standards Committee (Complaints and reviews)

When a meeting of a Sub-Committee of the Standards Committee is convened to consider a written complaint ¹ or to review a decision² then Part 5A of the Local Government Act 1972 does not apply to those meetings. Regulation 8 of the Standards Committee (England) Regulations 2008 applies to those meetings generally and Regulation 8(5)(a) governs the production and publication of a written summary of the sub-committees decision.

10.6 Disorderly Conduct – discretion to exclude public

The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

¹ Received under Section 57A(1) of the Local Government Act 2000

² Under Section 57B of the Local Government Act 2000

11.0 PUBLIC ACCESS TO CABINET MEETINGS

11.1 The Cabinet has decided that all of its meetings and its Committees are to be held in public whether or not a Key Decision is to be made and the preceding rules 1 – 10 therefore apply.

11.2 However if a Key Decision is to be made Rules 11 to 16 below also apply

A “key decision” means an executive decision which, is likely

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

11.3 If the Cabinet or its Committees meet to discuss a key decision that is due to be taken collectively and

- a) an Officer (other than a political adviser) is present at the discussion
- b) the discussion is within 28 days of the date by which, according to the Forward Plan, the decision is to be made

then Rules 1 – 11 must be complied with unless Rule 15 (general exception) or

Rule 16 (special urgency) applies or the principal purpose of the meeting is for the Officer to brief the decision maker on matters connected with the making of the executive decision.

12.0 PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a Key Decision may not be taken unless:

- (a) a notice (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 3

13.0 THE FORWARD PLAN

13.1 Period of Forward Plan

Forward plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan. They will contain outstanding matters from the previous forward plan.

13.2 Content of Forward Plan

13.2.1 The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 14 days before the start of the period covered and made available to the relevant Scrutiny Committees. It will describe the following particulars in so far as the information is available or might reasonably be obtained

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

13.2.2 The Proper Officer will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that Key Decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the Key Decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the Key Decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

13.2.3 Exempt information (as defined in Rule 10) and the advice of political advisers need not be included in a forward plan and confidential information (as defined in Rule 9) cannot be included, but the Forward Plan should contain particulars of the matter.

14.0 GENERAL EXCEPTION

14.1 If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 15 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next Forward Plan relates;

- (b) the Proper Officer has informed the chairman of a relevant scrutiny committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made;
- (c) the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Proper Officer complied with (b) and (c).

14.2 Where such a decision is taken collectively, it must be taken in public.

15.0 SPECIAL URGENCY

15.1 If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chairman of the body making the decision, obtains the agreement of the chairman of a relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred and the decision is urgent. If there is no chairman of a relevant Scrutiny Committee, or if the chairman of the relevant Scrutiny Committee is unable to act, then the agreement of the Mayor of the Council, or in his/her absence the Deputy Mayor will suffice.

16.0 REPORTS TO COUNCIL

16.1 When a Scrutiny Committee can require a report

Where an executive decision has been made and was not treated as a Key Decision and a relevant Scrutiny Committee thinks that it should have been treated as a Key Decision the Scrutiny Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Scrutiny Committee specifies. The power to require a report rests with the Committee but is also delegated to the Chief Executive who shall require such a report on behalf of the Committee when so requested by the Chairman of the Committee or any 5 Members. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant Scrutiny Committee.

16.2 The Cabinet's report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the resolution of the Scrutiny Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the leader is of the opinion that it was not a key decision, the reasons for that opinion.

16.3 Quarterly reports on special urgency decisions

In any event the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

17.0 PUBLIC ACCESS TO CABINET DECISIONS - RECORD OF DECISIONS

- 17.1 After any meeting of the Cabinet or any of its Committees, the Proper Officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as reasonably practicable and make it available for inspection by the public. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

18.0 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET OR OFFICERS

- 18.1 Public access to reports intended to be taken into account

Where an Individual Cabinet Member or Officer receives a report which he/she intends to take into account in making any Key Decision, then he/she will not make the decision until the report has been available for public inspection for at least five clear working days.

- 18.2 Provision of copies of reports to Scrutiny Committees

On giving such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chair of every relevant Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

- 18.3 Public access to record of individual decision

As soon as reasonably practicable after any executive decision has been made by an individual member of the Cabinet or a Key Decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 6 and 7 (inspection of documents after meetings) will also apply to the making of Key Decisions by Directors. This does not require the disclosure of exempt or confidential information, or advice from a political adviser or assistant.

19.0 MEMBER ACCESS TO EXEMPT OR CONFIDENTIAL DOCUMENTS

- 19.1 This section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.
- 19.2 Members of a committee or decision-making body of the Council or of the executive are automatically provided with, and entitled to receive, copies of confidential or exempt reports.
- 19.3 In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:
- Group Leaders
 - Local Ward Members for the Ward affected, in accordance with the Ward Member Protocol
 - Relevant scrutiny committee Chairmen and Vice-Chairmen
 - Members visiting the meeting in question, who would receive the papers upon arrival
- 19.4 Subject to the provisions above, and to paragraph 19.5, any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where the report or document contains information relating to either of the following categories:
- Staffing information, where the identity of individual officers would be revealed
 - Information relating to vulnerable children and adults
- 19.5 Any Member wishing to receive or inspect a report or document containing information of the categories referred to in paragraph 19.4 must demonstrate a 'need to know' in accordance with the following process:
- The Member will submit to the Borough Solicitor and Monitoring Officer, or to the Democratic and Registration Services Manager in writing, information in support of their claim to have a "need to know".
 - The claim will be submitted to the relevant Chairman (or Vice Chairman, in his/her absence) of the non-executive committee or sub-committee in question, or to the Portfolio Holder (or the Leader, in his/her absence), in respect of an executive decision, for determination.
 - The determination as to whether or not a "need to know" has been demonstrated will be based on officer advice and will include legal advice.

- Once a determination has been made, this will be communicated to the Member who has made the claim.

19.6 All Members of the Council shall have access to all minutes and records of decisions, subject to the provisions of paragraphs 19.4 and 19.5.

21. 0 NATURE OF ADDITIONAL RIGHTS

The members rights of access in Rules 19 and 20 are additional to any other statutory or common law rights they have including the right to access to information on a 'need to know' basis in order assist in the proper discharge of their duties as a member of the Council.

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	20 th September 2012
Report of:	Democratic and Registration Services Manager
Subject/Title:	Notice of Motion - Venue for Meetings of the Strategic Planning Board

1.0 Report Summary

- 1.1 The report invites the Committee to consider the following Motion, proposed by Councillor D Brickhill and seconded by Councillor S Hogben- "That when the Strategic Planning Board agenda contains a majority of items from the south of the Borough, the meeting will be held in Crewe or Sandbach" which has been referred by Council to the Committee for consideration.

2.0 Recommendation

- 2.1 That the options outlined in the report be considered by the Constitution Committee with a view to adopting one of the options as a formal policy.

3.0 Reasons for Recommendations

- 3.1 To comply with the Notice of Motion request proposed and seconded at a meeting of full Council held on 19 July 2012.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 None.

7.0 Financial Implications

- 7.1 Costs of hiring an external venue to hold meetings of the Strategic Planning Board if it is not possible to hold the meeting in a Council

owned building, as well as any additional costs regarding microphones and hire of IT equipment.

8.0 Legal Implications

8.1 None.

9.0 Risk Management

9.1 None.

10.0 Background

10.1 Currently it has been the policy to hold meetings of the Strategic Planning Board at Macclesfield Town Hall, unless there are applications on the agenda which are likely to cause considerable public interest, in which case attempts are made to ensure the venue for that particular meeting is moved. This is done in consultation with the Chairman of the Board.

10.2 Difficulties have arisen for Officers in finding a venue that meets all the requirements of the Council when notice of what will be on the agenda for consideration is only confirmed 5 working days prior to the meeting taking place. A week prior to the agenda being published, Officers receive a draft list of the applications which may go to the Strategic Planning Board, however this list often changes and many of the applications don't make it onto the agenda.

10.3 A further problem that Officers face is the location of applications can vary widely. Generally there is a trend for applications to be in both the Crewe and Macclesfield areas and sometimes the number of applications is split proportionally. On other occasions, the agenda has contained applications for one particular area of the Borough, or more rarely applications relating to a number of areas within the Borough. The agenda published on 29 February 2012 illustrates the point well where there were applications for Disley, Tytherington, Shavington Cum Gresty, Middlewich, Congleton and Gawsorth.

10.4 Advice is sought from the Planning Department as to the nature of the applications and whether or not it is anticipated that many people will be attending the meeting. If an application is expected to be controversial and it isn't related to the Macclesfield area then the Officers do everything they can to ensure the meeting takes place in the affected area, however it has not always been possible to locate a suitable venue. One of the priorities is to ensure the agenda is published within the legal timescales and therefore as a result Officers are often left with insufficient time to spend on looking for an alternative venue if the key choices are unavailable.

- 10.5 Recently the Board have had to consider a number of applications for the Crewe area. Finding a suitable venue in this area which has sufficient room to accommodate the general public (any venue accommodating less than a 100 people would not be considered suitable), sufficient parking close to venue and microphone facilities all at a reasonable cost has proved extremely difficult. The Council Chamber in the Municipal Buildings in Crewe is frequently booked as is the Long Gallery in the Victoria Centre. The library in Crewe has meeting rooms, however the Council would need to hire out microphones at an extra cost and provide its own refreshments. In addition this room has an exercise class booked every Wednesday for the next year between 10.30am and 11.30am and it can only hold up to a maximum number of 80 people. On a few occasions the Council has booked Crewe Alexander Football Club which provides all the relevant facilities that Macclesfield Town Hall offers but this has been at considerable expense to the Council and is not considered to be financially sustainable.
- 10.6 A copy of the report has been circulated to the Chairmen and Vice Chairmen of the all of the Planning Committees and Councillor Mrs Rachel Bailey for comment.
- 10.7 There are a number of options which the Constitution Committee could consider and they are listed as follows:-

Option A

Keep Macclesfield Town Hall as the permanent venue for meetings of Strategic Planning Board regardless of the applications on the agenda.

Option B

Leave the decision to the Chairman's discretion.

Option C

Book the Capesthorne Room, Macclesfield Town Hall and the Council Chamber, Crewe Municipal Building in advance and then cancel one of the rooms if not required. (Note: For this Municipal year the Council Chamber may not be available for the dates required but Democratic Services could book it in advance for the next Municipal year).

Option D

Book a number of venues throughout the Borough and cancel all but the necessary venue once agenda has been confirmed.

Option E

Book a venue that is central to the North and South ie Congleton and keep it as the permanent base.

11.0 Access to Information

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

Name: Sarah Baxter

Designation: Democratic Services Officer

Tel No: 01270 686462

Email: sarah.baxter@cheshireeast.gov.uk

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Decisions Taken in the Absence of a Portfolio Holder

1.0 Report Summary

- 1.1 This report addresses an issue concerning the need for executive decisions to be taken in the absence of the relevant Portfolio Holder.

2.0 Recommendation

- 2.1 That

- (1) Council be recommended that the responsibilities for executive functions within the Constitution be amended to include the following provision:

“Any arrangements made by the Leader for the discharge of any functions by a Portfolio Holder will not prevent the Leader from exercising those functions.”

- (2) the Committee consider the further options set out in paragraph 10.4 of this report and decide whether to make any recommendations to Cabinet.

3.0 Reasons for Recommendations

- 3.1 To enable decisions to be taken in a timely way and avoid undue delays.

4.0 Wards Affected

- 4.1 N/A

5.0 Local Ward Members

- 5.1 N/A

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 arrangements for Portfolio Holder decision-making would require an amendment to the Constitution.

9.0 Risk Management

- 9.1 There are no risks identified with this matter.

10.0 Background and Options

- 10.1 Occasionally, a Portfolio Holder is not available when a decision is required and the decision has to await his or her return. This can also delay officer delegated decisions where Portfolio Holder consultation is required. It is therefore necessary to consider arrangements for taking Portfolio Holder decisions when the relevant Portfolio Holder is not available.

- 10.2 Under the Local Government Act 2000, the Leader, as the source of all executive authority, may exercise a function which he has delegated to a Portfolio Holder if the Portfolio Holder is not able to exercise the function. However, there is no express provision of this kind within the Council's Constitution. It is therefore proposed that the responsibilities for executive functions within the Constitution be amended to include the following provision:

“Any arrangements made by the Leader for the discharge of any functions by a Portfolio Holder will not prevent the Leader from exercising those functions.”

- 10.3 This will make clear what is the current position and will enable the Leader to take an executive decision if necessary in the absence of a Portfolio Holder. In accordance with the existing arrangements, any such decision would be taken at a formal public meeting.

- 10.4 Even with these arrangements in place, there could be occasions when both the Portfolio Holder and the Leader are not available. The Committee may therefore wish to consider further options such as:

1. the Deputy Leader being designated to take the decisions of other Portfolio Holders in the absence of the Leader;
2. the Leader authorising a particular Portfolio Holder to take a particular decision in the absence of another Portfolio Holder.

- 10.5 It should be recognised, however, that whilst such arrangements would lead to greater flexibility in executive decision-making, they could also cause confusion among other members and the public if the responsibility for a decision is unclear. The Committee may take the view, therefore, that such arrangements should be used sparingly and not routinely.

- 10.6 Any changes to the executive decision-making arrangements are a matter for the Leader and Cabinet and therefore if the Committee felt there was merit in pursuing the options in 10.4, it would need to make an appropriate recommendation to the Cabinet. It would then be for Council to approve any necessary amendments to the Constitution.

11.0 Access to Information

Local Government Act 2000 (published document)

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

Name: Paul Mountford
Designation: Democratic Services Officer
Tel No: 01270 696472
Email: paul.mountford@cheshireeast.gov.uk

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Key Decisions – Definition and Thresholds

1.0 Report Summary

- 1.1 This report sets out the Council's current definition of a key decision and compares the definition adopted by a number of comparator authorities. It is recommended that Council should be requested to adopt a new definition as set out at in Section 11.6 having regard to the definition used in the comparator authorities.

2.0 Recommendation

- 2.1 That the Committee

(1) consider the Key Decision definitions adopted by the identified comparator authorities; and

(2) recommend the definition set out in paragraph 11.6 to Council for approval.

3.0 Reasons for Recommendations

- 3.1 The Council's current definition of a key decision is based on the statutory definition and as a result does not set out any financial limits to be used as a guideline figure to assess what is a key decision in budgetary terms. A number of Councils have adopted appropriate limits or thresholds and members have requested that comparator information is made available to enable the Council's current definition to be reviewed.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Key decisions are significant decisions made by the Cabinet and as such will affect the vast majority of the Councils major policies. In particular the

Guidance issued under the Local Government Act 2000 in relation to the making of key decisions indicates that decisions made by the Cabinet in the course of the development of proposals to full Council to amend the Policy Framework will fall within the definition of a key decision.

7.0 Financial Implications

- 7.1 There are no direct financial implications associated with the proposed decisions.
- 7.2 The proposed revised definition for a Key Decision is in line with the current Financial Procedure Rules and therefore there are no revisions proposed for any other associated areas of the Constitution.

8.0 Legal Implications

- 8.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 come into force on the 10 September 2012 and replace earlier regulations made under the Local Government Act 2000 for those authorities operating executive arrangements. However the definition of a key decision is largely unchanged from that set out in earlier regulations.

9.0 Risk Management

- 9.1 The Council needs to be clear that all decisions which do fall within the definition of a “ Key Decision “ are properly identified and appear on the Councils Forward Plan otherwise there is the risk of challenge that the decision is ultra vires on the basis that the requisite procedures have not been followed.

10.0 Background and Options

- 10.1 The Constitution states that certain types of decisions made by the Cabinet, individual Cabinet Members, Committees, Sub-Committees of the Cabinet are “Key Decisions”. Except in cases of urgency, these types of decision receive advance publicity in the Forward Plan so that members of the public and Councillors are able to consider the implications of the decision. They may also seek to influence the decision by making contact with the decision-maker. Key Decisions appear on the Council’s Forward Plan, which can be viewed on the Council’s website, or in hard copy form at the Council’s offices.
- 10.2 The Constitution provides that the Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 14 days before the start of the period covered and made available to the relevant Overview and Scrutiny Committees. It will describe the following

particulars in so far as the information is available or might reasonably be obtained

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

- 10.3 The Constitution also sets out the procedure to be followed where decisions are urgent or it is impracticable for the item to be included in the Forward Plan.

11.0 Key Decisions

- 11.1 Cheshire East uses the original statutory definition of a Key Decision as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000. An extract from the constitution is set out below

“an executive decision which, is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.”*

- 11.2 As part of the overall arrangements for the modernisation of Local Government and the introduction of executive arrangements the then Government issued “Local Government Act 2000: Guidance to Local Authorities” setting out detailed advice and examples on how the new decision making structures would be expected to operate. Chapter 7 dealt with “Accountable decision making”. The intention was to make decision making more efficient, transparent and accountable so that the public knew who was

responsible for making decisions, when they would make them, how they could have input and access to information about decisions and could influence the decision making process and that significant decisions should not be a surprise to those they affect.

- 11.3 The definition of a key decision is two fold. The first limb relates to monetary considerations and covers those executive decisions where either expenditure or savings are significant having regard to either the service or the function to which the decision relates. The guidance states that whilst it is for the potential decision maker to decide in any one case whether a decision made is likely to involve significant expenditure, for the purposes of consistency and to ensure the public are clear about what is regarded a significant locally, the authority itself ought to agree as a full Council limits above which items are significant. It would be open to the Council to set different thresholds for different services or functions given the overall budget for the services or function and likely impact upon the local community. The guidance stresses that there ought to be consistency between neighbouring Councils of comparable size.
- 11.4 The second limb of the definition of a key decision relates to its impact and effect upon local communities. Although the statutory definition requires the impact to be on two or more wards the guidance recognises that in some instances there will be very significant impact on one ward (e.g. closure of a school or carrying traffic calming works) and such a decision ought to be treated as if it were a key decision. The strategic nature of the decision being taken is a relevant consideration as well as its negative or positive impact upon the community or of the service provided to a significant number of people living or working in the locality.
- 11.5 The Councils current definition of a key decision does not specify any thresholds in the first limb of the definition. The Guidance indicates that the Council ought to look at specifying limits, both in the interests of consistency and so that the public are clear about which decisions are considered significant in financial terms. Information has been obtained on the definition of a “key decision” adopted by Cheshire East Council’s 15 near statistical neighbours as approved by the Audit Commission namely:
- Bath and North East Somerset
 - Bedford
 - Central Bedfordshire
 - Cheshire West and Chester
 - East Riding of Yorkshire
 - Herefordshire
 - North Somerset
 - Shropshire
 - Solihull
 - South Gloucestershire
 - Stockport
 - Trafford
 - Warrington
 - Wiltshire

- York

The definitions are set out at Appendix A

11.6 Based on a consideration of the various definitions it is recommended that the following Key Decision definition is recommended for approval by full Council:

an executive decision which is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising one or more wards or electoral divisions in the area of the local authority.*

For the purpose of the above, savings or expenditure are “significant” if they are equal to or greater than [£].

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

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Authority	Definition of a Key Decision
Bath and North East Somerset	<p>A “key decision” is defined in law as one which is likely to:</p> <ul style="list-style-type: none"> (a) result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or (b) be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority. <p>Those taking “key decisions” will do so in accordance with the requirements of the Access to Information and Executive Procedure Rules set out in this Constitution.</p>
Bedford	<p>A Key Decision is an executive decision which is likely:</p> <ul style="list-style-type: none"> (1) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates; or (2) to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the Borough. <p>and, in accordance with Section 38 of the Local Government Act 2000, in determining the meaning of “significant” for these purposes, regard shall be had to any guidance issued by the Secretary of State.</p> <p>A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 6 of this Constitution.</p>
Central Bedfordshire	<p>1.1 A Key Decision means an executive decision which is likely:-</p> <ul style="list-style-type: none"> 1.1.1 To result in the Council incurring expenditure which is, or the making of savings, which are significant as defined in 1.2 below, having regard to the Council’s budget for the service or function to which the decision relates; or 1.1.2 To be significant in terms of its effect on communities living or working in an area comprising one or more wards in the area of the Council. <p>1.2 For the purposes of 1.1.1 above, savings or expenditure are significant if they exceed £200,000 per annum (revenue) or</p>

	<p>£500,000 whole life cost (capital),.</p> <p>1.3 Savings and expenditure in 1.2 above, does not include:-</p> <p>1.3.1 The day to day activity of the Council's treasury management functions, which are covered by the Treasury Management Policy Statement approved separately by the Council.</p> <p>1.3.2 Expenditure which is identified in the approved Revenue Budget or Service Plan for the service concerned;</p> <p>1.3.3 Implementation of a capital project identified in the approved Capital Programme and in respect of which the detailed business case (or equivalent) has been approved;</p> <p>1.3.4 Implementation of an explicit policy within the approved Budget and Policy Framework or fulfilment of the policy intention of a key decision previously approved by the Executive;</p> <p>1.3.5 The invitation of tenders or awarding of contracts where necessary to provide for the continuation of an established policy or service standard.</p> <p>1.4 For the purpose of 1.1.2 above, a decision will be regarded as "significant" if the outcome of the decision will have an impact, for better or worse, on the amenity of the community or quality of service provided by the Authority to a substantial number of people living or working in the wards affected.</p> <p>1.5 A decision maker may only take a Key Decision in accordance with the requirements of the Access to Information Procedure Rules set out in Part G2 of the constitution.</p>
<p>Cheshire West and Chester</p>	<p>4.1 Under the Local Government (Executive Arrangement) (Access to Information) (England) Regulations 2000, a key decision is a decision made by the Executive, an individual Member or Officer which is likely:</p> <p>“(a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or the function to which the decision relates; or</p> <p>(b) to be significant in terms of its effects on Communities living or working in an area comprising two or more wards in the area of the local authority”.</p> <p>4.2 The definition of "Key Decision" for Cheshire West and Chester is to be found in paragraph 41 of the Council Procedure Rules (Section 13)</p>

	<p>41.2 The following decisions are Key Decisions:</p> <p>an executive decision which is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the authority's budget for the service or function to which the decision relates; or to be significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority</p> <p>41.3 Under part (a) of the definition any expenditure or savings of £1million or more shall be significant for that part of the definition, with the exception that the letting of any contract which involves the provision of services to, or the purchase of goods and services by the Council, where such contract relate to the internal workings of the Council and therefore do not have a significant impact on local communities in the same way as other contracts. Such contracts include advertising, provision of locum staff, library books, vehicles, consumables, food, gas, electricity and cleaning services shall be excluded from the definition of a key decision</p> <p>41.4 Where the Executive as a body is making Key Decisions, that meeting shall be held in public. Where a matter is to be considered and Regulation 7 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 is applicable then the meeting will be held in public. In both cases the public may be excluded from the meeting where confidential or exempt information is likely to be disclosed.</p> <p>41.5 Where an officer exercising an executive function under delegated powers, receives a report which he/she intends to take into consideration when making a Key Decision that decision shall not be taken until the report has been made available for inspection by the public for five clear working days following receipt of the report by the decision taker. A copy of such report must be supplied as soon as reasonably practicable to the Chairman of the relevant Scrutiny Committee.</p>
<p>East Riding of Yorkshire</p>	<p>(i) A Key Decision is an Executive decision to be taken by The Cabinet which falls within the following definition approved by the Council:-</p> <ul style="list-style-type: none"> Any decision relating to the approval of or variation to the Council's policy framework or budget which is reserved in the Council's constitution for determination by Full Council on a recommendation from The Cabinet (Any recommended to Council item), or Any decisions made in the course of developing proposals to the Full Council to amend the policy framework. This includes decisions made to amend draft policies for the purposes of consultation.

	<ul style="list-style-type: none"> • Any decision which will result in income, expenditure or savings with a gross full year effect of £500,000 or greater whether or not the item has been included in the relevant approved budget with the exception of expenditure which is required for the day to day provision of services (eg day to day supplies, payment of energy bills etc.), or • Any decision which is likely to have a significant impact on people living or working in communities in two or more Wards with the exception of decisions that involve two or more Wards simply because of the carrying out of a programme of works. <p>(ii) A decision taker may only make a key decision in accordance with the requirements of The Cabinet Procedure Rules set out in Part 4 of this Constitution.</p>
<p>Herefordshire</p>	<p>3.3.5.1 A Key Decision is a decision:-</p> <ol style="list-style-type: none"> a. taken by the Cabinet or an individual Cabinet Member, b. in connection with the discharge of a Cabinet Function and which is determined as such by the Leader and is likely: <ol style="list-style-type: none"> i. to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or ii. to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the County. <p>3.3.5.2 For the purposes of 3.3.5.1(b)(i) above £500,000 shall generally be regarded as significant in terms of expenditure or savings. A matter involving a lesser sum may be regarded as significant in terms of expenditure or savings in exceptional circumstances including but not limited to:</p> <ol style="list-style-type: none"> a. where a lesser sum is involved but other non financial factors make the matter significant in terms of the service or function to which the decision relates, b. or where a lesser sum is involved but it has significant impact on the budgets for other services or functions or on the Council's budget as a whole. <p>3.3.5.3 For the purposes of 3.3.5.1 (b) (ii) above any issue which, in the opinion of the Leader of the Council, is likely to have a significant effect or impact any group(s) of people shall be regarded as significant in terms of impact on communities. In deciding whether an issue has a significant effect or impact on any group(s) of people the Leader shall have regard to:</p> <ol style="list-style-type: none"> a. whether the decision may incur a significant social, economic or environmental risk or benefit

	<p>b. the likely extent of the impact of the decision both within and outside the County</p> <p>c. whether the decision is likely to be a matter of political or other controversy</p> <p>d. the extent to which the decision is likely to result in or attract substantial public interest.</p> <p>3.3.5.4 The decision of the Leader of the Council as to whether a decision is a Key Decision may be challenged by Call In.</p> <p>3.3.5.5 The Chief Executive will maintain a list of anticipated Cabinet decisions that may be Key Decisions.</p>
North Somerset	<p>Key decisions taken by the Executive as a whole, have to be taken at a public meeting of the Executive and advance notice of the decision is therefore required. A "key decision" is an Executive decision which is likely:-</p> <ul style="list-style-type: none"> • to result in the Local Authority incurring expenditure which is, or the making of savings which are, significant having regard to the Local Authority's budget for the service or function to which the decision relates • to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Local Authority <p>With regard to decisions referred to above, they shall not be taken by an individual Executive Members unless prior notice that the decision is to be taken has been issued and at least five clear days have elapsed since the notice had been published.</p>
Shropshire	<p>(i) A key decision is a Cabinet decision which is likely:</p> <p>(a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or</p> <p>(b) to be significant in terms of its effect on communities living or working in an area comprising two or more electoral divisions in the area of the local authority.</p> <p>NOTE: The current Financial and Contract Rules recommend any financial decision over and above a budget value of £140,000 to be a key decision.</p> <p>(ii) A decision-taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.</p>

<p>Solihull</p>	<p>A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.</p> <p>These are decisions which are likely:-</p> <ul style="list-style-type: none"> (i) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority. <p>The Council will treat decisions on the following matters as key decisions:</p> <ul style="list-style-type: none"> • Statutory plans - policy framework plans, which need full Council approval in any event. • Any matter on which Cabinet will require full Council approval. • Contracts involving expenditure or income of over £250,000 (Contracts over £5000,000 expenditure will need Council approval anyway) in respect of any single contract. • Virement between budget heads of more than 10% for any amount exceeding £250,000. • Proposal for Council development on any land which is not "permitted development" under the Permitted Development Order (i.e. which requires an application for planning permission) except for development which involves temporary consent. • Any proposal which changes charges to any users of a service. • Any proposal to cease to provide a Council service (other than temporarily) at any premises. • Any proposal to make substantive changes to any service provided by the Council. • Consideration of budget estimates.
<p>South Gloucestershire</p>	<p>(i) A key decision is an Executive decision which is likely:</p> <ul style="list-style-type: none"> (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority. <p>(ii) Key decisions may only be made by the full Executive (the</p>

	Cabinet) or by a committee of the Cabinet or an individual executive councillor (or under delegations to an area committee or under joint arrangements) and will follow the Executive Standing Orders set out in Part 4, Section B of this Constitution.
Stockport	<p>A decision of the Executive, an Area Committee, or of a Corporate Director acting in accordance with the Scheme of Delegation will be a Key Decision if it comes within one or more of the following categories:</p> <ul style="list-style-type: none"> i) It is likely to result in the Council incurring expenditure or making savings which are significant having regard to the Council's budget for the service or function to which the decision relates; or ii) it is likely to be significant in terms of its effects on communities living or working in 2 or more Stockport wards. iii) it forms part of the development of, or the development of a change to, the Policy Framework or Budget. iv) it involves revenue expenditure or saving that is neither provided for within the Budget, nor virement permitted by the Constitution. v) it involves capital expenditure that is not provided for within: <ul style="list-style-type: none"> a. the capital estimate for a specific scheme; or b. a lump sum capital estimate; c. the capital programme at all, subject to rule 5.7 of the Financial Procedure Rules, which permits the Executive to utilise released capital funding for other projects where approved scheme costs are reduced or the approved scheme is deleted (unless the resources were specifically ring fenced). vi) it involves a significant reduction in or significant change to a service or facility provided by the Council, such reduction or change not being within the Policy Framework or Revenue Budget. vii) it consists of the declaration of land or property, the estimated value of which exceeds £250,000, as surplus to the Council's requirements. viii) it involves securing approval in principle to the acquisition or disposal of land or property the value of which is estimated to exceed £250,000. ix) it involves securing approval in principle to the taking of, or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licences, easements or wayleaves, at considerations in excess of £250,000 per annum or a premium of £250,000. x) its consequences are likely to result in compulsory redundancies or major changes to the terms and conditions of employment of a significant number of

	<p>Council employees.</p> <p>A Key Decision may only be taken in accordance with the requirements of the Executive Procedure Rules (Part 4 PR3) and Access to Information Rules (Part 4 PR7).</p>
Trafford	<p>(i) An executive decision taken by the Executive, an Executive Member or an officer will be a Key Decision if it comes within one or more of the following categories:</p> <ul style="list-style-type: none"> a. It is likely to result in the Council incurring expenditure or making of savings which are significant having regard to the Council's budget for the service or function to which the decision relates; or b. to be significant in terms of its effects on communities living or working in 2 or more Trafford wards. c. It forms part of the development of, or the development of a change to, the Policy Framework or Budget. d. It involves securing approval in principle to the acquisition or disposal of land or property the value of which is estimated to exceed £500,000. e. It involves securing approval in principle to the taking of, or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licenses, easements or wayleaves, at considerations in excess of £250,000 per annum or a premium of £500,000 f. Its consequences are likely to result in compulsory redundancies or major changes to the terms and conditions of employment of a significant number of Council employees. <p>(ii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.</p>
Warrington	<p>12.5.1 The statutory definition, as contained in paragraph 8 of Part III of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, is as follows:-</p> <p>an executive decision, which is likely:-</p> <ul style="list-style-type: none"> (a) to result in the Local Authority incurring expenditure which is, or the making of savings which are significant having regard to the Local Authority's budget for the service or function to which the decision relates; or (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Local Authority.

	<p>12.5.2 Under part (a) of the definition and subject to 12.5.3 below the Borough Council has decided that any expenditure or savings of £250,000 or more shall be significant for the purposes of that part of the definition. All such Key Decisions must be approved by the Executive Board.</p> <p>12.5.3. The Council has decided that the letting of any contract on behalf of the Council by an authorised person which involves the provision of services to, or the purchase of goods and services by the Borough Council shall be excluded from the definition of a key decision, where such contracts relate mainly to the internal workings of the Authority and do not therefore have a significant impact directly on local communities in the same way as other key decisions. Such contracts may include advertising, library books, vehicles, consumables, food, gas, electricity, and cleaning of borough premises.</p>
Wiltshire	<p>Wiltshire Council defines a key decision as:</p> <ul style="list-style-type: none"> • any decision which would result in the closure of an amenity or total withdrawal of a service; • any restriction of service greater than 5 per cent measured by reference to current expenditure or hours of availability to the public; • any action incurring expenditure or producing savings greater than 20 per cent of budget service areas against which the budget is determined by Full Council; • any decision in accordance with the Council's Financial Regulations (Part 9), involving financial expenditure of £500,000 or above, with the exception of operational expenditure by Corporate Directors identified within the approved budget and policy framework. • any proposal to change the policy framework. • any proposal which would have a significant effect on communities living or working in an area comprising two or more electoral divisions.
York	<p>A key decision means a decision made in connection with the discharge of a function which is the responsibility of the Cabinet and which is likely to:</p> <ol style="list-style-type: none"> a) result in the Council incurring expenditure, or making savings which are significant having regard to the Council's budget for the service or function to which the decision relates; or b) be significant in terms of its effects on communities <p>For the purpose of the above, savings or expenditure are significant if they are equal to or greater than £500,000 or equal to or greater than £100,000 where the savings or expenditure exceeds 10% of the budget for the service plan area whichever is</p>

	<p>the less. Expenditure in excess of the above levels will not constitute a key decision if such expenditure is made as part of the implementation of a decision which itself was a key decision e.g. the award of a contract <i>or where the expenditure is routine expenditure as described in the Contract procedure rules.</i></p> <p>A decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules set out in Part 4 of this Constitution.</p>
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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Review of Contract Procedure Rules

1.0 Report Summary

- 1.1** The purpose of this report is to propose amendments to the Council's Contract Procedure Rules and to seek the approval of the Committee and a recommendation from it to the Council that the amendments be made.

2.0 Recommendations

- 2.1** That the amendments to the Contract Procedure Rules (as set out in the Appendix to this report) be recommended to the Council for approval and the Constitution be amended accordingly.

3.0 Reasons for Recommendations

- 3.1** The Action Plan approved by the recent meeting of the Audit and Governance Committee recognised that the Council needs to ensure robust controls are in place. At its meeting on the 5th July the Committee resolved to undertake a further review of the Contract Procedure Rules. A meeting of the Constitution Task Group was held to undertake the review. This report sets out the recommendations of the Group and will support delivery of the Action Plan.

4.0 Wards Affected

- 4.1** All

5.0 Local Ward Members

- 5.1** All

6.0 Policy Implications

- 6.1** None have been identified.

7.0 Financial Implications

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

8.0 Legal Implications

- 8.1 Any changes to the Constitution need to be agreed by the Council following a recommendation from the Constitution Committee. Any changes which are proposed also need to comply with the relevant statutory requirements.
- 8.2 The Purchase of goods, services and works by the Council as a public sector body is regulated by the Public Contracts Regulations 2006 (the Regulations) which implement into English law the EU procurement regime currently in place throughout the EU.
- 8.3 It is important to note that the Regulations only apply to contracts with a value that exceeds the relevant thresholds. The current thresholds that apply to local authorities are as follows:

SUPPLIES (GOODS)	SERVICES	WORKS
£156,442	£156,442	£3,927,260

- 8.4 However, in undertaking any procurement (including those below the EU threshold) a contracting authority must also comply with the following key principles (derived from the Treaty on the Functioning of the European Union (TFEU) and the fundamental freedoms of the EU):
- Proportionality
 - Mutual recognition
 - Transparency
 - Non-discrimination
 - Equal treatment
- 8.5 In simple terms, the Council is required to act in a transparent way, treating all potential providers equally and in a non-discriminatory way. There are also detailed requirements in relation to the drafting of technical specifications, the requirement to publish contract award notices and submission of returns to the Office of Government Commerce (OGC).
- 8.6 As third parties have a right to take court action for financial loss if there is any failure to comply with the principles, it is extremely important that the Council does comply with the key Principles set out in paragraph 8.4.

9.0 Risk Management

- 9.1 The Action Plan approved by the recent meeting of the Audit and Governance Committee recognised that the Council needs to ensure robust controls are in place. A fundamental review of procedures is being undertaken 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 At its meeting on 5th July the Committee resolved that the Task Group previously appointed by the Committee to review detailed changes to the Constitution be asked to undertake a further review of the Contract Procedure Rules and report back to the Committee's next meeting.
- 10.3 The Task Group met on 9th August and a number of matters were considered. The Task Group agreed the following:
- Clarity was required around the responsibilities of Directors which would include ensuring that they took all reasonable steps for the proper administration of contracts and procurement in their Departments
 - Revisions were required to clarify the process, actions and approvals required in respect of exceptions to the rules, non compliance with the rules and urgency
 - Other matters included retaining records, specifications, whole life costs (excluding VAT) and quotations
 - The need for a short Guide to Procurement for Officers to complement the existing Knowledge Map.
- 10.4 In the light of the conclusions reached by the Task Group the contract procedure rules have been amended a copy of which is enclosed at Appendix 1.
- 10.5 The Shared Services Manager undertook to produce the additional guidance on contracts and procurement.

- 10.6 Members' views are sought on the proposed changes to 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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APPENDIX

E	Contract Procedure Rules
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Why is this important?

This section covers all aspects of procurement and Contracts procedures in relation to EU and National legislation.

What's covered in this Section?

The roles and responsibilities of:

- The Cabinet
- The Committees of the Cabinet
- The Statutory Officers
- All Officers procuring goods and services on behalf of the Authority

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<u>E.93</u>	<u>Contracts where the Council is the supplier</u>
<u>E.94 – E.96</u>	<u>Collaborative and Partnership working</u>
<u>E.97</u>	<u>E Procurement</u>
<u>E.98</u>	<u>Written Contracts and Signing of Contracts</u>
<u>E.99 – E.100</u>	<u>Content of Contracts</u>
<u>E.101 – E.111</u>	<u>Contract Terms and Conditions</u>
<u>E.112</u>	<u>Parent Company Guarantees and Performance Bonds</u>
<u>E.113 – E114</u>	<u>Performance Monitoring</u>

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.

Chief Officers must ensure before beginning the procurement that they have the appropriate authority to undertake it either by means of delegated authority given under the Scheme of Delegation or by Cabinet

Chief Officers must ensure that every procurement is dealt with in accordance with any statutory requirements including relevant EU legislation, within budget and financial provision and in accordance with the Constitution, these rules, all Councils policies, procedures and strategies

Due to the size and complexity of Directorates and to ensure timely procurement activity, it is highly likely that Chief Officers will delegate authority to appropriate officers/Council employees within their Directorate/Services/Section/Groups to procure on their behalf. Each Director must however provide and maintain a list of the officers authorised to initiate procurement, place orders and make payments on their behalf specifying a maximum financial limit for each transaction within any pre-defined limits. These lists should be reviewed regularly

Chief Officers will ensure that all officers/Council employees authorised to initiate procurement, place orders and make payments have the appropriate knowledge, skills and training to undertake the same. Any issues in relation to knowledge and training needs should be discussed in supervision and PDPs

- 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 & 24. Before a DD is prepared the authorised officer/Council employee 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 Chief Officer and Portfolio Holder.

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 are 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 and that specifications are clear and sufficiently detailed
- 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 net of VAT

	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. In the event that Procurement, Legal, or Finance Officers' advise that the DD should not be exercised but the Chief Officer and/or Portfolio Holder still wish to seek a waive to these rules the matter will be referred to Cabinet

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 Chief Officer and Portfolio Holder 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 Legal, Finance and Procurement, 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 the Chief Officer and Portfolio holder consider warrants an exception to the requirements for competition, on the basis of an emergency (which is defined as a situation brought about by unforeseeable events and not attributable to the council) 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 or 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 Chief Officer and Portfolio Holder and supported by advice from Legal, Procurement and Finance.

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E.25 In those circumstances where 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..

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 her 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;
- details of the quotes/tenders sought and received (see E25)
- 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.

Parent Company Guarantees and Performance Bonds

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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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Director of Finance and Business Services
Subject/Title: Proposed Amendments to the Council's Finance and Contract Procedure Rules/Project Gateway

1.0 Report Summary

- 1.1 This report seeks approval from the Committee for proposed amendments to Sections A and B of the Council's Finance and Contract Procedure Rules and a recommendation to Council for their endorsement. The proposed amendments are required due to the creation of a 'Project Gateway' to provide a strong quality assurance model for major projects and programmes in Cheshire East and the establishment of new governance arrangements to enable the new process.

2.0 Recommendations

- 2.1 That the amended Finance and Contract Procedure Rules (as set out in Appendix 1) be recommended to Council for approval and the Constitution be amended accordingly.

3.0 Reasons for Recommendations

- 3.1 Following consideration of an internal audit report by the Audit and Governance Committee at its meeting on 14th June 2012 an action plan was approved that included a commitment to review procedures and systems in respect of the Council's major Projects and Programmes.
- 3.2 The new governance arrangements impact on the decision making process for major Projects and Programmes. This therefore required a review of the Finance and Contract Procedure Rules within the Council's Constitution. The results of this review and the recommended amendments to the Finance and Contract Procedure Rules are set out in this report.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

6.1 None

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

- 7.1 The Finance and Contract Procedure Rules set out the arrangements for managing the Council's financial affairs and are a key element of the overall governance and control framework. They apply to every Member and officer of the Council and anyone acting on its behalf, including School Governors operating under local delegation arrangements.
- 7.2 Compliance with the provisions of the Finance and Contract Procedure Rules is essential in ensuring the security of Council assets and the appropriate and lawful use of resources. It is also essential in maintaining appropriate standards of stewardship and accountability and in demonstrating value for money for local tax payers and other stakeholders.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Council is required to prepare and publish an Annual Governance Statement (AGS). This requirement was introduced by the revised CIPFA/SOLACE Good Governance Framework (Delivering Good Governance in Local Government) and is necessary to meet the statutory requirement set out in Regulation 4 of the Accounts and Audit Regulations (2003 as amended).
- 8.2 The purpose of the AGS process is to provide a continuous review of the organisation's governance arrangements so as to give assurance on the effectiveness on the processes and/or to address identified weaknesses.
- 8.3 The creation of a 'Project Gateway' to provide a strong quality assurance model for major Projects and Programmes in Cheshire East will help meet the AGS requirements and support effective management within the Council.

9.0 Risk Management

- 9.1 The Council is undergoing continual change both in terms of the way it works and the climate in which it operates. It is essential that there is a clear framework of rules in place to guide officers and Members in both their financial and operational decision making, in order to ensure proper control and to safeguard both the reputation and the resources of the Council and its employees.
- 9.2 The Finance and Contract Procedure Rules provide this guidance and give assurance both to the Council and its stakeholders with regard to proper financial management. They are an important control in mitigating against the risk of fraud and misappropriation as well as waste, inefficiency and poor decision making. In order to be effective however, they need to be regularly

reviewed and updated so that they remain relevant and usable, and reflect best practice developments at local and national level.

- 9.3 Section C of the Finance and Contract Procedure Rules deals specifically with Risk Management and the Control of Resources and establishes the key principles for wider risk management practice across the Council.

10.0 Background and Options

- 10.1 The new Project Gateway will bring about a more robust discipline to the management of major Projects and Programmes across the Council. The new governance arrangements associated with the Project Gateway impact on the decision making process and the required financial controls and therefore a review of the Finance and Contract Procedure Rules is required.

- 10.2 A key aspect of effectively operating the Project Gateway is the formation of a high-level, Member-led Governance group called the Executive Monitoring Board (EMB). The EMB will take on the challenge role as part of the development of the Council's Business Plan and the monitoring of its delivery. As part of this role it will replace the Capital Asset Group by taking on the Capital Modelling, Planning and Monitoring role as described in the current Capital Strategy. One of the key aims of the EMB will be to provide consistent and robust direction for all major Projects and Programmes in Cheshire East through the Project Gateway model. The first meeting of the EMB took place on 29th August 2012. It will be supported by a Technical Enabler Group (TEG) comprising of key corporate enablers supporting major Projects and Programmes and a Programme Office (PMO). The TEG is in the process of being set up.

- 10.3 The EMB is comprised of the following members:

Portfolio Holder for Performance (Chair)
Portfolio Holder for Finance (Vice-Chair)
Strategic Director for Places and Organisational Capacity
Strategic Director for Children, Families and Adults
Director of Finance and Business Services

In attendance to support the Board:

Organisational Change Manager (PMO Lead)
Corporate Finance Officer
Heads of Service as appropriate

- 10.4 The EMB will essentially perform three streams of work:

Stream 1 - Deliver the Capital Strategy

- EMB will develop and recommend a strategic, five-year Capital model based on its role in the Capital Visioning work.

- EMB will develop and recommend a Capital funding strategy, which will inform the Council's borrowing strategy as part of the Treasury Management Strategy.
- EMB will develop the Capital model to include all associated financial benefits, including Capital Receipts, Service income streams and Service cost elimination/reductions.
- EMB will form a recommended list of proposals to be considered as part of the Business Planning process.

Stream 2 -Review and challenge of proposals as part of the Business Planning Process

- Review and challenge proposals for Capital and Revenue coming through the Business Planning Process in 2012/13 and in subsequent years. Proposals will be presented to EMB in the form of a Business case on the agreed template. **(Gate 1)**
- Compile the final list of Revenue and Capital proposals to be included in the Business Plan and to form the 2013/14 Capital Programme.
- Project or Programme leads, if appropriate, will be required to attend EMB to present and answer questions relating to their proposal.
- EMB will reject Business Planning proposals if they are unconvinced of the viability of the Business case, any other aspect of the delivery plan or of the fit with corporate priorities, which may result in the cessation of the proposal or a request for a revised proposal (ceased proposals should be properly recorded as they may be reviewed by other Business Planning stakeholders).
- If a Business Planning Proposal is recommended by EMB it will then feed back into the Business Planning process for wider consultation.
- Once recommended proposals have been through wider consultation EMB will review the draft list for inclusion in the draft Business Plan, including the Capital Programme.
- Identify improvements in the process as part of the annual lessons learnt exercise.

Stream 3 - Quality assurance and monitoring of progress

- EMB will recommend the major Delivery Plan for 2013/14 and subsequent years, based on the approved Business Plan and Budget, and monitor all major Revenue and Capital Projects and Programmes.
- All major Projects and Programmes must prepare a detailed **Project Initiation Document (PID)** outlining in more detail how the Project or Programme will be delivered, providing more robust data to confirm the viability of the Business Case.
- Project or Programme leads will be required to make further presentation to the EMB to gain confirmation to proceed. **(Gate 2)**
- EMB will review and challenge new and revised Business Cases submitted in-year, with a requirement to pass through Gate 1 and Gate 2 as appropriate.
- In terms of the embargo to start any new activities, imposed by Cabinet on 15th August 2012, on an exception basis, EMB requires the preparation and

submission of a business case requesting the release of funding for business critical propositions.

- If a Project or Programme is found to be no longer viable, EMB will recommend a course of action via the required decision making route.
- EMB will sign off the Capital elements of Quarterly Performance report to Cabinet, including virements and Supplementary Capital Estimates against the Capital Programme.
- EMB will sign off the Delivery Plan elements of the Monthly Performance report to CMT and Informal Cabinet, including forecast Capital outturn.
- Monitor progress for new starts in 2012/13 and beyond, for all projects and programmes with a total spend in excess of £250k and/or where there is significant risk to ensure all core Project and Programme disciplines are being carried out to agreed standards.
- Project or Programme leads will be required to prepare a succinct Highlight Report on the agreed template provided by the Programme Office and may be required to attend EMB to respond to key questions.
- EMB will determine the frequency of monitoring, dependent upon the assessed risk.
- Monitoring will focus mainly on financial performance, progress against plan, risks and issues, quality and benefits.
- EMB will drive an increased focus on Benefits Management and will therefore want assurance throughout the Project lifecycle that benefits have been clearly identified, quantified, tracked and achieved.
- Ensure major Projects and Programmes are on track to deliver what they set out to do in their Business Planning proposal and confirm there is a continued Business Case viability.

- 10.5 The proposed changes to the Finance and Contract Procedure Rules are set out in Appendix 1 and fall broadly into two main categories:

Amendments to Section A with regard to Virements and Supplementary Estimates

- 10.6 In terms of Virements, in paragraph A.32 there is a need to change the name of the Portfolio Holder and introduce a new decision layer between £250,000 and £500,000. Recognition is given to the role of the EMB in the decision making process.
- 10.7 In terms of Supplementary Estimates, in paragraph A.36 there is a need to remove an anomaly to a reference to paragraph A.33. With regard to the new process there is also a need to change the name of the Portfolio Holder and introduce a new decision layer between £250,000 and £500,000. Recognition is given to the role of the EMB in the decision making process, including the requirement to recommend through to Cabinet and Council.

Amendments to Section B with regard to Capital Approvals, Capital Block Provisions, Capital Monitoring and Amendments to the Capital Programme

- 10.8 In terms of Capital Approvals, the wording in B.27 has been amended to acknowledge the establishment of the Project Gateway for major Projects and Programmes. The wording in paragraphs B.28 and B.29 has been amended to include recognition that major projects in excess of £250,000, or where there is a significant risk, will be considered by the EMB.
- 10.9 In terms of Capital Block Provisions, the wording in paragraph B.32 has been amended to require the detailed breakdown of Block Provisions to be considered by the EMB.
- 10.10 In terms of Capital Monitoring and Amendments to the Capital Programme, the wording in paragraphs B.34 has been amended to recognise the requirement for in-year Business Cases to be endorsed by the EMB before being taken through the appropriate decision making route. The wording in paragraph B.35 has been amended to recognise that once the Capital Programme has been approved Project and Programme managers must submit a Project Initiation Document (PID) to the EMB for approval to commence a Project or Programme. Paragraph B.35 has also been amended to ensure that the viability of Projects and Programmes is monitored by the EMB and where a Project or Programme is found to be no longer viable it will be recommended for abandonment through the appropriate decision making route.

Access to Information

The background papers relating to this report are available from the report writer below.

The report writer is:

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Designation: Director of Finance and Business Services

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Appendix 1 – Relevant Paragraphs of the Finance and Contract Procedure Rules in the Constitution

A.32 Approval limits for virements are as follows:

Approval Level	Virement Amount/Percentage
Head of Service	Up to £100,000 or 10% of their net Service budget, whichever is the lowest. (Revenue)
Corporate Management Team	Greater than 10% of a net Service budget but less than £100,000 (Revenue)
	Up to £100,000 between net Service budgets (Revenue) within their area of responsibility
	Up to £100,000 funded from underspends within the approved Service budget (Capital)
Corporate Management Team in consultation with Resources Finance Portfolio Holder	Over £100,000 and up to and including £500,000 £250,000 (Revenue/Capital)
Portfolio Holders and Corporate Management Team in consultation with Performance Portfolio Holder, Finance Portfolio Holder via Executive Monitoring Board	Over £250,000 and up to and including £500,000 (Revenue/Capital)
Cabinet Members	Over £500,000 and up to and including £1,000,000 (Revenue/Capital)
Council	<ul style="list-style-type: none"> ▪ £1,000,000 or more; and/or ▪ Significant ongoing financial implications; and/or ▪ Significant policy change. (RRevenue/Capital)
	“Significant” to be defined by the Director of Finance and Business Services or their representative.

No virements are permitted from ringfenced budgets.

Supplementary Estimates

A.33 Where services wish to undertake an activity not originally identified in the budget or extend an existing capital scheme where additional income or

ringfenced funding becomes available in year, approval must be sought for a fully funded supplementary capital or revenue estimate in accordance with A36 below. The Director of Finance and Business Services must be consulted to establish that the funding identified can be legitimately linked to the expenditure in question.

- A.34** Any request for a supplementary capital or revenue estimate for £1,000,000 or more, whether or not it is fully funded, must be approved by Council.
- A.35** Supplementary estimates which are not fully funded and are to be met from reserves or balances or general purpose funding (i.e. Council tax or non-ringfenced grant) regardless of value, must be approved by Council. Council approval is also required where there are significant implications (as determined by the Director of Finance and Business Services) for future year's budgets.
- A.36** Approval limits for fully funded supplementary capital and revenue estimates, as defined in A33 above, are as follows:

Approval Level	Supplementary Estimate Amount
Corporate Management Team	Up to £100,000
Corporate Management Team in consultation with Resources Finance Portfolio Holder	Between £100,000 and £500,000 £250,000
Portfolio Holders and Corporate Management Team in consultation with Performance Portfolio Holder, Finance Portfolio Holder via Executive Monitoring Board	Between £250,000 and £500,000
Cabinet Members with recommendation from Executive Monitoring Board	Between £500,000 and £1,000,000
Council with recommendation from Executive Monitoring Board and Cabinet	Over £1,000,000

Capital Programmes

Capital Expenditure

- B.26** Capital expenditure is broadly defined as expenditure in excess of £10,000, on the acquisition of a tangible asset, or expenditure which adds to (rather than merely maintains), the value of an existing asset and/or extends the useful life of an asset and increasing usability, provided that the asset yields benefits to the Council and the services it provides is for a period of more than one year.

Capital Approvals

- B.27** Capital approvals referred to in these Finance Procedure Rules relate to the total cost or “starts value” of each provision or scheme rather than the anticipated expenditure in each year. Individual items estimated to cost in excess of £250,000 will be treated as separate schemes or provisions.
The Council has established a Project Gateway process to provide a strong quality assurance model for major Projects and Programmes which underpins these rules.
- B.28** An Option Appraisal in the form of a detailed Business Case Template, in a form agreed by the Director of Finance and Business Services, must be prepared for all capital proposals with a gross estimated cost in excess of £250,000, **or where there is a significant risk**, including the replacement of individual vehicles or items of equipment, before being submitted for inclusion in the Capital Programme or before approval is sought from Members in year. **In accordance with the Project Gateway process all such Business Cases will be considered by the Executive Monitoring Board.** A ~~summarised version of the~~ Business Case Template will also be required for all proposals over £100,000. These will be used as the basis for assessing the affordability and deliverability of the scheme, as well as for monitoring, reporting and post-implementation review. **Such Business Cases will not be considered by the Executive Monitoring Board.**
- B.29** Option Appraisals, in the form of a **detailed** Business Case Template, must also be prepared for all revenue proposals with a significant financial impact, risk profile or policy change, as specified by the Director of Finance and Business Services. The ~~proforma~~ template, in a form agreed by the Director of Finance and Business Services, must include an assessment of the Service consequences, risk and impact on users, and include any differential impact on particular groups or localities. **In accordance with the Project Gateway process all Business Cases above £250,000, or where there is a significant risk, will be considered by the Executive Monitoring Board.**

Capital Block Provisions

- B.30** As part of the annual policy and planning process, schemes in the capital programme which have not reached an advanced state will be reconsidered.
- B.31** Services are expected to develop reserve capital schemes which can be brought forward in the event of changes in the approved programme, subject to approval via the normal routes.
- B.32** Block provisions will be approved within the Capital Programme for individual schemes costing less than £250,000. A detailed breakdown of the expenditure proposed must be submitted for approval by the

~~appropriate Cabinet Member~~ Executive Monitoring Board as part of the policy and planning process. This requirement will also apply to block provisions included in the vehicle and equipment replacement programme.

Capital Monitoring and Amendments to the Capital Programme

- B.33** Where possible, all capital schemes contained within the block provision should be approved through the annual capital programme setting process, within the timetable set out by the Director of Finance and Business Services and approved by Council in February. Any subsequent further breakdown of block approvals must follow the appropriate approval route, with completion of a delegated decision template where necessary.
- B.34** Any 'in year' approval sought for capital schemes in excess of £250,000, ~~and/or there is significant risk~~, must be supported by a completed, ~~detailed~~ Business Case template, in the format prescribed by the Director of Finance and Business Services, which has been endorsed by the ~~Capital Asset Group Member-led governance group called the Executive Monitoring Board~~ prior to submission ~~through the appropriate decision making route~~.
- B.35** ~~Once the Capital Programme has been approved, Project and Programme managers must produce a Project Initiation Document (PID) outlining in more detail how the Project or Programme will be delivered which must be approved by the Executive Monitoring Board. Project and Programme managers must ensure that the project specification remains consistent with the approved capital appraisal and continues to represent value for money for the Council. Where project outcomes or costs alter significantly from those set out in the original appraisal a revised detailed Business Case Template must be completed and submitted to the officer-Capital Asset Group Executive Monitoring Board. Where the Executive Monitoring Board have identified particular Projects and Programmes which they wish to monitor the Board will be empowered to control, if they deem it appropriate, delivery of the Project or Programme through a requirement at each critical stage for its consent before releasing the funding needed. In the event that the Executive Monitoring Board consider that a Project or Programme has become unviable the Portfolio Holder for Finance is authorised in consultation with the Leader of the Council, the Portfolio Holder for Performance and the relevant Portfolio holder to recommend the abandonment of the Project or Programme through the appropriate decision making route.~~
- B.36** Wherever possible, expenditure in respect of Highways improvements funded by developers and Rechargeable works should be included in the Capital Programme. Where this is not possible Heads of Service may approve capital expenditure in respect of:
- Highway improvements fully funded by developers under Section 278 of the Highways Act 1980, provided that a formal agreement has been completed with the developer

- Other rechargeable reinstatement work costing in excess of £10,000
- Urgent work to repair, replace or reinstate vehicles, buildings or equipment, where the work is to be fully funded from insurance monies following consultation with the Finance Manager.

B.37 In addition, Heads of Service may authorise essential design work required in advance of the start of the financial year on capital schemes which are in the programme approved by Council in February.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Democratic and Registration Services Manager
Subject/Title: Special Responsibility Allowance: Local Service Delivery Committees for Crewe and Macclesfield

1.0 Report Summary

- 1.1 The report gives details of the Independent Remuneration Panel's recommendations regarding the award of a Special Responsibility Allowance to the Chairmen and Vice Chairmen of the Local Service Delivery Committees for Crewe and Macclesfield.

2.0 Recommendation

- 2.1 Constitution Committee is invited to consider the Independent Remuneration Panel's findings summarised in paragraph 11 and make recommendations to Council, including the effective date of any change.

3.0 Reasons for Recommendations

- 3.1 Before any changes can be made to the Scheme of Members' Allowances, Council must consider a report from its Independent Remuneration Panel.
- 3.2 In making its recommendations, the Independent Remuneration Panel took into consideration the current level of recompense for elected Members under Cheshire East Council's Scheme of Members' Allowances.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Any agreement to amend the allowances payable to elected Members will require alteration(s) to be made to Cheshire East Council's Scheme of Members' Allowances.

7.0 Financial Implications

- 7.1 Having considered the matter, the Independent Remuneration Panel is recommending that a Special Responsibility Allowance should be paid to the Chairmen and Vice Chairmen of the Local Service Delivery Committees for Crewe and Macclesfield for the period 2011/2012.
- 7.2 If the recommendation were to be approved, it would incur an actual cost to the budget of £6,600 rather than £13,200 (2x £5,600 and 2 x £1000) due to two of the proposed recipients having received Special Responsibility Allowances (SRA) during 2011/2012 and in accordance with the Scheme of Members' Allowances no Member can be in receipt of more than one SRA. The additional costs can be met from within the Members' Allowances budget.

8.0 Legal Implications

- 8.1 The Council is empowered to pay a range of Allowances to its Members in respect of their roles and responsibilities but must, in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003, appoint an Independent Remuneration Panel to offer advice and make recommendations on the Members' Allowances Scheme to Council. This report contains the advice of the Panel.

9.0 Risk Management

- 9.1 Consideration of the report enables the Council to comply with the requirements of the Local Authorities (Members' Allowances) (England) Regulations 2003 thereby reducing risk.

10.0 Background and Options

- 10.1 In keeping with the Government's localism agenda, Cheshire East Council established in May 2011, two Local Service Delivery Committees for Crewe and Macclesfield, to enable members in these non-parish Council areas to consider the implications for the transfer and devolution of local services.
- 10.2 Both Committees have dealt with detailed and complex issues during their first year; making recommendations and decisions in respect of local matters and this high level of responsibility is expected to continue to develop until such time as the Community Governance Reviews for Crewe and Macclesfield have been concluded.
- 10.3 In order to ensure that the work of the Committee is properly reflected, the Independent Remuneration Panel was invited to consider, whether Special Responsibility Allowances (SRA) should be payable to the Chairmen and Vice Chairmen.

- 10.4 The Panel sought information relating to the workings and make up of the Committees and noted that, whilst both Committees had been reconstituted at Annual Council in May 2012, neither had met nor appointed a Chairman or Vice Chairman for this municipal year.
- 10.5 Mindful of this position, the Panel recommended that, in recognition of the work undertaken by the Committees, a Special Responsibility Allowance should be paid to the Chairmen and Vice Chairmen of the Local Service Delivery Committee (Crewe) and the Local Service Delivery Committee (Macclesfield), specifically the Chairmen's SRA to be equivalent to the lowest Chairman's SRA currently payable in the Scheme (0.5 basic equal to £5600 per annum) and, in line with payments to Vice Chairmen, an SRA of £1000 plus £50 per meeting chaired be awarded to the Vice Chairmen of the Committees for the municipal year 2011/2012 only.
- 10.6 Given that the Committees had not met during 2012, the Panel considered that any further award should be considered as part of the review of Members' Allowances currently being undertaken.

11.0 RECOMMENDATION TO COUNCIL: That -

- 11.1 a) A Special Responsibility Allowance be awarded to the Chairman and Vice Chairman of the Local Service Delivery Committee (Crewe) and the Local Service Delivery Committee (Macclesfield), of £5,600 (Chairman) and £1,000 (Vice Chairman) for 2011/2012 in recognition of the work undertaken during the Committees' inaugural year and in line with the requirements of Cheshire East Council's Scheme of Members' Allowances which states that a Member can only be in receipt of one Special Responsibility Allowance; and
- b) The matter be included as part of the Independent Remuneration Panel's Review of the Scheme of Members' Allowances for 2012/2013 which will consider whether the posts merit the awarding of a Special Responsibility Allowance from 16 May 2012 onwards.

12.0 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: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Petitions - The Local Democracy, Economic Development and Construction Act 2000, the Local Authorities (Petitions) (England) Order 2010 and the Localism Act 2011

1.0 Report Summary

- 1.1 The Local Democracy, Economic Development and Construction Act 2009 placed a duty on Councils to promote local democracy and introduced facilities for receiving and dealing with petitions and e petitions.
- 1.2 Under the Local Authorities (Petitions) (England) Order 2010 and in accordance with Statutory Guidance the Council approved its Petition Scheme on 27th May 2010. On 1st December 2010 the Council revised the Scheme to include provision for e petitions.
- 1.3 Section 46 of Chapter 10 of the Localism Act 2011 repeals the provisions relating to facilities for receiving and dealing with petitions and e petitions. In the light of these changes this report invites the Committee to revise the scheme for dealing with petitions.

2.0 Recommendations

2.1 That

(1) the Council's petitions scheme be amended to:

- (a) remove the right of a petitioner to request an overview and scrutiny committee to review the steps taken or action proposed by the Council;
- (b) remove the provisions to hold an officer to account; and

(2) the revised petitions scheme as set out in Appendix 1 be approved and the Borough Solicitor be requested to amend the Constitution accordingly.

3.0 Reasons for Recommendations

- 3.1 Petitions are the most widely used form of civic action by individuals and communities to make representations to different public bodies on

matters affecting them. The Council should retain a Petitions Scheme but revise it to meet the needs of Cheshire East.

4 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications including

6.1 Not applicable.

7.0 Financial Implications

7.1 The Council's Modern.gov agenda management system was upgraded at no extra cost with an e-Petitions module. The cost of controlling, moderating and dealing with paper and e petitions is being met from within existing resources.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Chapter 2 of Part 1 of the Local Democracy, Economic Development and Construction Act placed a duty on the Council to have a Scheme in place to handle petitions and to provide a facility for making electronic petitions to the authority. The Local Authorities (Petitions) (England) Order 2010 required the Council to adopt a Petitions Scheme by the 15th June. The order required e petitioning to be introduced by 15th December 2010. Section 46 of Chapter 10 of the Localism Act repeals the provisions about petitions to local authorities. The Council is therefore free to determine its own arrangements.

9.0 Risk Management

9.1 The Council moderates petitions and has developed criteria to be established to decide if a petition should be rejected. This covers petitions that do not reflect the views of the Council or those which are politically motivated. Democratic Services provide guidance for the public on submitting a petition or e petition.

10 Background and Options

10.1 The Local Authorities (Petitions) (England) Order 2010 placed specific requirements on the Council. These included requirements about the way petitions should be categorised. These were as follows:-

- a. "Petitions for Debate" must be reported to and debated at full Council;

- b. “Petitions to hold an Officer to Account” trigger an open meeting of an Overview and Scrutiny Committee at which the named officer will report and be questioned on their actions
 - c. “Exempted Petitions” – Petitions received in response to statutory consultation for example on planning and licensing applications will continue to be reported to Planning and Licensing Committees or other appropriate Committee
 - d. “Ordinary Petitions”, for which the authority can determine how these petitions will be handled.
- 10.2 The Councils Petition Scheme also allows that if a petitioner so requests, an Overview and Scrutiny Committee may review the steps taken or action proposed to be taken by the Council in respect of “Ordinary Petitions”.
- 10.3 The majority of Petitions are ‘ordinary petitions’ and usually have a low number of signatures generally less than 1000. These are dealt with by Portfolio Holders and Heads of Service and Local Ward members are notified of progress.
- 10.4 Normally the Council will attempt to resolve the petitioners’ request directly, through the relevant Portfolio Holder or officer taking appropriate action. For example where the petition relates to fly-tipping and the authority can arrange for it to be cleared up directly. Where this is done, the Petitions Officer will ask the petition organiser whether s/he considers that the matter is resolved. In this regard the Councils Petition Scheme has operated successfully.
- 10.5 In a previous report this Committee was invited to consider if there was any evidence to suggest that “Petitions for Debate” and “Petitions to hold an Officer to Account” made a significant difference to the way in which this Council dealt with Petitions and if these aspects of the Scheme should be abandoned and replaced with an alternative provision. The Committee resolved that views of Corporate Management Team and Cabinet on the proposals contained in this report.
- 10.6 The views of views of Corporate Management Team and Informal Cabinet are that if a petition has in excess of 3000 signatories and if a petitioner so requests, Council should debate the matter before it is referred on to the appropriate decision-maker for determination on the grounds that a petition of this size would be a significant matter worthy of debate at a full meeting of Council.
- 10.7 In respect of the right of a petitioner to request, an Overview and Scrutiny Committee to review the steps taken or action proposed to be taken by the Council or to hold an officer to account, Corporate Management

Team and Informal Cabinet have recommended that these should be removed.

10.8 A revised Petitions Scheme is enclosed at Appendix 1.

11.0 Access to Information

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

Name: Brian Reed
Designation: Democratic and Registration Services Manager
Tel No: 01270 686670
Email: brian.reed@cheshireeast.gov.uk

Appendices:

Appendix 1 A revised Petitions Scheme

APPENDIX A

Petitions

Cheshire East Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition

We treat as a petition any communication which is signed by or sent to us on behalf of a number of people. For practical purposes, we normally set a requirement for at least 10 signatories or petitioners before we treat it as a petition. Whilst we like to hear from people who live, work or study in Cheshire East, this is not a requirement and we would take equally seriously a petition from, for example, 10 visitors to the District on the subject of facilities at one of our visitor attractions.

Petitions can also be presented to the Mayor prior to a meeting of the Council. These meetings take place on a bi monthly basis, dates and times can be found on the Cheshire East Website www.cheshireeast.gov.uk. If you would like to present your petition to the Mayor, or would like your councillor to present it on your behalf, please contact the Democratic Services Manager at the address below at least 10 working days before the meeting and they will talk you through the process.

What should a petition contain?

A petition should include –

A clear statement of your concerns and what you want the authority to do. This must relate to something which is the responsibility of the authority, or over which the authority has some influence. Where a petition relates to a matter which is within the responsibility of another public authority, we will ask the petition organiser whether s/he would like us to redirect the petition to that other authority. Where a petition relates to a matter over which the authority has no responsibility or influence, we will return the petition to the petition organiser with an explanation for that decision;

The name and contact details of the “petition-organiser” or someone to whom you would like any correspondence about the petition to be sent. Contact details may be either a postal address or an Email address;

The names of at least 10 petitioners (which can include the petition organiser). Where the petition is in paper form, this can include an actual signature from each petitioner, but actual signature is not essential. Where the petition is in electronic form, a list of the names of the petitioners will suffice. You may include the addresses of petitioners, which may be useful to the authority, for example, in assessing the degree of local support or opposition to a planning application, but this is not essential. If you want your petition to be debated at a meeting of the Council (“A Petition for Debate”), ~~or to trigger a public meeting of an Overview and Scrutiny Committee at which a specific officer will be required to report (“A Petition to hold an Officer to Account”)~~, your petition will need to contain a higher number of signatories or petitioners (see below);

If you are submitting the petition in response to our consultation on a specific matter, please identify the matter which it relates to, so that we can ensure that your petition is considered along with original matter.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

Who should you send a petition to?

Where you submit a petition in response to consultation by the authority, please address it to the return address set out in the consultation invitation. This will ensure that it is reported at the same time as the matter to which it relates is considered.

We have appointed a Petitions Officer, who is responsible for receiving, managing and reporting all other petitions sent to the authority. Please address petitions to –

The Petitions Officer
Cheshire East Council,
Westfields,
Middlewich Road,
Sandbach,
Cheshire CW11 1HZ

Or to petitons@cheshireeast.gov.uk.

The Petitions Officer will ensure that your petition is acknowledged to the petition organiser and entered on the authority's petitions website and that the website is regularly up-dated with information on the progress of your petition. The Petitions Officer can also provide you with advice about how to petition the authority or the progress of your petition, at either of the above addresses or by telephone at 01270 686458.

Types of Petition

There are **five** four different types of petition, as set out below. How we deal with a petition depends on which type of petition you submit –

Ordinary Petitions

These are petitions which do not come within any of the following specific types. Please note that petitions which raise issues of possible Councillor misconduct will be taken as complaints arising under the Local Government Act 2000 and will be reported to the Standards Committee, rather than considered under this Petitions Procedure.

Consultation Petitions

These are petitions in response to an invitation from the authority for representations on a particular proposal or application, for example on planning or licensing applications or proposals for parking restrictions or speed limits. Consultation petitions which are received by the response date in the consultation invitation will be reported to a public meeting of the person or body which will be taking the decision on the application or proposal.

Statutory Petitions

Particular Acts of Parliament require the Council to consider petitions, for example a petition for a review of Parish Councils, or a petition for a directly-elected Mayor. Where you submit a petition under such a specific statute, we will report it to the next available meeting of the Council in accordance with the statutory requirements.

Petitions for Debate

If you want your petition to be reported to and debated at a meeting of the Council, it must contain at least 3000¹ signatories or petitioners (this is reduced to 1500 signatories or petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). The Petitions Officer will request the appropriate Chief Officer to prepare a report. This report together with the Petition will be presented to full Council who will debate it fully. Council may then refer the Petition to the appropriate decision making body for further consideration.

Petitions to Hold an Officer to Account

~~If you want your petition to be considered at a meeting of an Overview and Scrutiny Committee, where an officer, identified either by name or by post title, will be required to answer questions on the conduct of a particular matter, your petition should contain at least 2000 signatories or petitioners (this is reduced to 1000 signatories or petitioners where the petition relates to a local issue, affecting no more than 2 electoral wards within the authority's area). The authority has determined that such petitions must relate to the Chief Executive, a Director or a Head of Service of the authority. Please note that where the petition raises issues of competence or misconduct, the petition will be referred to the Chief Executive (or to the Head of Human Resources in respect of the Chief Executive) and will be considered under the authority's Disciplinary Procedures, and not under this Petitions Procedure.²~~

The Petitions Website

The authority maintains a petitions web page on its website.

When a petition is received, within 5 working days the Petitions Officer will open a new public file within the website and will put in that file the subject matter of the petition, its date of receipt and the number of signatories or petitioners. The petition organiser's name and contact details will only be included on the website if s/he so requests.

As soon as it is decided who the petition will be considered by within the authority, and when that consideration will occur, this information will be entered on the website at the same time as it is sent to the petition organiser. Once the petition has been considered, the authority's decision will be notified to the petition organiser and put on the website within 5 working days of that consideration.

¹ The number of signatories or petitioners required for Petitions for Debate, and for Petitions to Hold and Officer to Account have been set by the authority to try to ensure that matters of genuine concern can be brought to the authority's attention. These requirements will be reviewed periodically in the light of the number of petitions received, to ensure that the requirements are not excessive.

² Note that the Local Democracy, Economic Development and Construction Act 2009 makes no provision for handling petitions which raise issues of officer or member misconduct or officer competence, but in practice such petitions cannot be handled under the Petitions Procedure and must be handled under the procedures appropriate to such matters.

Petitions are presented on the petitions website in the order in which they are received, but the website can be searched for key-words to identify all petitions relating to a particular topic. All petitions are kept on the website for 2 years from the date of receipt.

The role of Ward Councillors

When a petition is received which relates to a local matter (particularly affecting specific electoral wards), the Petition Officer will send a copy of the petition to each relevant Ward Councillor at the same time as acknowledging receipt of the petition to the petition organiser.

What happens when a petition is received?

Whenever a petition is received –

Within 5 working days of receipt, the Petitions Officer will acknowledge receipt to the petition organiser.

At the same time as responding to the petition organiser, the Petitions Officer will notify Ward Councillors of receipt of the petition and the relevant officers and Portfolio Holders. In some cases, the Petitions Officer may be able to resolve the petitioners' request directly, by getting the relevant Portfolio Holder or officer to take appropriate action. For example where the petition relates to fly-tipping and the authority can arrange for it to be cleared up directly. Where this is done, the Petitions Officer will ask the petition organiser whether s/he considers that the matter is resolved.

Unless the matter has been resolved to the satisfaction of the petition organiser, the Petitions Officer will within 5 working days of receipt of the petition provide a substantive response to the petition organiser setting out who the petition will be reported to for consideration,

Within 5 working days of receipt of a petition, the Petitions Officer will open a new public file for the petition on the authority's petitions website, setting out the subject matter of the petition, the date of receipt and the number of petitioners. The petition organiser's name and contact details will only be included on the website if s/he so requests.

At each stage of the consideration of the petition, within 5 working days of any decision, the Petitions Officer will ensure that the petitions website is updated to ensure that petitioners can track progress of their petition.

The process after this stage differs for the various types of petitions – see below.

What happens to a Consultation Petition?

Consultations Petitions are submitted in response to an invitation from the Council to submit representations on a particular proposal or application, such as a planning or licensing application or a proposed traffic regulation order.

The petition will be reported to person or body who will take the decision on the proposal or application at the meeting when they are to take the decision on that application or proposal. The Council's Constitution defines who will take different types of decision, as set out in the Scheme of Delegations and the terms of Reference of Committees and Sub-Committees.

Where the petition relates to a matter, which is within the delegated power of an officer, s/he will not exercise those delegated powers but will automatically refer the matter up to the relevant Portfolio Holders for decision.³

Where the petition relates to a matter, which is within the delegated powers of an individual Portfolio Holders, s/he may decide not to exercise those delegated powers but to refer the matter to Cabinet for decision.

What happens to a Statutory Petition?

Particular Acts of Parliament require the Council to consider petitions, for example a petition for a review of Parish Councils, or a petition for a directly elected Mayor. Where you submit a petition under such a specific statute, we will report it to the next available meeting of the Council in accordance with the statutory requirements.

What happens to Petitions for Debate?

Petitions for Debate will be reported to the next convenient meeting of Council. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of Council which are not convened to consider the subject matter of the petition.

As set out below, the petition organiser will be invited to address the meeting on the subject of the petition. The petition organiser may nominate another person to address the meeting and to answer any questions on the matter.

~~What happens to a Petition to Hold an Officer to Account?~~

~~Petitions to hold an officer to account will be reported to the next convenient meeting of the relevant Overview and Scrutiny Committee.~~

~~In advance of the Committee meeting, the petition organiser will be invited to submit a list of questions which s/he would like put to the officer at the meeting. These questions will be provided to the Chairman of the Committee, who will decide whether they are appropriate, and to the officer concerned, in advance of the meeting.~~

~~At the meeting, the Chairman will invite the petition organiser to address the Committee on the issue⁴, and the relevant officer will then be required to report to the Committee in relation to the conduct of the subject matter of the petition. Members of the Committee may question the officer, and the Chairman may invite the petition organiser to suggest questions for him/her to put to the officer.~~

What happens to an Ordinary Petition?

The Petitions Officer will arrange for each ordinary petition to be reported to the appropriate officer and Portfolio Holder, which has responsibility for the subject matter of the Petition for them to deal with under delegated powers. If appropriate to do so the petition organiser will be invited to meet the Portfolio Holder to make representations in support of the petition

³ The exceptions to delegated powers set out in Paragraphs 3.8.3 and 3.8.4 will need to be carried over to the Scheme of Delegations in the Council's Constitution

⁴ Note that the 2009 Act does not give the petition organiser a right to speak at the Committee meeting, but the Council has decided that s/he should be invited to set out the petitioners' concerns in relation to the subject matter of the petition.

Within 5 working days of the consideration of the petition by the relevant Portfolio Holder, the Petitions Officer will notify the petition organiser of the Portfolio Holder's decision and advise him/her that if s/he is not satisfied with that decision, s/he may require the matter to be reported to the next convenient meeting of the appropriate Overview and Scrutiny Committee for review.

At each stage, the Petitions Officer will enter the relevant information on the website at the same time as it is sent to the petition organiser.

~~Appeal to an Overview and Scrutiny Committee~~

~~If the petition organiser is not satisfied with the outcome of the authority's consideration of his/her petition, he/she may appeal to an Overview and Scrutiny Committee by notifying the Petitions Officer of his/her intention to appeal within 20 working days of being notified of the authority's decision on the petition.~~

~~Within 5 working days of receipt of intention to appeal, the Petitions Officer will determine which is the relevant Overview and Scrutiny Committee and will notify the petition organiser of the time, date and place of the next convenient meeting of that Overview and Scrutiny Committee and will invite the petition organiser to attend the meeting and to address the Committee on why they considers that the authority's decision on the petition is inadequate.~~

~~At that meeting, the Overview and Scrutiny Committee will invite the petition organiser and Ward Councillors to make their representations and to explain why s/he considers that the Council's response was insufficient. The Overview and Scrutiny Committee may not over ride the decision maker's decision but the decision maker must consider any recommendations made by the Overview and Scrutiny Committee.~~

The role of the Petition Organiser

The petition organiser will receive acknowledgement of receipt of the petition within 5 working days of its receipt by the authority.

Where the petition is not accepted for consideration the petition organiser will be advised by the Petitions Officer of the rejection and the grounds for such rejection.

Where the petition is accepted for consideration, the petition organiser will be advised by the Petitions Officer within 5 working days of receipt by the authority as to who the petition will be considered by, and the date, time and place of the meeting at which it will be considered, and will be invited to address the meeting for up to 3 minutes. The meeting may then ask the petition organiser questions on the subject matter of the petition.

The petition organiser may nominate another person to address the meeting and to answer any questions on the matter.

The Council will not promote individual Petitions. Raising awareness of Petitions can be done in a number of ways such as promoting it on local community websites, discussion forums or newsletters. The Council will not allow the collection of signatories in public buildings. To do so may present a safeguarding risk.

The petition organiser will be regularly informed by the Petitions Officer of any decisions in respect of the petition and will be formally notified of the outcome of the petition's

consideration within 5 working days of such decision. It is the responsibility of the petition organiser to disseminate the outcome of the petition to any signatories on the Petition.

~~The petition organiser may notify the Petitions Officer of his/her intention to appeal to an Overview and Scrutiny Committee against the decision of the authority relating to the petition within 20 working days of being notified of that decision, and may attend and address the meeting of the Overview and Scrutiny Committee as to why he/she considers that the authority's decision on the petition was inadequate.~~

Petitions which will not be reported

Duplicate Petitions

Where more than one petition is received in time for a particular meeting, each supporting the same outcome on one matter, each petition organiser will be treated as an independent petition organiser.

Repeat Petitions

Where a petition will not normally be considered where they are received within 6 months of another petition being considered by the authority on the same matter.

Rejected Petitions

Petitions will not be reported if in the opinion of the Petitions Officer, they are rude, offensive, defamatory, scurrilous or time-wasting, or do not relate to something which is the responsibility of the authority, or over which the authority has some influence.

If your petition is about something over which the council has no direct control we will pass on the petition on behalf of the community to the relevant body. The council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with council policy), then we will set out the reasons for this to you.

Wherever possible, it is expected that the petition will be dealt within six weeks of it being received by the Council. If this is not possible, then a holding response will be sent to the lead petitioner and relevant Portfolio Holder(s).

E Petitions

Who can sign an e-petition?

An e-Petition can be signed by a person of any age who lives, works or studies in the Cheshire East area. You do not have to be a registered user to sign all e- Petitions but you will need to provide your name and a valid email address, for verification purposes.

You can only sign an e-Petition once. The list of signatories will be checked by officers and any duplicate signatures or frivolous responses removed.

How to create a new e-Petition

An e-Petition can be created by a person of any age who lives, works or studies in the Cheshire East area. To submit an e-Petition you will need to be a registered user. Registration is a simple process that just requires you to provide us with a few details in case we need to contact you about the e-Petition. On the e-Petitions homepage, select the 'Submit a new e-Petition' option and follow the prompted steps from there. Your online form will be submitted to the Democratic Services Section who may contact you to discuss your e-Petition before it goes live.

What information should an e-Petition contain?

Your e-Petition will need to include:

- A title or the subject of the e-Petition
- A statement explicitly setting out what action you would like the Council to take (e.g. to take action or stop doing something action”).
- Any information which you feel is relevant to the e-Petition and reasons why you consider the action requested to be necessary. You may include links to other relevant websites.
- A date for your e-Petition to go live on the website. It may take Democratic Services five working days to check your e-Petition request and discuss any issues with you so please ensure that you submit the request a few days before you want the e-Petition to go live.
- A date for when your e-Petition will stop collecting signatures. We will host your e-Petition for up to 12 months but would expect most to be significantly shorter in length than this.

What issues can my e-Petition relate to?

Your e-Petition should be relevant to some issue on which the Council has powers or duties or on which it has shared responsibilities. Your petition should be submitted in good faith and be decent, honest and respectful. Your e-Petition may be rejected if it does not meet these criteria. In addition, during politically sensitive periods, such as during the period prior to an election, politically controversial material may need to be restricted. The Council accepts no liability for the petitions on these web pages. The views expressed in the petitions do not necessarily reflect those of the Council.

Promoting an e-Petition

Whilst the Council will host e-Petitions on its website, it will not generally promote individual e-Petitions. Raising awareness of your e-petition can be done in a number of ways such as promoting it on local community websites, discussion forums or newsletters.

What happens when the e-Petition is complete?

When the e-Petition reaches its closing date, you will no longer be able to sign it online. An officer from Democratic Services will submit the final petition to the relevant Portfolio Holder and Council department for action. If appropriate Ward members will also be notified. A response indicating how your e petition will be dealt with will be sent to you within 5 working days and this will set out the timescales involved. The final response will be posted on the Council's website.

If, unusually, the petition is to be considered by a Committee, the petition organiser will be invited to address the meeting on the subject of the petition and will be allowed to speak for three minutes. The meeting may ask the petition organiser questions on the subject matter of the Petition. The petition organiser may nominate another person to address the meeting and to answer any questions on the matter.

~~you will be invited to attend the meeting. If you feel that your petition has not been dealt with properly, you have the right to request that the relevant scrutiny committee review the steps that have been taken in response to your petition.~~

What can e-Petitions achieve?

When you submit an e-Petition to the Council it can have positive outcomes that lead to change and inform debate. It can bring an issue to the attention of the Council and show strong public approval or disapproval for something which the Council is doing. As a consequence, the Council may decide to, for example, change or review a policy, hold a public meeting or run a public consultation to gather more views on the issue.

Privacy policy

The details you give us are needed to validate your support of a petition and, beyond your name, will not be published on the website. This is generally the same information required for a paper petition. All petitions are a matter of public record and the public have a right to visit the Council's Offices at Westfields Sandbach to view the details of those who have signed a particular petition.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	20 th September 2012
Report of:	Borough Solicitor
Subject/Title:	Review of the Planning Protocol of Conduct and the Planning Public Speaking Protocol

1.0 Report Summary

1.1 This report advises Members of the need to review the Council's existing Planning Protocol and Planning Public Speaking Protocol following the adoption of the new Code of Conduct by Cheshire East Council in July 2012 and the amendments to the rules on pre-determination as a result of the provisions in the Localism Act 2011.

2.0 Recommendation

2.1 That, having regard to any comments made by the Strategic Planning Board on 12th September, the Committee approve the proposed amendments to the Council's Planning Protocol of Conduct and Planning Public Speaking Protocol and, subject to any further comments by the Audit and Governance Committee, recommend their adoption by Council.

2.2 Reasons for Recommendations

3.1 It is essential that the Council's existing practice and procedures are not inconsistent with any of the provisions in the new Code.

3.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

6.1 Strong Ethical Governance, including clear policies and protocols supporting and underpinning the Code of Conduct, are critical for the corporate governance of the Council and for public confidence in the Council's decision making processes.

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

- 7.1 There are no obvious financial implications

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 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 were brought into effect from 1st 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. The Borough Council remains responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.

9.0 Risk Management

- 9.1 The Council must have robust processes in place both from a reputational management viewpoint and to safeguard the integrity of the Council's Corporate Governance and Decision making processes as a whole.

10.0 Background and Options

- 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 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 At its meeting on 19 July 2012 Full Council approved the adoption of a new Code of Conduct for Elected Members of Cheshire East Council together with a procedure relating to the investigation of complaints under the new Code.
- 10.3 The new Code of Conduct gives rise to a need to ensure that the Planning Protocols reflect it.

11.0 Planning Protocol and Planning Public Speaking Protocol

- 11.1 Members will be aware that the Council has approved a Planning Protocol which supplements the Member Code of Conduct and sets out guidance and best practice in terms of dealing with Planning issues both as a Member of the Strategic Planning Board and Northern and Southern Planning Committees and as a Ward Member. The Planning Protocol needs to be updated to bring the guidance in line with the new Code of Conduct and to incorporate the provisions in relation to pre determination

as enacted earlier in the year under the Localism Act. The Planning Public Speaking Protocol was also approved by the Council in order to regulate how those wishing to address the Planning Committees may do so. Amendments are required in order to bring it into line with the amended Planning Protocol.

11..2 The amended Planning Protocol is set out at Appendix 1 and the amended Planning Public Speaking Protocol is set out at Appendix 2. Following consideration by both the Strategic Planning Board on 12th September and the Constitution Committee at this meeting, they will be considered by the Audit and Governance Committee at its meeting on the 27th September 2012 as that Committee now has responsibility for Code of Conduct issues and any comments from the SPB and Constitution Committee will be reported to that meeting for Members' information. Members of the Northern and Southern Planning Committees have also been made aware of the process to enable them to input into the process if they wish to do so. Members are requested to recommend to Council the adoption of the amended Planning Protocol of Conduct and the Planning Public Speaking Protocol.

11.3 The main amendments set out in the Planning Protocol are as follows :

- The description of hospitality is amended in line with Code of Conduct for Members.
- Reference is made to Disclosable Pecuniary Interests and the requirement to register/declare them.
- Reference is made to Non Pecuniary Interests which although not specified in the Code of Conduct for Members should be declared.
- The amended Protocol makes it clear that if a member has a Disclosable Pecuniary Interest in a proposal they may neither take part in the debate or vote, nor exercise public speaking rights and must leave the planning meeting when the relevant item is announced.
- There is a reminder that it is a criminal offence to fail to declare or register a Disclosable Pecuniary Interest or to take part in a debate or vote where such an interest exists.
- The amended Protocol makes it clear that if a member has a Non Pecuniary Interest arising from a close association or connection then they should not take part in the debate or vote.
- The Protocol's provisions on pre determination are up dated in line with the Localism Act 2011 and request that members leave a planning meeting where they have pre determined.
- Notifications to (and responsibilities of) the Head of Planning and Housing are now to the Development Management and Building Control Manager abbreviated to DMBCM.

11.4 The main amendments to the Planning Public Speaking protocol are set out below:

- To extend public speaking to matters other than planning applications, for example variations of planning obligations.

- To remind members that they need to register their intention to speak even if they have called in an application.
- To clarify when members may or may not speak when they have declared an interest.
- To provide that visiting members may speak for three minutes and may be asked questions through the chair.

12.0 Access to Information

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

Name: Caroline Elwood

Designation: Borough Solicitor

Tel No: 01270 685882

Email: caroline.elwood@cheshireeast.gov.uk

PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

Section	Subject	Page Number
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The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and **applies to members of the Strategic Planning Board and Northern and Southern Planning Committees when they are involved in the planning process.**

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The Council was required under section 27 of the Localism Act 2011 to adopt a new code of conduct from July 2012 based on the core principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. The new code of conduct is entitled 'Cheshire East Council Code of Conduct for Members – 2012' and this Planning Protocol (and the Public Speaking Protocol mentioned in it) has been reviewed and amended in light of it. It is referred to as the Code of Conduct for Members throughout this Planning Protocol.

The Code of Conduct for Members should be applied throughout the decision making process and this Planning Protocol seeks to explain and supplement the Code of Conduct for Members in relation to planning control. If you do not follow this Planning Protocol you may put the Council and yourself at risk of proceedings on the legality or maladministration of the related decision. Furthermore section 34 of the Localism Act 2011 introduced new criminal

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offences of failing to declare or register certain interests and debating or voting whilst having such an interest.

The Code of Conduct for Members requires Disclosable Pecuniary Interests (which are specified and defined in it) to be notified to the Monitoring Officer. Non Pecuniary Interests may be required to be notified but none have yet been specified.

If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any planning meeting takes place.

In this Planning Protocol "planning meeting" covers all meetings of the Strategic Planning Board and the Northern and Southern Planning Committees.

SUMMARY

Important things to remember –

1. apply the rules in the Code of Conduct for Members first, and continue to comply with them throughout the decision making process, and disclose the existence and nature of any interest set out in the Code at the relevant planning meeting unless you have already registered it.
2. understand what Disclosable Pecuniary Interests as referred to in the Code of Conduct for Members are, and the implications of such interests arising. If you have a Disclosable Pecuniary Interest in a matter you must not speak or vote on it.
3. If you have a non-pecuniary private interest in a planning matter, declare it and leave the room, although you may exercise public speaking rights before you go.
4. don't make your mind up on how you will vote on a matter before the formal consideration of the matter at the planning meeting
5. be aware that if you do lobby or campaign on a particular issue it may mean you can't take part in the decision making process
6. if you are a cabinet member, don't take part in a planning meeting in a matter where you appear to be the advocate of a proposal
7. if you are approached for technical planning advice or receive any materials relating to an application (other than those circulated by an Officer), refer the person who approached you or the material to Officers

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8. if you attend meetings individually with developers or lobby groups be careful not to put yourself in a position where you appear to favour a person or a group over another
9. if you do attend a meeting with a developer or lobby group make sure it is clear that you do not bind the authority to a particular course of action, or views, and that the meeting is noted in your diary
10. you can ask that Officers attend and/or organise meetings
11. avoid accepting gifts, benefits or hospitality from anyone involved in a planning proposal
12. it is not advisable to become a member of a group or organisation whose primary purpose is to promote or oppose specific planning proposals in your area
13. a site inspection is the opportunity to seek information and observe the site, not to start the debate into the merits of the application.
14. you can call-in an application to be determined by Committee that would otherwise be delegated to Officers, and can seek advice from Officers over the wording. Take care that the wording of your call-in does not give the impression of bias for or against an application
15. you can discuss applications with Officers but the Officer must be able to reach their own conclusion
16. make sure you are present at the planning meeting for the entire item, including the Officers introduction and update, otherwise you cannot take part in the debate or vote on that item
17. do not allow members of the public to communicate with you during planning meetings
18. you must not exercise your public speaking rights on a matter at a planning meeting if you have a Disclosable Pecuniary Interest in that matter
19. make sure your decisions at a planning meeting take into account the development plan and other relevant material planning considerations
20. put your and your local community concerns forward at the planning meeting, and consider whether planning gain requirements under s106 could help make acceptable development that would otherwise be unacceptable in planning terms

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21. include the content of s106 agreements in the debate at a planning meeting

21. if you are proposing or seconding a decision that is contrary to Officer recommendation, you need to identify the planning reasons for doing so, if necessary with the assistance of the the Officers at the planning meeting

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22. you must attend mandatory training and should try to attend all training sessions arranged by the Council

This summary provides a list of the main points to remember while the body of the Protocol provides more detailed information, explanation and assistance.

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1 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE CODE OF CONDUCT FOR MEMBERS

1.1 DISCLOSABLE PECUNIARY INTERESTS

It is your responsibility to register Disclosable Pecuniary Interests and where such an interest has not been registered to declare its existence at the relevant planning meeting, and any informal meetings or discussions with Officers and other Councillors. Preferably, disclose any Disclosable Pecuniary Interest that you have not already registered, at the beginning of the planning (or other) meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any Disclosable Pecuniary Interest that you have not already registered apply whenever you are in attendance at a planning (or other) meeting, regardless of whether you are a member of the Committee.

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- 1.2 Where you have a Disclosable Pecuniary Interest: You must register it in the register of interests held by the Monitoring Officer
- If a matter related to it is on the agenda of a planning meeting, you must not participate in, or give the appearance of trying to participate in, the making of any decision on the matter by the planning authority, including the processing of the application. You must withdraw from the planning meeting room when the matter is

announced and you must not exercise public speaking rights in respect of it.

- You shouldn't try to represent local, Ward or Area views, get another Member to do so instead.
- Be careful not to seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a Disclosable Pecuniary Interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not be able to do the same.
- Whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary Interest to an appropriate Officer, in person or in writing, be aware that the Code of Conduct for Members places greater limitations on you than would apply to a normal member of the public.

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1.3 You do need to notify the Monitoring Officer and Development Management and Building Control Manager ("DMBCM") in writing if you are submitting your own application, or if you are employed as an agent and:-

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- The notification to the Monitoring Officer and the DMBCM should be made no later than submission of the application;
- the proposal will always be reported to a planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the planning meeting (where appropriate) to avoid public criticism

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you can make written representations to Officers about the proposal but may not address the planning meeting pursuant to the Public Speaking Protocol.

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1.4 NON PECUNIARY INTERESTS

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The Code of Conduct for Members has not specified any Disclosable Non Pecuniary Interests. However, the general obligation of honesty requires you to declare any non-pecuniary private interests relating to your public duties and to resolve any conflicts arising, in a way which protects the public interest. In practice this will mean declaring a non-pecuniary interest at the Planning Meeting and leaving the room for the duration of the item, although you may exercise public speaking rights before you go. So, if you attend a planning meeting at which a proposal is to be considered and you have some close association or connection with the site or applicant or objector by reason of, for example, a friendship or membership of a body or organisation then you should not take part in the debate or vote and should leave the planning meeting room prior to consideration of the proposal. In the interest of openness you should declare the nature of your interest.

If you have an association or connection with the site, applicant consultee or objector which is not close enough to affect your judgment but which it would be advisable to declare in the interests of openness, do this but then stay to take part in the debate and vote. This is likely to happen where you are a member of a consultee body which has expressed an opinion regarding an application

2 PRE-DETERMINATION (FETTERING DISCRETION) IN THE PLANNING PROCESS

2.1 Councillors making decisions in planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, so must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings. Not to do so puts the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination.

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2.2 S25 Localism Act 2011 provides that previous acts shall not be taken by themselves as proof of predetermination. However, predetermination is still unlawful: this intention of this provision is just to make it easier for members to form legitimate predispositions and to discuss planning matters in the community before they make up their minds and come to a final decision at the Planning Meeting. Prior involvement with an application could still justify a challenge on grounds other than predetermination, for example on grounds of bias or of taking an immaterial consideration into account and should be approached with caution. In the rest of this Protocol references to bias include these other grounds of challenge.

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2.2 In order to avoid allegations of bias, and therefore jeopardising your ability to participate in planning decision-making, wait until the formal planning meeting to hear the Officers' presentation, any public speakers and arguments on both sides before expressing your view on an application.

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2.3 Take care in the wording of your planning reasons on a call-in that you do not suggest that you have already formed a view on the application, if you have not done so, and that you are biased for or against it. Seek advice on this from Officers if necessary prior to completion of your form. Wording such as "I consider that this application may raise issues of ..." will help avoid claims of pre-determination if you have not done so.

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2.4 If the Council is the landowner, developer or applicant and you have acted as, or could be viewed as being, a chief advocate for the proposal then you may appear biased in its favour. This is more than a matter of dual membership: it arises where significant personal

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involvement in preparing or advocating the proposal means that you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)

- 2.5 You are always free to listen to a person's point of view about a planning proposal, give basic procedural advice and can agree to forward any comments, but beyond this you should refer the person to the appropriate planning Officer.
- 2.6 If there are other ward Councillors available that do not sit as a member of the same planning meeting then they will not be subject to the same restrictions regarding pre-determination and can therefore be an alternative contact for members of the public or lobby groups.
- 2.7 Political group meetings prior to the planning meeting should not determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning Officer's report and update and heard any further representations and the debate at the planning meeting.
- 2.8 You should not speak and vote on a proposal as a member of the planning meeting where you have pre-determined an application. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 2.9 If you have pre-determined an application you should explain that you have, or could reasonably be perceived as having already made up your mind on an application so that this can be recorded in the minutes. You may then exercise separate speaking rights, where you do wish to speak:
 - advise the democratic services Officer or Chairman that you wish to speak in this capacity before the planning meeting;
 - remove yourself from the member seating area to the public gallery for all of that item and consider whether you need to leave the room; and
 - ensure that your actions are recorded in the minutes.

If you foresee that prior involvement in a planning matter could give you an appearance of bias (to a fair-minded and informed observer), make it plain beforehand and again at the Planning Meeting that you

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will retain and have retained an open mind throughout. If the appearance of bias is so strong, in the circumstances, that an assurance will not be sufficient to rebut it, then you should declare an appearance of bias or predetermination and, unless you want to exercise public speaking rights, you should take no part in the item and, ideally, leave the room.

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3 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

3.1 The Code of Conduct for Members that you are bound by because you are a member of Cheshire East Council may be the same as or different from the one you are bound by because you are also a member of a town or parish council. Nonetheless, all Member Codes are based on the same principles including selflessness, integrity, objectivity, accountability, openness, honesty, respect for others and leadership. If you are bound by different Codes, you need to be aware of this, and if necessary you may want to seek advice on any issues you are not clear about.

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3.2 You need to exercise discretion in deciding whether or not to participate where you have been significantly involved in the preparation, submission or advancement of a planning proposal on behalf of :

- (a) another local or public authority of which you are a member; or
- (b) a body to which you have been appointed or nominated by the Council as its representative; or
- (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

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In such cases, whilst no Disclosable Pecuniary Interest arises, an issue of lack of impartiality arises, and you should withdraw from the planning meeting.

3.3 You can take part in the debate on a proposal when acting as part of a consultee body for a planning application (where you are a member of the Parish Council, for example), provided:

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- the proposal does not relate to any Disclosable Pecuniary Interest you may have

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- you make it clear to the consultee body at the time they consider the matter that:

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- (a) your views are expressed on the limited information before you only;

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- (b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and

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- (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting.

It is also advisable in the interests of openness to mention your membership or role when the planning meeting ultimately comes to consider the proposal.

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4 CABINET MEMBERS

- 4.1 There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

- 4.2 You should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have declared in both meetings that you will approach the planning decision afresh, taking material planning considerations into account at the Planning Meeting. Again, if the assurance will not rebut appearances, declare an appearance of bias and, unless you want to exercise public speaking rights, take no part in the matter: ideally, leave the room.

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- 4.3 Where you do wish to speak :

- advise the democratic services Officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
- ensure that your actions are recorded in the minutes

Deleted: At a planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member, and so predetermined the matter, do you should not not take part in the debate, but you can exercise separate speaking rights and the Public Speaking Protocol provided you do not have a personal and prejudicial interestDisclosable Pecuniary Interest.

5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If you are approached for technical planning advice you should refer the person to Officers, and can always refer a person to Officers if you are uncomfortable giving procedural or other advice.

- 5.2 Where you feel that a formal meeting would be useful in clarifying issues, you should request the DMBCM to organise this. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the planning meeting.

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- 5.3 If you are invited to attend a meeting with applicants, developers or groups of objectors you should exercise care particularly between the submission of an application and the planning meeting where it is to be

determined. You can attend meetings but, **to avoid complaints of bias,** you need to be careful not to express views or opinions on the application if you are intending to take part in the planning meeting.

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5.4 In addition you should consider:

- the advice on lobbying;
- whether or not it would be prudent in the circumstances to make notes when contacted;
- notifying the **DMBCM** of any significant contact with the applicant and other interested parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
- asking relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.

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5.5 Don't attend a planning presentation unless an Officer is present and/or it has been organised by Officers, as it is a form of lobbying and you need to be careful not to express any views on the application or give the impression you have made up your mind.

5.6 Remember that a presentation is not part of the formal process of debate and determination of any application, this will be carried out by the appropriate planning meeting of the planning authority, but you are able to ask relevant questions for the purposes of clarifying your understanding of the proposals.

6 PRE-APPLICATION DISCUSSIONS

6.1 It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with Officers present and a written record of the discussions made and kept.

6.2 If you are involved by an Officer in pre-application discussions ensure that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation will have taken place.

6.3 Officers should deal with any queries or give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. This ensures a consistent and co-ordinated approach from the Council.

6.4 Where there is a legitimate reason justifying non-disclosure respect a request for confidentiality. Seek advice from the Officers present if you are unsure.

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6.5 Make sure you provide information on matters of fact, local knowledge and geography to any pre-application meeting rather than dealing with the merits of any proposed application.

6.6 Make sure you do not use your position to improperly influence decisions in pre-application meetings.

6.7 You can ask an Officer for a briefing or update on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

7 LOBBYING OF PLANNING COMMITTEE MEMBERS

7.1 While you can listen to those lobbying or attempting to lobby you, you should explain that it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to form an intention to vote one way or another or express such a firm point of view that you could appear biased.

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7.2 As a member of the planning meeting your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

7.3 You should not accept any gifts, benefits or hospitality from a person involved in or affected by a planning proposal. Where a degree of hospitality is entirely unavoidable, you must ensure it is of a minimum level, its acceptance is declared as soon as possible and remember the Code of Conduct for Members requires that you register any gift, benefit or hospitality which you have accepted where its value is over £100.

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7.4 Remember you can copy or pass on lobbying correspondence you receive to the DMBCM, if relevant or raising new issues, or declare the receipt of lobbying information at the planning meeting.

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7.5 If you receive any offer of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise, refer the offer to the DMBCM.

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7.6 If you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or

hospitality), notify the Monitoring Officer who will in turn advise the appropriate Officers to follow the matter up.

- 7.7 Unless you have a Disclosable Pecuniary Interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening to or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

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8 MEMBERSHIP OF LOBBY OR GENERAL INTEREST GROUPS

- 8.1 Avoid becoming a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals or those within a limited geographical area, as if you do, you are likely to have fettered your discretion and have to withdraw from the planning meeting.
- 8.2 Depending on your degree of involvement with a group and its purpose, you can sometimes continue to participate but note that if it could realistically lead to allegations of bias, you should withdraw from the meeting.
- 8.3 If a matter relates directly to the lobby group of which you are a member rather than to the views it holds, or is submitted by the group you should ordinarily withdraw from considering the matter.
- 8.4 Where your lobby group has expressed a public view on a matter you need to consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors you should consider are:
- the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 8.5 If the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the

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management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.

- 8.6 Remember that if you publicly support a particular outcome on a proposal within your Ward or actively campaign for it, you will not be able to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge, particularly where the campaign included factors or expressed viewpoints which were not material planning considerations. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining any application in accordance with the law.

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- 8.7 You are able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but it is sensible at a planning meeting to refer to your membership where that organisation has made representations on a particular proposal; you should also make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.

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- 8.8 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest.

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- 8.9 You should not ever decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

9 SITE INSPECTIONS

The Council has a separate protocol that deals with Site Inspections in more detail.

- 9.1 Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact

finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to both Councillors requests for a Site Inspection and those the ~~DMBCM~~ may arrange without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.

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- 9.2 It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors at site visits will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all planning meeting members will attend all formal site inspections and a record of attendance will be maintained and monitored.
- 9.3 You should try to attend site inspections organised by the Council.
- 9.4 You can request a site inspection if you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 9.5 The site inspection is an opportunity for you to seek information and to observe the site, and therefore you can ask the Officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection. Officers may seek clarification from the applicant or an objector on your question, but you should not do this directly.
- 9.6 Be careful not to be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind while on a site inspection by expressing opinions or views to anyone. The decision can only be made at the planning meeting and you should make this clear to any applicant or other party who approaches you and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the Officer present.

- 9.7 Information that you gain from the site inspection should be reported back to the planning meetings, so that all Councillors have the same information.
- 9.8 You should not enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias. If you feel it is essential for you to visit the site other than through attending the official site inspection you should speak to the DMBCM about your intention to do so and give him the opportunity of an Officer accompanying you. If you do attend site on your own ensure you comply with these good practice rules on site inspections.

10 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with the procedure for Public Speaking at meetings in more detail.

- 10.1 Members of the public and non-committee members should not communicate with you during the planning meeting (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 10.2 Make sure that you comply with the Council's Protocol for Public Speaking at planning meetings if you are attending the planning meeting other than as a member.
- 10.3 Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member.
- 10.4 Where you have a Disclosable Pecuniary Interest in an application then you must as soon as the item is announced leave the planning meeting room whilst the meeting considers the proposal.
- 10.5 Where you have a non-pecuniary interest in an application then you may exercise public speaking rights but leave the room immediately afterwards to counter any potential suggestion that the remaining members were influenced by your continued presence.
- 10.6 Planning Councillors who have pre-determined a matter may also exercise public speaking rights and should consider withdrawing from the meeting room having spoken on a matter to counter any potential suggestion that the remaining members were influenced by your continued presence.

11 OFFICERS

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11.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst Officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to Officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.

11.2 You can submit views on current applications to the DMBCM, which can be incorporated into any committee report.

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11.3 Officers are part of a management structure and you can discuss a proposal, outside of any arranged meeting, with those Officers who are authorised by the DMBCM to deal with the proposal at a Member level or the DMBCM. However, you should not seek to do anything that would compromise, or is likely to compromise, the impartiality of Officers who must be free to reach their own conclusion.

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11.4 Officers who are involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors.

11.5 Remember the Council's Member/Officer Relations Protocol.

12 DECISION MAKING

The Council has adopted a separate protocol that deals with the Call in of planning applications in more detail.

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12.1 Ensure that the planning reasons in your request for a proposal to go before the planning meeting rather than be determined through Officer delegation are recorded and repeated correctly in the report to the planning meeting.

12.2 Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless other material considerations indicate otherwise.

12.3 It is important that you reach your decision only after due consideration of all of the information reasonably required upon which to base a decision. You should come to meetings with an open mind and if you feel there is insufficient time to digest new information or

that there is simply insufficient information before you, request that further information, and if necessary, defer or refuse the application.

12.4 It is vital that you have been present to hear the entire item, including the Officers' introduction to the matter before you vote or take part in the planning meeting's discussion on a proposal.

12.5 Check that the minutes of the meeting record correctly the reasons for the planning meeting's decision to grant, refuse or defer any proposal.

12.6 The planning meeting can delegate to the DMBCM in conjunction with the Chairman, if necessary, the specific wording of conditions that the planning meeting may wish to add or amend when they are considering an application for approval. An explanation of why the change or addition is required should be given to the planning meeting.

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12.7 Be aware that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you need to clearly identify and explain the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and will be recorded and Officers will be able to assist with formal wording. Be aware that you may have to assist in defending a resulting decision by giving evidence in the event of any challenge.

12.8 Where necessary, you can consider deferring the determination of sensitive applications that the planning meeting wish to approve against Officer recommendation to the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.

12.9 Where necessary, you can consider deferring the determination of an application to another meeting if there is a very strong objection from Officers on the validity of reasons for refusal against Officer recommendation, to allow the proposed reasons to be further investigated and form the basis of an updated report to a future meeting.

12.10 You should ensure that you are aware of, and comply with the Protocols adopted by the Council.

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13 TRAINING

13.1 You must attend the mandatory planning training prescribed by the Council before you participate in decision-making at planning meetings.

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- 13.2 ~~You should try~~ to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and assist you in carrying out your role properly and effectively.

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14 INVOLVEMENT IN SECTION 106 AGREEMENTS

- 14.1 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by such benefits offered.
- 14.2 Remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.
- 14.3 Requirements of Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the ~~DMBCM~~ as soon as you become aware of them.
- 14.4 The content of Section 106 Agreements needs to be discussed at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 14.5 If you feel that a meeting would be useful to clarify issues of content of potential Section 106 agreements, you should ask the ~~DMBCM~~ to arrange a meeting with relevant Officers. Participants can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 14.6 Do remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that the Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors can contact Officers for any information required on completed Section 106 Agreements.

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15 MONITORING AND REVIEW

- | 15.1 The DMBCM will report annually to the Portfolio Holder regarding compliance with the arrangements set out in this Planning Protocol and will identify any proposals for amendment in light of issues that have arisen, although any amendments would be required to go through the Council's formal process.

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- | 15.2 In particular, the DMBCM shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

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PROTOCOL ON PUBLIC SPEAKING RIGHTS AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

- a) The Strategic Planning Board and Planning Committees have to make decisions on the merits of each individual application, upon the basis of what is in the Development Plan and other material considerations. All written representations made to the Council will be taken into account in the Officers' written report to Committee, but this procedure allows members of the public and Councillors who are not members of the Strategic Planning Board or Committees to attend a Strategic Planning Board or Planning Committee meeting and speak for or against an application prior to the Strategic Planning Board or Planning Committees making a decision about a planning application or other item on their public agenda.

- b) The Strategic Planning Board usually meets at Macclesfield at 10.30 am every 3 weeks.

- c) The Planning Committees usually meet at the Crewe Municipal Buildings, Earle Street, Crewe, CW1 2BJ (Southern) and at the Macclesfield Town Hall, Market Place, Macclesfield, SK10 1DX (Northern) every 3 weeks.

NB. As both venues and start times of meetings are subject to change, it is important that members of the public check details on the relevant agenda (available a week before the meeting) or contact Democratic Services for confirmation.

- d) The agenda for each Strategic Planning Board or Planning Committee meeting is available five clear working days before the meeting and is available via the Council's website. Interested groups and individuals should keep themselves informed about when a planning application will come to the Strategic Planning Board or Planning Committees. A list of meetings can be obtained from the Council Offices and officers will be able to advise on the progress of applications.

- e) This protocol has been amended in light of the Code of Conduct for Members – 2012

PROCEDURE:

1. WHO CAN SPEAK AND FOR HOW LONG

1.1 The following individuals/groups are eligible to speak

- Objectors
- Applicants or their agents
- Supporters
- The relevant Parish or Town Council

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- Local representative groups/Civic Society (where not covered by any of the above categories)
NB. In order to be treated separately to individual objectors and entitled to a separate speaking slot, local groups are expected to have a formal Constitution.
- Ward Members if they are not on the Board/Committee provided that they do not have a Disclosable Pecuniary Interest
- Members who are not on the Board/Committee and are not Ward Members provided that they do not have a Disclosable Pecuniary Interest

1.2 Each person or group identified shall be entitled to speak for a period of up to three minutes. If there is more than one person wishing to speak from a particular group e.g. objectors, people are encouraged to consult each other and agree how to share their 3 minute slot. The Chairman has a general discretion which may be exercised to extend time limits, but this will normally only be exercised in exceptional cases. Where a listed building or conservation area application is involved, no extra time will normally be provided.

1.3 The site plan will be shown and may be referred to throughout the consideration of the application. In order to be fair to all parties, no other presentation aids will be permitted. Similarly, the circulation of information, photographs and/or plans at the meeting will not be allowed.

2 HOW TO SPEAK AT STRATEGIC PLANNING BOARD AND PLANNING COMMITTEES

2.1 It is necessary to inform, in writing (email, fax or letter), the Democratic Services Section of an intention to speak at a Strategic Planning Board or Planning Committee meeting no later than 12.00 noon the day before the day of the planning meeting. Any emails should be sent to Speakingatplanning@cheshireeast.gov.uk Members should note that they still need to register their intention to speak even if they have called in an application.

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2.2 Speakers are advised to arrive for meetings approximately 10-15 minutes prior to the start of the meeting in order to register with the Democratic Services Officer.

2.3 A statement to the Strategic Planning Board or Planning Committee should only refer to planning issues, for example:

- exterior design, size, appearance, layout, etc
- residential amenity
- highway safety
- character of the area
- trees and historic buildings

- planning policy (Local Plan/Structure Plan)
- Government guidance

2.4 The Strategic Planning Board or Planning Committee cannot take into account non-planning issues, for example:

- boundary disputes/property rights
- personal comments about any individual
- loss of property value or loss of view
- matters covered in other laws

2.5 Speakers are reminded of the law relating to slander. If, at the meeting, they say something which is not true about another person, they could be at risk of legal action. Further, Race Relations and Human Rights legislation will not allow any discriminatory comments, for example race, religious beliefs or disability.

2.6 The order of speaking at the meetings of the Strategic Planning Board and Planning Committees is as follows -

- Announcement of the item by the Chairman
- Introduction and description of the application by the Planning Officer, including any update of the Committee report and an oral report of any site visit and highlighting of the key issues
- Ward Councillor(s) (3 mins) (NB. In single Member Wards, the Ward Member may at his or her discretion delegate the right to speak to an alternative Member.)
- Members who are not on the Board/Committee and are also non-Ward Members (3 mins)
- Parish/Town Council representations (3 mins)
- Civic Society/Local Representative Groups (3 mins)
- Objectors' representations (3 mins)
- Supporters' representations (3 mins)
- Applicants' representations (3 mins)
- Further comments by Planning Officer
- Ward Councillor if a Member of the Board/Committee
- Board/Committee Members debate and decision taken

2.7 At the Chairman's discretion, members of the Strategic Planning Board or Planning Committee may ask, through the Chairman, any of the speakers listed above to clarify an issue of fact after their statement is concluded. The Chairman may also ask that questions of fact are answered by any speakers during the Members' discussion to clarify matters. Speakers will not be permitted to ask questions of the Strategic Planning Board or Planning Committee or other speakers or to interrupt the Members' discussion on an individual planning application. The Constitution (Paragraph 58 of the General Procedure Rules) provides Chairmen with powers to ensure good order during meetings.

- 2.8 In exceptional circumstances, the Chairman may (with the approval of the Board or Committee) extend the speaking period for some or all speakers or allow more speakers if appropriate. This power will be treated with caution for controversial or complex schemes and if additional time is granted to objectors, a similar allowance will be given to supporters and/or the applicant.

2.9 Members who have a Disclosable Pecuniary Interest in an application must not speak on it and must leave the planning meeting room as soon as the application is introduced. If a member has a non pecuniary private interest they should declare it and leave the planning meeting room but may exercise public speaking rights before doing so. If a member of the committee has pre determined an application they may exercise public speaking rights and then, ideally, leave the planning meeting room.

3 AFTER THE DECISION

- 3.1 Speakers are asked to respect the decision made by the Strategic Planning Board or Planning Committee during the course of the meeting. The Strategic Planning Board's or Planning Committee's decision is final, but the applicants do have the right to appeal to the Secretary of State if their application is refused or if conditions are attached which they do not like. Objectors do not have the right to appeal a decision to the Secretary of State but they can seek to have a decision quashed by an application to the High Court by way of judicial review.

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- 3.2 If an application is deferred to a future meeting for consideration, speakers will be required to register to speak for that meeting in accordance with this protocol.

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- 3.3 This scheme will be monitored and reviewed by the Strategic Planning Board annually.

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