

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 17th September, 2015 at Council Chamber, Municipal
Buildings, Earle Street, Crewe CW1 2BJ

PRESENT

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

Councillors G Baxendale, M Beanland, B Burkhill, S Edgar, S Gardner,
L Jeuda (Substitute), D Mahon, N Mannion, R Menlove, L Wardlaw
(Substitute) and G Wait

Officers

Anita Bradley, Head of Legal Services and Monitoring Officer
Brian Reed, Head of Governance and Democratic Services
Martin Smith, Manager Executive Officer
Julie Gregory, Lawyer
Rachel Graves, Democratic Services Officer

14 APOLOGIES FOR ABSENCE

Apologies have been received from Councillors S Hogben, D Newton and
S Pochin.

15 DECLARATIONS OF INTEREST

No declarations of interest were made.

16 PUBLIC SPEAKING TIME/OPEN SESSION

Sue Helliwell spoke in relation to the Protocol on Public Speaking at
Planning Committees.

17 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 15 July 2015 be confirmed as a
correct record, subject to the following amendment:

Item 10 – resolution to be amended to include the concluding word
“committees.”

Item 13 – resolution 1 be amended to read as follows:

“1 The Chair and Vice-Chair of the Constitution Committee agree the content and format of the Procurement Engagement Form.”

18 COUNCIL FLAG FLYING POLICY

The Committee considered a report on amendments to the Council's Flag Flying Policy.

The Civic Sub Committee, at its meeting on 8 September 2015, had discussed the Flag Flying Policy and had made a number of recommendations. These recommendations had been incorporated into a proposed revised Flag Flying Policy outlined in Appendix 1 to the report.

The Council's current Policy had been set in 2010 and outlined those occasions when the Cheshire East Flag would be flown at half-mast.

RESOLVED:

That the Council's Flag Flying Policy be amended in accordance with Appendix 1 of the Report.

19 APPOINTMENT OF HONORARY ALDERMEN AND FREEMEN

The Committee considered a report on the appointment of Honorary Aldermen and Honorary Freeman.

Section 249 of the Local Government Act 1972 allowed local authorities to appoint both Honorary Freeman and Honorary Aldermen. The criterion for appointment as Freeman was that an individual should be a “person of distinction” and have “rendered eminent service to the place or area.” The criterion for appointment as Honorary Aldermen was that an individual “should have rendered eminent service to the Council as [a] past Member of the Council”. There was no bar on an individual being both a Honorary Freeman and a Honorary Alderman.

Cheshire East Council's policy in relation to the appointment of Honorary Aldermen was that a former Member should have served for a minimum of ten years (including service on one of the four demised authorities) and/or have served as Leader or Mayor of Cheshire East.

Twelve former Members whose service on Cheshire East and/or one of the demised authorities qualified them for appointment as a Honorary Alderman; these being:

- David Brickhill
- Roy Cartlidge
- Ken Edwards
- Wesley Fitzgerald
- Shirley Jones
- Frank Keegan
- Peggy Martin

- Brendan Murphy
- David Neilson
- Andrew Thwaite
- David Topping
- Roger West

The Leader of the Council, had indicated at a meeting of Council earlier in the year, that he wished to see a number of Members who were standing down from the Council appointed as Freeman. These former Members had satisfied the test of having rendered eminent service to Cheshire East and were:

- Carolyn Andrew
- David Brickhill
- Roland Domleo
- Shirley Jones
- Chris Thorley
- David Topping
- Steve Wilkinson

The Civic Sub Committee, at its meeting on 8 September 2015, endorsed the appointment of the former Councillors as Honorary Aldermen and Honorary Freeman. The Local Government Act specified that both Honorary Freeman and Honorary Aldermen must be appointed at a Special Meeting of Council, with the appointment being endorsed by a two thirds majority of those Members in attendance at the meeting. The Sub Committee was of the view that the most appropriate date for a Special Meeting of Council would be Thursday 17 December; the day of the scheduled meeting of Council.

It was noted that Former Councillors Brickhill, Jones and Topping would be appointed to the position of Honorary Alderman and Honorary Freeman and it was suggested that the Special Meeting of Council have two ceremonies – the first to appoint Honorary Aldermen and the second to appoint Honorary Freeman.

It was suggested that as all those nominated may not be able to attend on 17 December that there should be some flexibility on the date for the Special Meeting of Council.

RESOLVED:

That a Special meeting of Council is convened to enable Honorary Aldermen and Honorary Freeman to be appointed, as proposed in paragraphs 10.5 to 10.8 of the report.

20 PROPOSED CHANGES TO THE COUNCIL'S CONSTITUTION

The Committee considered a report on proposed changes to the Council's Constitution.

On 15 July 2015 a report had been brought to the Committee which proposed a number of changes to the Constitution, intended to bring benefits to the Council's decision making and other arrangements.

The Committee decided to recommend changes contained within that report, subject to a number of amendments, to Council. In the event consideration of those amendments by Council were deferred pending a review of the agreed changes by the Constitution Working Group.

The Constitution Working Group had duly considered the proposed changes and the report set out those changes as refined and amended in accordance with the Constitution Working Group's recommendations.

The Constitution Working Group had also requested the inclusion of a further item to take into account the necessary changes to the Proper Officer Functions which had arisen as a result of changes in the staffing structure and officer responsibilities. It was proposed that the ability to make these changes be delegated to the Head of Legal Services and Monitoring Officer.

The Audit and Governance Committee, on 26 June 2014, had approved an amended Whistleblowing Policy and its adoption in accordance with the Committee's terms of reference and the amended Whistleblowing Policy had duly been inserted into the Constitution.

The Committee considered the proposed changes outlined in the report, and agreed a number of amendments to those proposed changes:

Appendix 1 – Terms of Reference for Strategic Planning Board and Planning Committees: Amend the wording in relation to a call in request to "However, there will be a presumption that a call in request by a local ward member will be agreed where applications are for the renewal (or extension of time) of extant, unimplemented permissions."

Appendix 4 – Terms of Reference for Staffing Committee: Incorporate wording in relation to Appeals to effect the following: "From 1 January 2016 training on appeals procedure (tailored in accordance with the individual Member's existing knowledge and experience) be mandatory for Members sitting on the Staffing Appeals Sub Committee."

Recommendation 2.5 – delete "and that the current practice of allowing the questioning of public speakers should, although the discretion of the Chair to asks questions of fact from anyone will remain."

Recommendation 2.25 (Executive Monitoring Board – financial thresholds) – delete in entirety

RESOLVED:

It is recommended to Council that:

- 1 The Constitution Committee be given the delegated authority to make all changes to the Council's Constitution which are not major, subject to the Head of Legal Services and Monitoring Officer and Chief Operating Officer (s151 Officer) agreeing that the proposed changes are not major and to Council subsequently being informed of such changes, provided that such changes as are considered by the Committee and agreed by the Head of Legal Services and Monitoring Officer and Chief Operating Officer (s151 Officer) to be major shall be referred to Council for approval.
- 2 The Head of Legal Services and Monitoring Officer be given delegated authority, in consultation with the Chair and Vice-Chair of the Constitution Committee, to make such changes to the Council's Constitution as he/she deems to be necessary and which are:

- in the Council's interests;
- not major in nature;

including, but not limited to, changes:

- amounting to routine revisions;
- to provide appropriate clarity;
- to correct typographical and other drafting errors;
- to reflect new legislation;
- to correct inconsistencies in drafting;
- to reflect new officer structures and job titles, properly approved through Council processes (including amendments and revisions to the Proper Officer Functions).

- 3 In relation to the Planning Committees that:

- (a) From the start of the next Municipal Year the Strategic Planning Board, and the Northern and Southern Planning Committees be reduced in size to 12 with a composition of 8:2:2 (Conservative: Labour: Independent) for each Board/Committee;
- (b) the political group representation agreed at the Council's Annual Meeting, and the methods, calculations and conventions used in determining this be amended to reflect the reduced memberships;
- (c) that any necessary and consequential adjustments be made to the total number of committee places allocated to

each political group in order to meet legislative political proportionality requirements, in consultation with the political group leaders, together with any resultant changes in committee places; and

(d) the operational effectiveness be kept under review.

(e) That the Constitution be amended as set out in Appendix 1 to the report to reflect that there are to be no substitutes at Planning Committees other than named substitutes

- 4 Amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1 to the report and that consequential amendments are made to that Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1 to the report such that Certificates of Lawfulness may only be signed off under delegated powers following Consultation with the Head of Legal Services and Monitoring Officer.
- 5 The Protocol on Public Speaking at Planning Committees be amended by increasing speaking time for the Local Parish Council from 3 minutes to 5 minutes to ensure that there is a stronger local voice in the process, and that lobby groups be included within the time allowed for objectors/supporters to speak.
- 6 Amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees to delegate decisions with regard to Neighbourhood Planning as set out in Appendix 1 to the report.
- 7 In relation to Notices of Motion that:
 - (a) Notices of Motion will be moved and seconded at Council meetings, without any comment from the movers and seconders, and referred-on for determination by the relevant decision-making body, provided that the existing rules which allow certain Notices of Motion to be debated and disposed of at Council meetings will continue to have effect.
 - (b) That the Head of Legal Services and Monitoring Officer be instructed to make the changes set out in Appendix 2 to the report.
- 8 The template agendas set out in Appendix 3 to the report be adopted for use at Annual Council and ordinary Council meetings and incorporated into the Constitution.
- 9 In relation to Staffing issues that:
 - (a) the terms of reference of the Staffing Committee, and the powers of the Chief Executive and Scheme of Delegation to Officers be

recommended to the Council for amendment in the Constitution as set out in Appendix 4 to the report;

(b) the Staff Employment Procedure Rules be amended as set out in Appendix 4 to the report; and

(c) the powers of the Head of Paid Service in relation to staffing and other matters be recommended to the Council for amendment in the Constitution as set out in Appendix 4 to the report.

10 The Head of Legal Services and Monitoring Officer be authorised, in consultation with the Head of Paid Service, to make such changes to the Constitution as he/she considers are necessary to give effect to the wishes of Council in respect of such staffing matters as were considered at the Council meeting of 23rd July 2015 and to incorporate the changes that were put before the Committee on the 26th March 2015 that have not been superseded by the subsequent changes in the staffing structure.

11 The proposed changes set out in Appendix 5 to the report (Health and Wellbeing Board Terms of Reference) are accepted.

12 That paragraph 11 (c) below (Constitution page 191), which permits topical questions, be amended as follows:

“(c) where time permits, questions which are of a topical nature be accepted **where the Mayor deems it to be appropriate**.”.

13 That paragraph 11.11 (Constitution page 192), which deals with the frequency with which question can be re-submitted, be amended by replacing 3 months with 6 months as set out below:

“11.11 No questions will be allowed which repeat, or are substantially the same as, questions submitted to a meeting of Council during the preceding **6 months**.”

14 That procedural rule 26.2 (Constitution page 197), which deals with changes to the approved calendar of meetings, be amended as below:

“26.2 A meeting of a decision-making body scheduled in the Calendar of Meetings may be cancelled or changed by the Chairman following consultation with the whole membership of the body and with the agreement of a simple majority of **those** members of that body **who respond within 2 working days of being notified of the proposed cancellation or change**, 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.

- 15 That the existing list of Category 1 organisations in the Constitution be replaced by Appendix 6 to the report.
- 16 That the Constitution be amended in accordance with the changes set out in Appendix 9 to the report to effect the removal of the requirement to hold secret ballots from the Council Procedure Rules.
- 17 That the suggested definition of an urgent decision is inserted into the Constitution (Part 4 Procedure Rules General Provisions Appendix 4, page 225) as follows:

“A decision will be urgent if any delay likely to be caused by following the usual procedures would seriously prejudice the Council’s or the Public’s interests. If a decision is deemed an urgent decision caused by a failure to plan appropriately or work without due regard to timeliness, the circumstances giving rise to the need for an urgent decision should be reported to the Audit and Governance Committee on a quarterly basis.”

- 18 That Paragraph 6 of the Mayoralty Code of Practice (Constitution page 442) be amended as follows:

“The Mayor should not be appointed as Chairman or Vice-Chairman or member of any Committee or Sub-Committee of the Council or Cabinet support member or act or be appointed to act as a Director of any of the Council’s Alternative Service Delivery Vehicles during his term of office.....”

- 19 That the Audit and Governance Committee’s terms of Reference be amended by the inclusion of the following wording as an introductory paragraph in the Constitution at the start of page 109:

Membership (11)

The Audit and Governance Committee, like all of the Council’s Committees, must be politically balanced. However the success of the Audit and Governance Committee depends upon its ability to remain apolitical. It must adopt a non-political approach to its meetings and discussions at all times. Remaining apolitical also places a duty on members not to make inappropriate use of information provided to the Committee for other purposes.

The Committee is composed of 11 Members, comprising 10 members of Council and one independent voting member (a member who is not a Councillor) with the Chair and Vice Chair being appointed at full Council. The co-option of an independent member will help to bring additional knowledge and expertise to the committee and also reinforce its political neutrality and independence. To ensure the Committee remains focussed on its assurance role any designated substitute must be appropriately trained.

20 That the Constitution be amended to reflect the changes set out below.

(a) That the following wording be inserted as a new paragraph 2.2 at page 51 (Chapter 14 Management of the Constitution):

“2.2 Once the changes to the Constitution have been formally approved by or notified to Council the amended version will be published on the Council’s website within one (1) month.”

(b) That the wording of paragraph 5 (page 52) be amended as follows:

“will **provide an electronic** copy of this Constitution to each Member of the authority upon delivery of that Member’s declaration of acceptance of office on the Member first being elected to the Council;”

21 That the Constitution be amended to remove reference to members’ pensions from the responsibilities of Council and Constitution Committee as follows:

(a) Paragraph 12 of page 56 be amended by removing the wording in red as below:

“12. will approve the Members Allowance Scheme **including any pension provision** for elected Members following advice from the Independent Remuneration Panel;

(b) Paragraph 7 of page 107 be amended by removing the wording in red as below:

“7. overseeing and monitoring the Members’ Allowance budget, **including pensions**, and keeping under review the scheme for the payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise the Council on the adoption or the scheme and on any proposed amendments;”

22 That paragraph 7 of the responsibilities of Cabinet (Constitution page 62) be amended to reflect that Human Resources Policies are approved by Staffing Committee:

“7. **developing**, monitoring and reviewing any Council Corporate personnel and human resources policies;”

23 That paragraph 1 (b) of the Strategic Planning Board terms of reference (Constitution page 88) be amended as follows:

~~(b) to vary the number, size and working arrangements of the Planning Committees, to appoint their membership to vary the division of functions and delegations between the Board, the Planning Committees and the Director of Planning & Sustainable Development.~~

24 That the paragraph 2 (b) of the Strategic Planning Board terms of reference (Constitution page 89) be amended as follows:

(b) submitted by a councillor, senior Council officer (**Grade 12** or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these.

25 That the Head of Legal Services and Monitoring officer be given delegated authority to make consequential changes to the Constitution to reflect the change in title from Corporate Leadership Board to Management Group Board.

26 That the wording of paragraph 3.2 (Constitution page 30), which relates to Task and Finish Groups, be amended to read as follows:

“Any Committee which sets up a Task and Finish Group will appoint its Chairman (and Vice-Chairman, if appropriate) and agree the membership. This must be cross party.”

27 That paragraph 4.2 of the (Constitution page 49 Chapter 13 – Finance, Contracts and Legal Matters) be amended by adding the wording in red as follows:

“4.2 Any contract entered into on behalf of the Council shall be made in accordance with the Council's Finance Procedure Rules **and Contract Procedure Rules**. In the absence of any authority given to a specific officer **under the Council's Finance Procedure Rules and Contract Procedure Rules** all such contracts must either be signed by at least the Head of Legal Services or his/her authorised deputy, plus another of his/her authorised deputies or be made under the common seal of the Council.

28 That the terms of reference of the Macclesfield Local Service Delivery Committee are deleted from the Constitution as following the creation of Macclesfield Town Council, this committee and references to it in the Constitution are now obsolete.

29 That paragraph 22.1 (Constitution page 196) which relates to the term of office of Members of committees and sub-committees, be amended as per the wording in red below:

“22.1 Committee and Sub-Committee Members will be appointed by the Council. The Council may, at any time, dissolve, alter or amend the membership of a Committee or Sub-Committee.”

- 30 That paragraph 28.6 of the Constitution (page 198) which related to the minutes of Committees and sub-committees, be amended by replacing 1 hour with 24 hours as shown in red below:

“28.6 . Where a Member has a question or comment on an exempt, private or confidential Minute, the question or comment must be given in writing to the Monitoring Officer at least 24 hours before the start of the meeting

- 31 That the Constitution is amended in accordance with the changes set out in Appendix 7 to the report (Local Choice Functions).
- 32 The Committee recommends to Council that the Constitution is amended in accordance with the changes set out in Appendix 8 to the report (Contract Procedure Rules) and the Chair and Vice-Chair of the Constitution Committee agree the content and format of the Procurement Engagement Form.
- 33 Following the deletion of the post of Executive Director Strategic Commissioning, the Head of Legal Services and Monitoring Officer be given the delegated authority to implement the necessary changes to the Constitution to reflect the re-allocation of delegations within the Officer Scheme of Delegation.

The meeting commenced at 2.00 pm and concluded at 3.42 pm

Councillor A Martin (Chairman)