

# **Staffing Sub Committee**

## **Agenda**

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**Date:** Thursday 27th June 2013  
**Time:** 4.30 pm  
**Venue:** Fred Flint Room, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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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. **Minutes of Previous meeting** (Pages 1 - 6)

To approve the minutes of the meetings held on 23 January 2013, 1 February 2013 and 7 February 2013.

4. **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.

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For requests for further information

**Contact:** Brian Reed  
**Tel:** 01270 686670  
**E-Mail:** [brian.reed@cheshireeast.gov.uk](mailto:brian.reed@cheshireeast.gov.uk)

5. **Summary Report of the Designated Independent Person's Report**  
(Pages 7 - 34)

To receive the summary report of the Designated Independent Person's Report

6. **Agreement upon Completion of the Work of the Sub Committee**

For the Sub Committee to resolve that its work has now been completed and for the Sub Committee to resolve that its minutes should now be forwarded to the Staffing Committee.

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Staffing Sub Committee**  
held on Wednesday 23rd January 2013 at East Committee Room - Municipal  
Buildings, Earle Street, Crewe, CW1 2BJ

**PRESENT**

Councillor H Murray (Chairman)

Councillors B Moran and D Newton

**Officers**

Paul Bradshaw, Head of HR and Organisational Development

Melanie Henniker, HR Delivery Manager

Mike Mousdale, external legal advisor

Brian Reed, Democratic and Registration Services Manager

**Councillor in Attendance**

Councillor K Edwards for Part 1 Items only

**25 APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**26 DECLARATIONS OF INTEREST**

The Chairman provided an opportunity for members of the Sub-Committee, and for officers, to declare any pecuniary, non-pecuniary or other interests, which arose from the proposed business of the meeting.

There were no such declarations of interest.

**27 MINUTES OF PREVIOUS MEETING**

The minutes of the meeting which took place on 8<sup>th</sup> January 2013 were considered by the Sub-Committee and it was

**RESOLVED:**

That these constituted a correct record of the proceedings of that meeting.

**28 PUBLIC SPEAKING TIME/OPEN SESSION**

No members of the public were present at the meeting.

Councillor Ken Edwards used public speaking time to explain his concerns about restrictions upon publication of the Report of the Designated Independent Person in respect of the Lyme Green development project. He asked the Sub Committee to recommend that the Report be published.

The Chairman explained that it was not within the remit of the Sub Committee to make such a recommendation.

**29 EXCLUSION OF THE PRESS AND PUBLIC**

Pursuant to Section 100B (2) of the Local Government Act 1972, the report relating to the remaining item on the agenda had been withheld from public circulation and deposit on the grounds that the matters may be determined with the public and press excluded.

It was moved and seconded, pursuant to Section 100A (4) of the Local Government Act 1972 that the public and press be excluded from the remaining items of the Sub-Committee's business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A to the Local Government Act 1972, as amended, and that the public interest would not be served in publishing the information, and it was

**RESOLVED:**

That the press and public be excluded from the remainder of the meeting for the reasons given.

**30 REPORT OF DESIGNATED INDEPENDENT PERSON**

The named senior officer, together with representatives, joined the meeting. The Chairman explained the process which would be followed by the Sub-Committee in respect of the disciplinary matters relating to the named senior officer's involvement in the Lyme Green development project.

The Chairman referred to documentation which had been submitted by and in support of the named senior officer and confirmed that the officers and the Sub Committee members had thoroughly read and understood it.

The Head of HR and Organisational Development explained the stage the proceedings had reached and how the business of the meeting might be dealt with.

The named senior officer's representative indicated that he and the named senior officer were content to proceed on this basis. He then made submissions on behalf of the named senior officer.

Members of the Sub-Committee asked questions of the named senior officer's representative and received his responses.

The named senior officer made submissions to the Sub-Committee and referred to documents which had been submitted prior to the meeting.

The named senior officer indicated that one document remained to be submitted to the Sub-Committee before a decision should be made upon this matter.

The Chairman asked the named senior officer and the representative of the named senior officer whether, once this document had been submitted to the Sub-Committee, this would complete all submissions and representations which the named senior officer wished to make in this matter.

The Chairman indicated that the Sub-Committee would be willing to receive and give due consideration to the document in question.

The named senior officer confirmed that submission of this document to the Sub-Committee would complete all submissions and representations which the named senior officer wished to make and agreed that the document in question would be produced by 31<sup>st</sup> January 2013.

During the proceedings, the Sub-Committee was adjourned on two occasions in order for members to consider the submissions made. The named senior officer and representatives left the meeting for these periods of adjournment, and rejoined the meeting thereafter.

**RESOLVED:**

That the proceedings stand adjourned to a date to be fixed, and that the named senior officer submit the remaining document to officers of the Council by no later than 31<sup>st</sup> January 2013.

Note: It was subsequently agreed that the meeting would reconvene at 9.30am on Friday 1<sup>st</sup> February 2013

The meeting commenced at 10.00 am and concluded at 4.20 pm on

Councillor H Murray (Chairman)

Minutes of a reconvened meeting of the **Staffing Sub Committee**  
held on Friday 1 February 2013 at Westfields, Middlewich Road, Sandbach,  
CW11 1HZ

**PRESENT**

Councillor H Murray (Chairman)

Councillors B Moran and D Newton

**Officers**

Melanie Henniker, HR Delivery Manager

Mike Mousdale, external legal advisor

Brian Reed, Democratic and Registration Services Manager

**31 REPORT OF DESIGNATED INDEPENDENT PERSON**

The meeting reconvened at 9.30 am on Friday 1 February 2013 and following continued discussion upon the matters in question and upon the submitted documentation, it was

**RESOLVED:**

That the proceedings stand adjourned until 10.00 am on Thursday 7 February 2013.

The meeting commenced at 9.30 am and concluded at 2.00 pm

Councillor H Murray (Chairman)

Minutes of a reconvened meeting of the **Staffing Sub Committee**  
held on Thursday 7 February 2013 at Westfields, Middlewich Road,  
Sandbach, CW11 1HZ

**PRESENT**

Councillor H Murray (Chairman)

Councillors B Moran and D Newton

**Officers**

Paul Bradshaw, Head of HR and Organisational Development

Melanie Henniker, HR Delivery Manager

Mike Mousdale, external legal advisor

Brian Reed, Democratic and Registration Services Manager

**32 REPORT OF DESIGNATED INDEPENDENT PERSON**

The meeting reconvened at 10.00 am on Thursday 7 February 2013 when discussions continued upon the matters in question, following which it was

**RESOLVED:**

- (1) That, subject to compliance with the required process, recommendations should be made to Council in respect of Allegations 2 and 3; and
- (2) That a meeting of the Sub Committee take place in due course in order for those issues of process, policy and organisational culture referred to in the Report of the Designated Independent Person be addressed by the Sub-Committee, for referral to the Chief Executive for appropriate action, when the above staffing matters has been resolved.

The meeting commenced at 10.00 am and concluded at 2.15 pm

Councillor H Murray (Chairman)

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## **The Lyme Green Project for a waste transfer facility in Macclesfield**

**Open summary of the confidential report of the investigation  
of the Designated Independent Person into the related actions  
of Council officers and elected Members**

**June 2013**

## Contents

	Page
1 Introduction	1
2 The DIP Investigation	2
3 Background – key events and decisions	4
4 Why the project failed	6
- poor project management	
- procurement	
- internal advice and challenge	
- escalating costs	
- organisational culture	
5 Involvement of elected Members	14
6 Specific allegations	17
7 Conclusions	25

## Introduction

This summary report seeks to provide a comprehensive overview of the findings of the investigation into allegations made against several senior officers of the Council in connection with the project to develop a waste transfer facility at the Lyme Green depot site in Macclesfield. This formal investigation was carried out by a Designated Independent Person, appointed by the Council, with the approval of all the officers in question, and took place in the period from October to December 2012.

The report of the DIP on the findings of his investigation was provided to the Council on a strictly confidential basis, and has been seen only by a small number of senior staff and elected members of the Council on a “need to know” basis. However, requests continue to be made to release the DIP’s report and make it publicly available. However, on clear legal grounds, the Council has refused these requests. The Council also has stated its view that to produce a redacted copy of the DIP’s report, in which all personal references to individuals mentioned in it had been deleted, would not provide a document which was intelligible or helpful to those seeking to understand the reasons why the Lyme Green project failed.

Nonetheless, in recognition of the level of public interest in this matter, a commitment was given by the Leader of the Council to make an authoritative and accessible summary version of the DIP’s report widely available. This document fulfils that commitment, whilst respecting the particular grounds on which the DIP’s report must remain confidential.

It is interesting to note that, even while this report was still being written, claims were being made publicly by some people that the Council would seek to use this well-intentioned initiative to be “judge and jury in its own case” and that the summary report would be “a whitewash”. To avoid such claims having any validity, this document quotes extensively and directly from the DIP’s report. It provides only the minimum of narrative comment necessary to ensure a well structured understanding of the events that took place, of their implications, and of their consequences. In short, it is intended to set out clearly all the key facts about the actions of Council officers and elected Members in relation to the Lyme Green project.

Fuller information on the Lyme Green project can be found in the publicly available report of the earlier investigation undertaken by the Council’s Audit Manager, dated 30 May 2012. This was considered by the Council’s Audit and Governance Committee on 14 June 2012, and has been commended by the DIP as a useful document.

Kim Ryley  
Interim Chief Executive  
June 2013

## The DIP Investigation

The then Leader of the Council and Chief Executive took action to start the process of commissioning a review of the Council's actions to build a waste transfer station at the Lyme Green Depot, Macclesfield, as part of wider improvements to waste collection and disposal arrangements, following a report to the Council's Audit and Governance Committee.

That report found that, although there were Council procedures in place for compliance with Officer Delegations (to take decisions), Finance and Contract Procedure Rules, and EU Procurement Rules, to prevent financial and legal irregularities in such projects, in this case there was evidence that certain officers of the Council might have failed to comply with these governance arrangements and decision making processes, with serious consequences for the Council and for local residents in the vicinity of the Lyme Green depot site.

Having been approached by the Leader of the Council, in June 2012, the Staffing Committee agreed the terms of reference for an independent review of the conduct of the staff involved. The Staffing Committee appointed a Sub Committee to commission an independent review, and to take decisions on any actions arising from this.

In July 2012, the Sub Committee resolved to appoint a Designated Independent Person (DIP) to investigate certain allegations made against several senior Council officers, and issued terms of reference for the investigation. This independent process is required by law in the case of certain senior posts in local authorities, to ensure an unbiased view is formed where allegations of misconduct are made against such senior staff, and where any disciplinary action might be recommended as a result. The Sub Committee decided not to suspend from work any of the officers against whom allegations had been made, while the review was being carried out.

Each DIP, as in this case, is given a number of powers to facilitate their role, including inspection of relevant documents and the calling of witnesses, appropriate to the scale and complexity of the investigation. The DIP can take account of statutory guidance on these arrangements and can, within his discretion, give directions related to the conduct of the investigation and what is relevant to it.

The role of the DIP is to produce a confidential report to the Council, (in this case to the Staffing Sub Committee designated by the Council to receive it), on whether the evidence obtained supports any allegation of misconduct against the officers involved, and whether any disciplinary action is recommended as appropriate for the Council to take in response to this evidence. The DIP's report is, therefore, part of the Council's disciplinary process and, in common with evidence used in all Council disciplinary proceedings, is not intended to be used for any other purpose. Therefore, it is accessible only to those Council staff and elected members who have a need to know, in order to progress any disciplinary action deemed appropriate.

The DIP in this case did, accordingly, offer all participant witnesses in the investigation general practical guidance on how it was to be conducted. He also responded to enquiries and questions raised during the investigation about this guidance. The DIP required all witnesses (except elected Members of the Council who are bound by a duty of confidentiality attached to their office as councillors) to sign an undertaking - to the Council and to the DIP - to keep confidential such information as was disclosed during the investigation. The Leader of the Council chose to sign such a confidentiality undertaking, whilst other elected Members involved accepted that obligation without signing.

The process also involved the signing off of transcripts for each individual witness's evidence. This was not required of elected Members for the reasons set out above, but Councillor Hilda Gaddum chose to do so.

All written evidence and that produced from witness interviews was taken into account by the DIP in producing his report and in the conclusions he reached in that report. The Council gave a commitment to the DIP that, in receiving his report, it would be used solely for the purpose of, and in connection with, any disciplinary proceedings arising from the investigation, and would otherwise remain confidential, as is normal practice in relation to conducting any disciplinary proceedings against Council staff.

## **Background – key events and decisions in the Lyme Green project**

Proposals to transform the Council's waste collection services had been under consideration since early 2010 and culminated in recommendations made to Cabinet in a report of 14 March 2011. It was concluded that the timely procurement of new contracts, additional containers and waste transfer facilities were integral to the delivery of new services as, without them, the new services could not be delivered and target financial savings would not be achieved. The report indicated that delivery of the changes necessary to achieve those objectives would be challenging and would have to be "driven hard" to ensure that all the objectives were achieved in the required timescales.

Provision was made for a contractor to collect the bulked co-mingled Dry Recyclate in connection with the south of the borough at Pym's Lane Depot, Crewe, it was therefore necessary to address the need for a second collection point in the north of the borough and this resulted in the proposal to build a waste transfer facility at Lyme Green. This was a case of capital investment being required to secure longer term revenue savings, and repayment costs were reported as affordable. As at 14 March 2011, the proposal was that operation from a northern depot had changed from the original approach of the Council building and operating its own waste transfer station to one of private sector provision of that facility.

The Cabinet report of 14 March 2011 made it clear that, in achieving the required savings, the provision of a waste transfer station in close proximity to Macclesfield, through an EU compliant procurement process, was necessary, as without such facility it would be impossible to provide the service and achieve the savings required. The solution, therefore, approved on 14 March 2011, was to appoint a private sector contractor to handle, store and despatch co-mingled dry recyclates in the north of the borough.

Only one tender for this work was received, (from Henshaws), in response to an OJEU Notice and an apparently properly managed procurement exercise. However, subsequently, that procurement process was abandoned following a decision by a senior officer based on a belief that greater revenue cost savings were possible. That decision was made despite recommendations from the Waste Strategy Manager to proceed with the Henshaws' bid, which was within budget. No contract award as a result of that procurement process was therefore made to Henshaws.

Up to a year before this, during a discussion on whether the Council should build its own waste transfer station or contract with the market, a decision had been taken to go to a private sector solution, on the assumption that the Council would probably get only one bid to deliver the service and that would be from Henshaws. That apparent monopoly situation was understood at the time of commencing that procurement process, and it was also understood that the bid price might well be inflated accordingly. It was therefore no surprise to some that the bid, when received, was on the lines submitted. If that bid had been accepted, sufficient time would have been available to program the consultation, preparation and obtaining of consents for the Lyme Green site development, including planning permission.

The consequence of the decision not to accept the Henshaws' three year contract was that a number of events were then set in motion, not least the need to provide an interim solution, and also a need to accelerate the programme and planning to build a waste transfer station at Lyme Green. The ensuing lack of proper project management and failure to meet normal consultation requirements, the unsatisfactory promotion of a planning application, and a lack of proper care at various stages in the process, flowed from that one key decision.

If the Henshaws' three year contract had been accepted, it would have given the Council sufficient time to have brought forward a properly considered and well thought out project for the whole site at Lyme Green.

There is no doubt that, by the third week in August 2011, the die was cast in terms of proceeding with a facility at Lyme Green and, at that time, the projected date for its completion was October 2011. This timetable (later extended to December 2011) was completely unrealistic in terms of the necessary consultation and process required to obtain a proper planning permission.

In early September 2011, a letter was sent to Henshaws seeking a price for bulking and waste transfer services on a four, six or eight month contract. Henshaws responded to the Council's letter quickly with their proposals. This then led to a Delegated Decision being taken by Council officers on 14 September 2011 to award the Interim Contract to Henshaws.

By this time, the "Project Design Team" was meeting and it is clear that planning approval was agreed as being critical. The then current budget allocation for the building (showing as fees inclusive, which was clearly not the case) was £650,000, but with no additional allowance being made for road infrastructure and site alterations. The overall costs of the project were now estimated to be far in excess of the approved capital budget for it. Therefore, the issue of a funding shortfall was already clear in early September 2011.

It was agreed in project team discussions, and in subsequent emails, that a revised target completion date was more likely to be towards the end of March 2012, taking into account all the critical activities involved, including the need to obtain a planning approval. Nonetheless, the decision of senior project officers was to accelerate the timetable for the completion of the project, even though they were advised that this increased the level of risk involved, both reputationally and financially, for the Council.

Action then moved on to the promotion of a Delegated Decision by officers to appoint Kier Regions Limited for the purposes of building the waste transfer facility at Lyme Green. The October 2011 Delegated Decision promoted a contract award without complying with the requirements for a "mini competition", principally because it would have caused delay, but the reference to the work programme attached to that Delegated Decision clearly indicates that the planning application process would run concurrently with construction. Although the letter of intent to appoint Kier Regions Ltd, initially to the value of £500,000, was assumed by some officers only to cover preparatory and site stabilisation works, there was no effective monitoring of that work on site, resulting in the cessation of the construction work following public complaints, not least about the lack of public consultation.

Consultation on an application to build a waste transfer station opposite residential homes (whatever other planning merits the site may have in terms of the prospects for planning permission) is clearly normally a key activity and priority in such a project.

The Assets Department assumed that consultation with the public was being managed by the Planning Department and probably vice versa. What is clear is that no-one within the project team was given the role of making sure that consultation would take place. The first effective public consultation was arranged by the local Ward Councillor, Hilda Gaddum, who arranged the consultation meeting and hence the public meeting on 27 October 2011.

Eventually, following complaints and intervention by the former Leader and Chief Executive of the Council, Kier Regions Ltd was stood down, and work ceased on site. In due course, the planning application was deferred by the Council's Strategic Planning Board on 18 January 2012. The planning application was eventually withdrawn on 17 February 2012. (A full timeline can be found in the Council's internal auditor's report.)

## Why the Lyme Green project failed

### Poor Project Management

The DIP is clear in his assessment that the Council's inability to deliver the Lyme Green project successfully was due mainly to a serious failure of project management by some of the senior staff involved. In his report, he states this view strongly:

**"... it is clear that throughout this process project management was confused, not robust. The identification of both the project sponsor and the responsibility between the waste team in Environmental Services and Assets was unclear.**

**"There is no doubt in my mind that the ensuing lack of proper project management and consultation requirements, the unsatisfactory promotion of a planning application, and the lack of care at various stages, flowed from that decision taken by ... [a senior officer to procure the work in a particular way and in a short timescale]. The timetable was in my view completely unrealistic to obtain a proper planning permission."**

The DIP notes that the Construction Manager for the project set out an appropriate risk log for its management which was shared with his senior colleagues and which clearly:

**"... put senior managers ... on notice that they were proceeding at risk and both the Council's reputation in terms of planning risk and the approved capital estimate for the project needed to be reviewed ... but that was not being recognised or accepted at a senior management level."**

He repeats this judgement elsewhere in his report, saying in similar words:

**"It is abundantly clear ... that the project management of the Lyme Green waste transfer station was not robust and lacked clarity. Indeed, at times, responsibility for the project was confused ... Part of the difficulty was that no-one in September/October 2011 was completely clear who the project manager was ..."**

This was not helped by the fact that the (Property) Assets function in the Council transferred, in the summer of 2011, part way through the project, from the Finance and Business Services Directorate to the Places Directorate, with a consequent change of project manager. In practice, a senior officer in both these services shared the project management role for a period of some months. Such confusion occurred despite the fact that the project was overseen also by both a "Project Sponsor" and a "General Programme Manager", as is required by the Council's procedures, ie by two managers of greater seniority to the Project Manager.

The failure of project management in this case was, therefore, a shared one, involving several people and more than one tier of managers, who failed to act in a co-ordinated way with other colleagues, despite being challenged to improve the project management arrangements in this case.

The DIP is critical also of the decision by project managers to set an unrealistic timetable for the completion of the work on site. He regards this error as pivotal to the work proceeding without proper planning permission, and to the procurement process used to undertake the work through external contractors then being in breach of the Council's rules and good governance requirements:



**“The justification for waiving the ... [normal] competition requirement ... was clearly because of the lack of time and compressed project planning ... although contract documents were prepared to conduct a mini-competition, they were not used because of that lack of time ... It is also clear to me that the justification for waiving a mini-competition was a purported “emergency” due to the basic lack of project planning time, and a Delegated Decision [to award the building contract for the waste transfer station] should not have been taken just on the grounds of a lack of forward planning ...”**

In addition, the DIP believes that the poor project management was compounded by the lack of due professional diligence and care by other senior officers in assessing and challenging the process and the risks involved:

**“[Officers have a duty of care to the Council. They] ... should apply an appropriate level of corporate due diligence to the decision making process ... They are clearly expected ... to apply a high level of professional care and due diligence ... That did not happen on this occasion ... [They should ensure compliance and then assess risk]. That did not take place in this case.”**

Indeed, the DIP goes on to make it clear that such action, had it been taken, could have avoided the failure of the project, by ensuring that the risks involved were known to and assessed by the Council:

**“... the quality of advice from ... [some officers to their] colleagues could have been more robust, and directive ... With a degree of care and forethought ... [officers] could have come to that conclusion if ... [they] had taken the time to do so ... On this occasion, ... [one officer] alone could have stopped the process ...”**

## **Procurement**

The DIP acknowledges that, **“Many aspects of the Lyme Green investigation relate to procurement.”**

As a result, in his report, the DIP urges that appropriate action be taken:

**“... to ensure that the Council’s procurement team and its legal officers ... are completely up to date with, and have a practical and accurate understanding of procurement law, the relevant regulations and the various policy statements from the European Commission.”**

This recommendation reflects the concern of the DIP, arising from his investigation, that there was evidence of:

**“[a] lack of basic understanding of what [these] ... require ... and how they can be used proactively in a commercial environment ... in some cases the law and practice ... is not clearly understood, [by Council officers] which ... may give rise to unnecessary caution.”**

Indeed, the DIP formed the view that poor project management in this case both caused and was compounded by badly handled procurement processes for services and works required to deliver the project’s objectives. Details of these are set out below in the section of this report which deals with the specific allegations the DIP was asked to consider.

## Internal advice and challenge

In his report, the DIP commends the actions of a number of Council staff in ensuring that proper professional/technical advice and, where necessary, appropriate challenge was given to those responsible for the management and completion of the Lyme Green project.

In particular, the DIP comments on the actions of the Council's Organisation Change Manager, Dave Upton, in querying the efficacy of the project management arrangements, and doing so in writing, in a way which:

**"... clearly showed there was some concern regarding the project management arrangements ... and indeed [he] issued a document to help clarify those arrangements."**

Similarly, in terms of the internal advice given to the project managers in relation to the planning aspects associated with the development of the Lyme Green site, the DIP states in his report that little criticism should be made of the planning officers involved:

**"it is a fact that officers in the planning department ... were put under considerable pressure, [by the decision of the most senior manager involved with the project to adopt a truncated timetable for delivery of the project] and should have been involved much earlier in the process ... I am satisfied therefore that ... the planning officers gave advice based on what they were being told and in relation to the scale of development that was being represented to them. Their advice on the whole was robust and clear."**

In particular, the DIP singles out the part played by planning officers Steve Irvine, Adrian Fisher and Emma Williams, who:

**"... made it quite clear that the construction of a waste transfer station at Lyme Green would need planning permission ... [and urged] colleagues in Assets not to do anything that requires planning permission [and referred] to the potential for bad press and loss of reputation ... [should the Council proceed with construction on the site without permission having been granted]."**

In relation to the Planning function, the DIP rightly comments on the need for this to be well managed and to be seen to be independent and objective, particularly where the Council itself has wider commercial objectives. However, in his report, he states that there is:

**"... some evidence, in connection with Lyme Green, that at times the planning advice lost its focus in terms of being robustly reported, and indeed on occasions was not properly heard ... [by those staff responsible for management of the project] at times there is evidence which suggests ... advice was not listened to or at least not listened to sufficiently ... There was a feeling that the advice was not welcomed."**

This was the case, the DIP identifies, even though there was also written advice to senior project managers **"which clearly showed that "works would commence without planning approval – could lead to adverse publicity."**

The DIP is of the view that if this advice:

**"had been considered properly by senior management ... then [they] ... would have had more than sufficient information within those notifications to understand that a real planning risk was emerging."**

More fundamentally, given the understandable outcry from the local community over how the site development at Lyme Green was handled by the Council, the DIP goes on to conclude that, as a result of the failure of senior management involved in the project to respond to sound professional/technical advice:

**“... if the pre-application consultation arrangements for planning applications which I understand ... are now in place, had been in place during the material time under consideration, then the difficulties in terms of progressing the application and starting works, and the various definitions that would be needed as to preparatory works ..., would have been managed on a much better basis. Consultation would have been engaged properly and the proper planning merits of the case in due course ventilated, and objectively considered.”**

The DIP is critical, however, of the failure by some Council staff to be clear and more forceful in the provision of advice or in fulfilling their own obligations for due diligence and care in carrying out their duties.

The DIP comments in his report that at no stage were Finance officers informed of the escalating costs of the project and the likelihood that these would exceed the approved budget authority:

**“The inputs relating to a revised capital cost in the case of the Lyme Green project ... were not at any time communicated clearly to officers in the Finance Directorate ... Although there is clear evidence that project team officers ... knew that the [funding] was insufficient.”**

But he goes on to say that:

**“This does not entirely remove, in my view, the need for a more proactive approach to have been taken by Finance and Business Services officers, particularly where Delegated Decisions were presented to them for signature [and approval as sound and appropriate] ... Finance officers were entitled to act on what they had been told, but again to a degree there was clearly a need for them to ask whether an appropriate capital provision was in place.”**

**“The capital monitoring system ... put in simple terms, seemed to be reactive and not proactive ... but [finance officers had the] opportunity to query the approved capital budget ... when the Delegated Decision was put before them ... [but they] saw their role as merely commenting on the judgements of others in relation to whether the matter was procurement compliant ... I do not think this was a satisfactory audit trail or indeed represents a considered view of how to adequately consider a Delegated Decision.”**

The DIP is measured in his views about the legal advice on the Lyme Green project provided by one of the Council's senior lawyers, Jayne McLaughlin. He states, sympathetically, that:

**“She was another officer put under considerable pressure because of timescales ... She was not a member of the ... project team, so therefore was asked for advice on specific matters at specific times ... she was ... under the very clear impression ... that the project had to proceed to achieve the ... timescale ... [she] therefore advised on the information available to her which at times was partial, or incomplete, and in very short timescales ... [she] did flag up ... that there were [EU] compliance risks. She appears to have done her best in the circumstances ...”**

There is criticism, however, by the DIP of the poor advice given by the Council's then Procurement Manager (who has since left the Council's employment), on the two Delegated Decisions:

**"He broadly confirmed the position taken by other officers, but again did not show any degree of due diligence in challenging the Delegated Decisions. He accepted the position, primarily it appears, on the basis of a "risk assessment" of challenge as opposed to basic compliance with EU law or the Council's FCPRs" [Financial and Contractual Procedure Rules].**

On this basis, the DIP concludes that, (leaving aside the actions of the three senior Council managers against whom allegations were made in the earlier Audit Committee report):

**"I am satisfied that. ... [with the exception of the project managers] there are no other officers or persons against whom allegations or proceedings could have been considered."**

## **The escalating cost of the project**

Understandably, the DIP is particularly critical in his report of the failure to spot and deal appropriately with growing costs of the Lyme Green project, which significantly exceeded the agreed budget for it.

The DIP comments in this context that:

**"... the budget shortfall continued to be regularly discussed in project team meetings ... but at no time was this communicated to the Finance and Business Service officers ... [who were not part of the project team and so did not attend these meetings] it was assumed that either the project sponsor or project manager was doing so." [Though neither actually did so.]**

Indeed, in addition, the DIP is of the view that:

**"There is no evidence to show that the capital costs shortfall was ever specifically reported at [senior management] meetings. [Where a Finance officer was present] ... the Assets department, in generating the Delegated Decision, should have made it expressly clear that there was a capital provision shortfall."**

As a result, the DIP concludes that, on the basis of instructions given by the senior managers responsible for the project:

**"junior officers assumed therefore that a direction had been given ..." [to proceed with the project regardless of the identified budget overrun involved.]**

He goes on to say that:

**"I did not find the Finance officers ... as a group, responsible for the lack of an application for a supplementary capital provision or virement not being brought forward."**

However, the DIP states clearly in his report that:

**"The project sponsor/project management arrangements were not clear. But what is clear is that between them, ... [the project managers] had information**

**from their project team officers clearly on the record, that the £650,000 approved capital budget was not sufficient. That shortfall should have been referred to Finance officers with a request for a supplementary capital provision and/or virement ... in accordance of the Council's FCPRs Rule B.25 ...but was not so presented [by the project managers who] failed to satisfy their obligations to the Council ..."**

As a consequence of the Council's need to abandon the badly managed Lyme Green project part way through its construction, the Council incurred unplanned costs in the consequential settlement of the contractual position with the company involved (to whom no liability is ascribed by the DIP), as well as other consequential revenue costs (including at a later stage those of the DIP's investigation itself).

The DIP acknowledges, however, in his report that:

**"The Council may possibly recover some "value" from its abortive capital investment in civil works at the Lyme Green site, in due course."**

Further details on the current stage of development of the site, which demonstrates that this is, indeed, the case are set out below in the concluding section of this report.

## **The "Culture" of the organisation at that time**

The terms of reference for the DIP's investigation asked him to consider whether the errors that occurred in the management of the Lyme Green project were due to the actions or decision of individuals or were caused by procedural or "cultural" errors.

In his report, the DIP explains that:

**"It is necessary to record that all the relevant officers have confirmed that they understood the Council's FCPRs."**

In other words, it was not ignorance of the rules that caused the failure of the Lyme Green project, but rather the fact that they were not properly followed in practice. As the DIP acknowledges in his report:

**"It is very difficult to point to a particular cultural element and say with certainty that it caused a particular action."**

Nonetheless, in commenting on the otherwise inexplicable failure of the project managers to inform Finance Officers of the escalating costs of the project, the DIP clarifies that:

**"I asked myself whether, in fact, there was a cultural reason why that did not take place as it seems an obvious thing to do. For example, that perhaps officers found it difficult to report negative news in connection with the project to their supervisors ... senior managers had the opportunity to raise this issue, but did not."**

However, the DIP does go on to say that:

**"there is some evidence that advice from planning and the legal departments was not welcomed if it did not comply with the expected answer ... Too often advice was seen [by the project managers] as "fire fighting", as opposed to being taken early to help properly inform strategic objectives, and help to find the best way forward. On other occasions the advice was ignored; there was**

**therefore a lack of transparency and respect for advisers on occasions ... there is some evidence to suggest that relationships were strained from time to time but there is no doubt that all officers shared the view that once ... [senior managers] gave a direction it had to be followed. To that extent there was a “culture” which had ... potential negative deficiencies in that the capacity and confidence to question decisions made ... may have been lacking.”**

As further evidence of a lack of a collective approach and of shared ownership of the Lyme Green project and its outcomes by officers, the DIP cites the fact that:

**“... throughout the material time ... [of these events] the Council’s Appraisal and Monitoring Group (CAMG) should have been meeting and was not ... although efforts had been made to encourage Chief Officers and senior managers to input into CAMG ... [Finance Officers] found it very difficult in the initial years of the [new unitary] Council to obtain “buy-in” from those officers.**

Some years ago, many local authorities changed their management structures to absorb a large number of largely autonomous service departments into larger groupings. The Council’s structure at the time of the Lyme Green project contained only two Directorates, each led by a Strategic Director, for People and for Placed-based services, respectively, together with a third group for Finance and Business Support Services. This structure was a product of those wider changes and was quite common in other local authorities. Such an approach had several advantages, not least in terms of reducing the number (and hence the cost) of senior managers needed to run the organisation, compared with previous structures.

However, such structures still tended to group services on the basis of their different professional expertise, and this did not foster joined-up multi-disciplinary approaches to complex issues or projects, which required the co-ordinated input of a range of different professionals. Indeed, such structures frequently created artificial and impermeable barriers between related functions, which prevented holistic solutions and which led to duplication of activity and inefficiency. As a result, the loyalty of managers and staff remained predominantly to their professional grouping, rather than to the Council more widely as a single entity.

The investigation into the failings of the Council’s Lyme Green development project exposed serious weaknesses in the Council’s organisational culture, which were a product of those separate professional “silos”. As the DIP has confirmed in his report, these sometimes caused confusion, poor decision making, and inefficiency, because it was not always clear who had authority to act and who was accountable ultimately for the success or failure of particular initiatives.

Increasingly, the outcomes desired from the Council’s activities, in terms of improving the quality of life of local people, require staff from different services to work together as a team, and to create joint solutions to complex challenges. However, as the DIP clarifies, there were times, under the previous structures, where the relationships between the different professionals involved were strained. As a result, there was often a lack of clarity about what was required and a lack of proper care and diligence over the procedures for achieving success, because staff did not personally “own” the outcomes involved and focused only on their own part of the process.

Consequently, at times, communication between Council services could be poor, and uncertain lines of reporting in the Council’s multi-tiered management hierarchy sometimes led to poor management of risk. The DIP’s view is also that, as a result of how the Council was structured, necessary technical advice was sometimes neither sought nor taken at key stages, with wrong assumptions being made as a result. Clearly, one unwelcome product of those structures was the unintended creation of an organisational culture in which key

decisions and judgments were sometimes insufficiently challenged, with staff being too reactive or lacking the confidence to do this effectively, within what should have been a mutually supportive environment and a framework of shared goals.

In the light of new government policy and legislative changes, together with the major ongoing squeeze on resources for public services, many local authorities are currently reconsidering their core purposes and priorities, and are reviewing the organisational form and structures they need to work effectively and efficiently in very different ways in future. The lessons from the Lyme Green project, coupled with the significant challenges involved in delivering the Council's ambitious service transformation plan, mean that it is similarly a good time for major changes to be made in the Council's management roles and responsibilities, to ensure that they are "fit for purpose" over the next few years, as a key element of moving to a new operating model for the Council. This change process is now underway within the Council and will be completed later this year.

## The involvement of elected Members of the Council

As the DIP rightly states in his report:

**“All Chief Officers have a duty and obligations under the Council’s FCPRs ... to comply with them, and to act in accordance with them ... If compliance is not possible, the clear intention is that a decision should be escalated to elected members because if not compliant, the delegation to officers then does not apply ... But informing a Cabinet Member [particularly after a delegated decision has been taken] is not the same as escalating the matter for the attention of elected members so that they could make a proper and adequate risk assessment of whether they wished to proceed or not.”**

The Council’s governance documents state clearly that “Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place with them.”

The DIP was asked specifically to look at whether, and to what extent, any Councillors were culpable for the failure of the Lyme Green project. He is clear, from his investigation, that the decisions taken on how the project was put into practice were solely those of particular senior Council staff who were responsible for it.

In his report, the DIP comments on this unequivocally, as follows:

**“I have not found any evidence to clearly show that elected Members put officers under undue pressure ... or coerced them in any way to take decisions or make recommendations” [in bringing forward the proposals for the waste transfer station at Lyme Green].**

He states also, similarly, that:

**“I have found no direct evidence to indicate that elected Members at any time ... gave directions to officers to deliver the efficiency program [sic] or Lyme Green project on the basis of “cutting corners” or ignoring the Council’s governance or compliance with EU procurement regulations.”**

In relation specifically to project costs exceeding the agreed budget, the DIP is emphatic in his judgement that **“at no time was this communicated to the Finance and Business Service officers.”** As a result, they were not in a position to brief the then Cabinet Member with responsibility for Finance about this, nor is there any evidence that he was informed about it in other ways, (such as by another Cabinet Member).

The DIP makes it clear in his report that, had Finance officers been requested by the project managers to seek supplementary capital provision to fund the Lyme Green project:

**“That in itself would have needed an escalation to elected members for a decision and, if that step had been taken, that aspect of the matter could have been dealt with satisfactorily. It may have prevented in any event a Delegated Decision coming forward, as ... the other issues equally could have been presented to elected members for a properly informed risk assessment.”**



The DIP rightly states that:

**“... elected members [have a] reasonable expectation that officers have a duty and contractual obligation to advise with care at all times.”**

But, in this context, although no negative views are expressed about other elected Members, the DIP is critical in his comments on the actions of the relevant Cabinet portfolio holder with ultimate responsibility for the Lyme Green project:

**“I am satisfied ... that [he] was told about both Delegated Decisions ... I have no specific evidence to confirm whether he relayed the background to those decisions to his Cabinet colleagues, or to the Ward Councillor, to whom he subsequently apologised for not taking the situation seriously enough ... Transparency ideally would have been well served if he had reported or enquired further ... Elected members ... need to respect, and be seen to respect, the Council’s position to act lawfully and within its own governance, particularly if they are portfolio holders and when necessary convey that message clearly.”**

The DIP states that, in partial defence of their lack of proper communication to elected Members of the Council about progress with the Lyme Green project, some Council officers expressed:

**“... views that at times elected Members had made it clear that advice from the legal department, and indeed at times the procurement department, was seen as unhelpful, in dealing with procurement issues.”**

However, the DIP dismisses this, by stating boldly that:

**“In my view that is not a new phenomena, and has always been the challenge in advising ... public authority clients in terms of what a compliancy regime requires, and finding the most appropriate way to secure the achievement of their commercial objectives.”**

Nonetheless, it is the case that, by the time of these events, a culture of mutual mistrust had developed in the new Council between some officers and some elected Members. This was largely the result of a lack of clarity over their respective roles and responsibilities, as well as over how they should work together as a single team for the benefit of local people.

There has been much positive change in the Council to resolve this over the past twelve months. But, as the Leader said in his recent speech at the Council’s Annual General Meeting, some officers and elected Members have yet to adopt the new, and more positive organisational culture, and ensuring that this happens consistently remains a key challenge for the Council – and for its new Chief Executive.

By contrast, the DIP singles out Councillor Hilda Gaddum, the local councillor for the Lyme Green area, for particular praise in her determined attempts to establish the truth in this matter and to protect the interests of local residents. He comments on the benefits of discussing the matter with her as being “most helpful” to his investigation.

The DIP goes on to confirm that, in his view:

**“Councillor Hilda Gaddum clearly had grounds to be particularly disappointed over the way in which this project emerged in her ward. She clearly felt misled by the management of the project and the assurances that she was given by officers of the Council at various stages.”**

Indeed, the DIP clarifies that fuller (though still inaccurate) communication from Council officers relating to planning permission for construction works on the Lyme Green site only:

**“... came after a number of emails from Peter Yates [a local resident] and also Councillor Hilda Gaddum asking for clarification and following the public meeting ... [convened by Councillor Gaddum in] October 2011.**

**“The first effective public consultation was arranged by the local ward Councillor ... Hilda Gaddum ... [who] if I may say so, in terms of her actions in this matter is an impressive and fine example of a ward Councillor acting in the interest of her local community.”**

## Specific allegations

As part of the terms of reference set by the Council for his investigation, the DIP was asked to consider and comment on 7 specific allegations about the actions of Council officers and elected Members in relation to the Lyme Green project. These are dealt with in turn below:

**1 Was development of the Lyme Green transfer facility commenced without planning permission?**

The DIP has no doubt about the answer to the question, stating in his report:

**“... clearly yes it did ... works progressed beyond the stage they should have done and prior to a planning application being in place ... The works were eventually stopped and the planning application deferred and then withdrawn.”**

The DIP goes on to clarify that the serious failure by a senior manager to give full and proper consideration to an early email of warning from a colleague, and the failure to visit the site and be clear about the extent of the works at Lyme Green, played a major part in the error which endorsed commencement of work on site prematurely:

**“That risk analysis clearly sets out that works would be at risk of commencing without planning approval and also that it is a course of action that could lead to adverse publicity [for the Council]. It also clearly sets out that instructions were given and in effect orders placed without planning approval in place ... it asked for clear instructions from senior management on accepting the risks and appointing contracts.”**

The DIP's view is that neither site clearance nor the commencement of building work at Lyme Green should have happened without planning permission. The decision to proceed was taken, nonetheless, even though the project managers:

**“should have been especially alert to the fact that ... a sensitive internal planning application ... needed close scrutiny and specific management ... [but they] did not take material and very relevant considerations into account ...”**

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**2 Did the Council fail to comply with the EU Regulations when awarding a contract to the Council's waste bulking contractors?**

The short answer to this question is that yes, it did and that, again, this was the direct result of poor project management. In his report, the DIP clarifies that this action by officers to award the contract was the subject of a formal, written Delegated Decision under the Council's procedures. These procedures enable managers to act on behalf of the Council, under powers formally delegated to them by elected Members of the Council, subject to necessary consultation with, and consent from, certain specified colleagues who provide statutory legal and financial (including procurement advice).

Such Delegated Decisions must be taken, however, within the terms of the Council's Finance and Contract Procedure Rules (FCPRs), as well as comply with the Council's Procurement Strategy, and with legal requirements. Any breach of these rules must be reported to the relevant Chief Officer, and failure to comply with them can result in disciplinary proceedings and legal action against the officer(s) involved. This is

because the Rules state that the aim is to ensure a system of openness, transparency, integrity.

The Delegated Decision, taken in September 2011, awarded a six month contract to Henshaws for the provision of bulking facilities for dry recyclate waste, at a stated value of £240,000, as it was necessary to provide an interim service in the Macclesfield area, as part of wider improvements being made by the Council to enable greater recycling of waste.

The decision record included the rationale that the Council had previously tendered for the provision of this service for a three year period and only one tender had been received (from Henshaws), who were, therefore, the sole commercial provider of suitable bulking facilities in the area at that time. Accordingly, the Delegated Decision awarded the six month contract, even though advice was given that such work should have been tendered for, (or the original three year contract should have been retendered to include it), because it was judged by Council officers that there was no significant risk of challenge in doing so from other contractors. In other words, the normal requirement for competition was waived, as is provided for in certain circumstances under the Council's FCPRs.

However, in his report, the DIP strongly questions the acceptability of this judgement and approach, stating that:

**"It is material to note the wording of the Delegated Decision records the value of the contract is above the services threshold set out in the Procurement Regulations ... of £156,442. The capacity to waive the requirement for competition in the FCPRs was subject to the contract value not exceeding the EU threshold [which it did] ... the FCPRs clearly set out that Delegated Decisions are not available if the proposed exception would breach national or EU legal requirements, and ... that Delegated Decisions can only waive the Council's internal rules ... If the proposed contract award does not comply with those provisions then officers do not have the capacity to ... waive competition on any of the grounds which then follow."**

The DIP goes on to state unequivocally that:

**"... the fact remains that the market was never actually tested for a short term contract ... In essence there was no time to do that, and the reality of the situation was that because of the lack of proper project planning, and the tight timescale, the officers now were faced with a situation where they had to justify making a contract award without a formal procurement process."**

**In any event, what is abundantly clear is that the Delegated Decision was not EU compliant, and therefore ... none of the Chief Officers ... had the capacity to make that decision."**

Indeed, the DIP confirms that, in his taking of statements from those involved, several senior officers:

**"acknowledged that the Delegated Decision was not compliant with the FCPRs, and ... that it was a breach of the Procurement Regulations ... [and] that the decision should not have been made as a Delegated Decision and should have been escalated to Members."**

Accordingly, the DIP concludes that certain senior officers were:

**“... responsible and culpable for the Council not complying with the EU Regulations ... and ... [for] a serious breach of ... [the Council’s] FCPRs ...”**

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**3 Was the decision to appoint the main contractor for construction of the waste transfer facility and to incur expenditure taken without the necessary authority, breaking Finance and Contract Procedure Rules?**

The view of the DIP on this question is that the FCPRs were not applied properly, and their requirements were breached. He is of the view also that, although one of the project managers was responsible primarily for this, several others shared partial responsibility.

The relevant Delegated Decision was taken in October 2011, and its record form shows that it sought to rely on an exemption from normal competition requirements, in the interest of the efficient management of the service, on the basis that, under the particular circumstances involved, the likely risk of challenge from other contractors was low. It failed, however, to disclose properly that the decision would incur “significant” expenditure, and that it would have a “significant” effect on those living and working in the Lyme Green area.

Although the decision was listed as a “key decision” under the Council’s agreed definition, the DIP is critical of the debate and confusion amongst senior officers about this and the decision was not published openly, as is required of “key decisions”. The DIP explains the significance of this point as follows:

**“Of course as a “key decision” the call in period for a further five clear working days would have operated once the decision had been published. This would have enabled elected members to have been consulted on that decision if need be for further scrutiny.”**

The DIP makes it clear that officers proceeded to award the construction contract:

**“... on the basis that the risks had been shared with senior colleagues, and managers, and they were effectively proceedings to make a direct award ... [to a particular contractor] on a non-compliant basis ... [though] the criteria for a direct award were not discussed or even considered prior to the award being made.”**

But the Council’s Rules state that competition can be waived only if the contract award complies with UK and EU legislation, and with the other FCPRs. However, the DIP states in his report that:

**“It is clear ... that the criteria relevant to the award of a direct contract ... were not considered. They were probably not read, and certainly not applied to the allocation of the contract ... I have seen no evidence that the audit trail requirements ... were properly completed.”**

The DIP is uncertain, therefore, about the answer to this question, as he goes on to say that, as a result of the omissions of Council officers:

**“It is arguable ... whether the award of the works contract ... was ... a breach of EU procurement law as the value of the contract ... was below the**

**works threshold for the purposes of the procurement Regulations ... [but] some commentators would take the view that if ...[the Council] does not follow the conditions of the ... [particular procurement framework used on this occasion] they can become non compliant and therefore a contract award could be non EU complaint."**

Regardless of this uncertainty, the DIP makes it clear that:

**"there is still a responsibility upon the Council to operate and award contracts fairly, without discrimination, transparently and in accordance with the conditions of the [procurement] framework ... a considered view should have been taken by the officers of the issues involved ... [but] none of the ... officers ... properly assessed these matters – the basis of risk assessment was poor.**

**"It is also clear to me that the justification for waiving a mini-competition was a purported "emergency" due to the lack of project planning time, and a Delegated Decision should not have been taken just on the grounds of lack of forward planning ... matters ... [were] represented within the Delegated Decision inaccurately, and not in accordance with the Council's FCPRs.**

In addition, given that the project managers had been informed that, at the time of the Delegated Decision, the current budget estimate for the project indicated overall costs far in excess of the approved budget, the DIP is of the view that the project was then proceeding (in breach of Council Rules) without a proper approved capital estimate being in place. He believes that project officers:

**"... should have brought forward a proposal for a supplementary capital provision or virement ... [but there was] no direct indication in the Delegated Decision that there is a need for a supplementary capital provision [which would have been reported to Cabinet Members]."**

The DIP is critical of the lack of care by senior officers in handling this matter:

**"In ... signing off a Delegated Decision ... [they] should have applied more due diligence ... and challenged it ... [to assess risk and compliance]."**

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- 4 **Was expenditure beyond the approved budget incurred on the scheme, were finance and contract procedure rules broken, and were officers' delegations exceeded?**

The DIP's assessment is that the answer to these related questions is yes in each case:

**"... it is clearly the case that in this instance, in respect of the Lyme Green project, officers in the Waste team within Environmental Services, and the Assets department, did not work within the Council's FCPRs ... There was clearly a breach of the FCPRs."**

**"They ... should have brought forward, or otherwise instructed that a revised business case was brought forward, to support an application for a supplementary capital provision ... As a result [of not doing so] there was a serious breach of the Council's governance and FCPRs ..."**

The DIP is also clear where responsibility for this situation lay:

**“It was the project management ... in this instance which primarily caused the breach of Council governance and FCPRs.”**

He goes on to exonerate Finance officers (and, by association, the relevant Cabinet Portfolio Holder) from such culpability, because they were not told that the agreed capital costs of the construction project on the Lyme Green depot site had been exceeded:

**“There clearly is no indication within that Delegated Decision that the original capital budget of £650,000 would be exceeded ... I am satisfied that the Finance officers were not told, nor were they given a reasonable opportunity to know, that the budget figure of £650,000 had in fact been increased to £1.5 million as the target cost for the project.”**

**“The Finance officers who compiled the information for the third quarterly Cabinet report were not aware of the additional capital requirements.”**

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**5 Were the requirements of the Council’s Capital Strategy and Finance and Contract Procedure Rules fully complied with?**

Again, the DIP is clear in his judgement about the answer to this question:

**“... in this case it is clear that a revised Business Case was never submitted to CAG [the Council’s Capital Asset Group for scrutiny and appropriate action] either by ... Waste and Recycling ... or subsequently by the Assets department ... If they had done so, the monitoring system would have picked it up, further scrutinised it, and challenged it ... The allegation is therefore well founded.”**

Also, again, the DIP makes it clear that Cabinet Members were not made aware of this error and omission by certain officers of the Council:

**“There were therefore no issues for revision [of the original capital estimate] highlighted within the reports within the capital monitoring process, and indeed on 28 November 2011, Cabinet received a report on a review of the Council’s position, where the waste transfer station project was still shown at a figure of £650,000.”**

**“Finance officers in this case cannot be held primarily responsible for the breach that occurred ... Senior [project] managers had the opportunity to raise the issue, but did not. Between them, they failed to apply the FCPRs effectively, and acted clearly in breach of ... [these rules].”**

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**6 Was appropriate project management and governance applied to the development of Lyme Green?**

As has been stated clearly earlier in this summary report, the DIP was consistently critical in his view about this aspect, stating in his report:

**“There is a common consensus that project management on the Lyme Green project, and indeed even the letting of contracts on a short term basis to Henshaws, was not clear, robust and considered ... [and this was] also confirmed from the evidence of the other participants that I have interviewed during this investigation.”**

**“Risks were identified and set out both as to cost overrun, planning, potential reputational damage to the Council, time-scale risk ... Those risks were not properly or diligently recognised, nor were they addressed sufficiently by ... [any of the project managers].”**

**“The Lyme Green project also suffered from the lack of a clear and properly researched feasibility study as to the costs, site conditions and general matters ... and that was a contributory factor to imprecise capital cost estimates.”**

The DIP concludes his comments on this aspect with a scathing criticism of the senior staff responsible for the project:

**“There is no doubt that the project management in connection with the Lyme Green project was not clear, robust nor to an acceptable standard ... [those senior staff] must ultimately take responsibility for the disjointed and at times chaotic project management ... [the chosen timescale for its completion] ruled everything and that was a product of an earlier lack of care, and doubtful strategic decisions. In addition, the consultation requirements with the public was woefully inadequate ... The Council’s standards as to openness and trust with the public as to consultation were not met.**

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**7 Were any elected Members (of the Council) or any members of the public misled with regard to the development of the Lyme Green Waste Transfer facility?**

As part of his investigation, the DIP was asked specifically to consider and answer this question. His report states:

**“whether there was an express intention to deceive the public by avoiding the need for planning permission at Lyme Green is not entirely clear, but I am persuaded that the effect of the project team members being given an unrealistic timescale, meant that they sought to manage the options which they could adopt in their view to minimise compliance with planning process ... requirements (eg in respect of consultation ... There is no doubt in my mind that was the case ... The errors in this regard were cumulative and I am satisfied that the timescale bred a lack of care in applying the procedures, rather than a defined plan to deceive. There is no doubt however, and understandably so, that the public did feel misled ...”**

The DIP understandably, finds this disappointing, given that:

**“The Council, in terms of its Constitution, and within its code of conduct for employees, clearly sets out core principles including “OPENNESS” and “TRUST”, which in simple terms is expressed as to act in accordance with the trust that the public is entitled to place on them ... in promoting its planning application for Lyme Green, the Council in any event should be seen to be using its best endeavours to ... [comply with these standards]**



**and by so doing set an example for the public at large and indeed other planning applicants.”**

Furthermore, the DIP is particularly critical that:

**“... within the project team there was nobody designated with dealing with “Consultation” on the project ... there was no clear direction on consultation and therefore no clear communication plan. I find this quite extraordinary, and particularly when one is dealing with a sensitive Council led application such as for a waste transfer station.”**

Although the DIP accepts that a crucial email about planning matters for this site, to Sutton Parish Council in November 2011, was not intended to be untruthful, he goes on to state that:

**“The end result however was that the council represented a position [in that email] which was not factual correct. I think this arose because of confusion between the officers as to what work “on the ground” had actually progressed ... if there had been a proper consultation and communication plan the confusion and uncertainty would not have happened.”**

Indeed, the DIP goes on to clarify that the Planning Officer involved was simply the “messenger” of what he was being told was going on at the site, and that the officer had stressed in a written communication to colleagues:

**“the need to establish clearly what is going on on site “so we are truthful in any public statements we make on the subject ... [and had stated that] I remain concerned however that we are not being entirely honest ... should we not simply come clean and say so.”**

The DIP is, perhaps understandably, not sure about what actually went on, stating that:

**“... there is a strong hint that ... [some officers] were attempting to contrive a version of events on Lyme Green which was not entirely accurate. I have thought long and hard about this as to whether there was an intent to deceive the public but on balance ... I have reached a conclusion that the cause of this lack of transparency and inaccurate communication was “confusion” ... because no-one was clear what was happening on the ground.”**

The DIP goes on to say, in relation specifically to the position of elected Members, that:

**“I do not believe that the ... offices acted in those matters with a view to mislead elected members or the public ... After careful analysis of all the relevant emails and communications, I do not find ... [they] had any personal intent to mislead the public nor elected members ... I believe there were poor internal communications between officers and a lack of certainty as to what was happening on the ground and that caused confusion and uncertainty and that was another product of poor project management.”**

However, the DIP has sympathy with the position of the local residents affected by the development project on the Lyme Green site:

**“I have no doubts that Councillor Hilda Gaddum felt misled and I can understand why. I also have no doubts that members of the public also felt misled, and I can equally understand why, and sympathise with them.”**

In this context particularly, the DIP singles out for criticism the unhelpful content of an email sent to a local resident, Mr Peter Yates, by a senior Council officer in January 2012, which said that there had been no significant breaches of the Council's procedures and that the Planning process involved in this case was robust in safeguarding the public interest. The DIP comments in his report that this:

**“... must have been frustrating to the recipient, and indeed sustained an impression that the Council was still seeking to maintain a position of planning compliance when ... that was not the case ... [this] email was not intended to mislead the public, it was however unfortunate in terms of the transparency of the message it sought to convey ... to allude to the planning process being robust and that there had been no “significant breaches of the Council’s own internal procedures” was regrettable.”**

**“I have immense sympathy with the public, including Peter Yates ... and also Councillor Hilda Gaddum, because it must have been incredibly frustrating to be able to see what was happening on the ground and receive communications from the Council which were clearly not representative of that.”**

In his report, the DIP thanks Mr Yates (who is also a Planning Consultant) for the helpful evidence he supplied as part of the investigation, which was taken into account by the DIP in reaching his conclusions.

## Conclusion

As a result of his extensive investigation, the DIP found a number of the allegations made against several of the senior officers involved to be well founded. In these cases, the DIP recommended in his report that action be taken by the Council to follow-up these findings and to apply appropriate sanctions in each case.

Such action was taken promptly by the Council's Leader and Chief Executive, as well as by the Staffing Sub Committee designated to receive and act on the DIP's confidential report. The Sub Committee met on several occasions and, where submissions were made by the staff involved or their legal representatives, gave due consideration to them, taking legal advice on the process used, where appropriate. This action by the Council continued up to the point where the gravity of the possible sanctions in this case were understood by the managers in question, and a number of individuals left the Council's employment, having exercised their right to resign.

In this context, it needs to be remembered also that the Council has since put in place an extensive Improvement Plan, under the oversight of its Audit and Governance Committee, to tackle the issues arising from the original internal Council investigation of what went wrong with this project.

This action plan has enhanced the Council's systems, procedures and staff training, as well as making clearer the potentially serious consequences for staff of any failure to comply with these requirements. This has been done to reduce the future risk of such project failure.

In addition, the Council is engaged in a major Management Review, as part of putting in place a new operating model, which is designed to change the attitudes, behaviours and organisational culture which contributed to the failure of the Lyme Green project. In particular, this breaks down the unhelpful barriers between related functions, which created separate professional silos, so that there is greater shared ownership of outcomes for local people.

In coming to the view that, in relation to the management of the Lyme Green development project, there was "a serious breach of the Council's governance and FCPRs", the DIP understandably draws attention on numerous occasions throughout his report to the consequent serious reputational harm this caused the Council, and to the costs involved in the aborted construction work on the site.

There is continuing interest in this matter in the local community where the Lyme Green depot is located, more than a year after the events in question. The matter also has received coverage in the national "trade" press for local government, as a result of the decision to engage the DIP to investigate allegations against a number of senior Council officers, because this happens relatively rarely. It is likely, therefore, that the mismanagement and consequent failure of this relatively small project will continue to unfairly taint the more significant achievements and successes of the Council for some time to come.

This is true despite the fact that all those senior officers criticised by the DIP for their role in this matter are no longer employed by the Council. In addition, the financial impact of the sudden curtailment of the Lyme Green project has been overstated and is not properly understood.

When the Lyme Green project was stopped prematurely by the Council before its completion, it had incurred costs in excess of £700,000. However, the depot site had already been zoned for development, and most of these costs were in relation to site preparations (such as excavation, drainage, and foundations) or reusable structures which can be used to support

alternative development opportunities. The net costs to the Council, therefore, were less than £100,000, including a compensatory payment to the building contractor involved on site.

In this context of further development, the Council has more recently reached an in principle agreement with a well-known, local independent retailer to provide a purpose-built warehouse facility on the Lyme Green depot site. These discussions have been undertaken in close consultation with the local community and Parish Council.

This project will help retain jobs in the Macclesfield area and will open up the site for further job growth, through other developments which are in keeping with the area. The Council expects to be in a position to make a more detailed announcement on this shortly, when the thorough business case analysis for the project has been completed.

The positive legacy of this experience also is that it has visibly improved the project management and procurement processes of the Council, thereby providing better value for local residents. In addition, it has contributed to a major change in management roles, service structures, working practices and organisational culture, as the Council moves to a more effective collaborative and joined-up approach to undertaking its various activities and initiatives. The experience has been a painful one, but much of lasting value has been learned as a result, though it is accepted by the Council that local people in Cheshire East will be the best judges, in future, of whether this is the case.