

# Constitution Committee

## Agenda

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<b>Date:</b>	<b>Thursday 17th September, 2015</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Council Chamber, Municipal Buildings, Earle Street, Crewe CW1 2BJ</b>

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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. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the body in question.

Individual members of the public may speak for up to 5 minutes but the Chairman 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 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.

It is not required to give notice of the intention to make use of public speaking provision, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

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For requests for further information

**Contact:** Paul Mountford

**Tel:** 01270 686472

**E-Mail:** paul.mountford@cheshireeast.gov.uk with any apologies

4. **Minutes of Previous meeting** (Pages 1 - 10)

To approve the minutes of the meeting held on 15 July 2015

5. **Proposed Changes to the Council's Constitution** (Pages 11 - 96)

To consider a report proposing a number of changes to the Constitution, which is intended to bring benefits to the Council's decision-making and other arrangements.

6. **Council Flag Flying Policy** (Pages 97 - 102)

To review the Council's Flag Flying Policy

7. **Appointment of Honorary Aldermen and Freeman** (Pages 103 - 106)

To consider the convening of a Special meeting of Council to appoint Honorary Aldermen and Freeman

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Constitution Committee**  
held on Wednesday, 15th July, 2015 at West Committee Room - 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,  
S Hogben, D Mahon, R Menlove, D Newton, B Roberts, S Pochin and G Wait

**Councillor in Attendance**

Councillor A Moran

**Officers**

Anita Bradley, Head of Legal Services and Monitoring Officer  
Brian Reed, Head of Governance and Democratic Services  
David Malcolm, Head of Planning (Regulation)  
Guy Kilminster, Head of Health Improvement  
Phil Badley, Interim Head of HR  
Julie Gregory, Lawyer  
Rachel Graves, Democratic Services Officer

**8 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor N Mannion.

**9 DECLARATIONS OF INTEREST**

No declarations of interest were made.

**10 PUBLIC SPEAKING TIME/OPEN SESSION**

Councillor A Moran spoke in relation to Item 6 – Proposed Changes to the Council's Constitution expressing concern about the proposal to reduce the membership numbers on the Planning Committees and the impact upon the proportionality on other.

**11 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 18 June 2015 be approved as a correct record.

### 12 **CHANGES TO OUTSIDE ORGANISATIONS APPOINTMENTS 2011-2015**

The Committee considered a report on nominations to Category 2 outside organisations.

Category 2 appointments had been allocated to the Constitution Committee to make. Details of the appointments being considered were detailed in the Schedule attached to the Report.

Appointments would be made for the duration of the Council, which was 2015-2019, although it may sometimes be necessary or desirable for them to be reviewed during that time in order to take into account changes for vacancies that may arise.

**RESOLVED:** That

- 1 the current approach to appointing to outside organisations be continued and the casual vacancy procedure be used in event of changes in the mid-term period.
- 2 the Schedule of Appointments attached to the Report be approved, and that the appointments run until such time as the Council's representation is reviewed following the election of the new Council in 2019.
- 3 the appointments take immediate effect; and
- 4 notwithstanding (1) above, the Council retain the right to review the representation on any outside organisations at any time, for any reason.

### 13 **PROPOSED CHANGES TO THE COUNCIL'S CONSTITUTION**

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

The existing Constitution had been in place since the Council's inception in 2009, and whilst having served the Council reasonably well, was now in need of revisions.

The report and appendices set out the proposed changes to the Constitution. The Committee's recommendations would be presented to full Council on 23 July 2015 for approval:

**RESOLVED:**

1. The Chair and Vice-Chair of the Constitution Committee agree the content and format of the Procurement Engagement Form prior to it being incorporated into the Constitution.

2. It is recommended to Council that:

1. delegated authority be given to the Constitution Committee 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 Council subsequently being informed of the 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 full Council for approval.
2. Monitoring Officer, in consultation with the Chairman and Vice-Chairman of the Constitution Committee, to make such changes to the Council's Constitution which he/she deem to be necessary and which are:
  - in the Council's interest
  - 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.

3 in relation to the Planning Committee that:

- (a) the Strategic Planning Board and the Northern and Southern Planning Committees be reduced in size to 10 with a composition of 7:2:1 (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; and
- (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.
- 4 amendments are made to the Scheme of Delegation of Officer and Terms of Reference of the Committees, as set out in Appendix 1, and that consequential amendments are made to that Scheme of Delegation of Officer and Terms of Reference of Committees, as set out in Appendix 1 such that Certificates of Lawfulness may only be signed off under delegated powers following consultation with the Head of Legal Services and Monitoring Officer, with the additional amendments of
- in the Strategic Planning Board Terms of Reference the deletion of “This does not include re-applications for extant schemes or detailed applications where an outline consent has been given or removal/variation of condition”
  - in the Northern and Southern Planning Committee Terms of Reference “residential development of 10 – 199 dwellings or between 0.5 and 4ha” be reinstated; the deletion of “This does not include re-applications for extant schemes or detailed applications where an outline consent has been given or removal/variation of condition”, and the deletion of “ (e) All applications for advertisements, tree work, prior approvals, Certificates of Lawfulness and notification.”
- 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.
- 6 amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees to delegate decision with regard to Neighbourhood Planning, as set out in Appendix 1.
- 7 with regard 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.

- 8 the template agendas set out in Appendix 3 be adopted for use at Annual Council and 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, as set out in Appendix 4 with the additional amendments:
    - (i) Terms of Reference/Appeals –  
delete first bullet point “to consider appeals against dismissal from Statutory Chief Officers and Non-Statutory Chief Officer  
amend to second bullet point by deleting “at the discretion of the Head of Paid Service in consultation with the Chair of Staffing Committee.”
    - (ii) Scheme of Delegation to Senior Officers – para 1.23  
Delete “the advice prior notification of the Head of Human Resources and Organisational Development and.”  
Delete “in consultation with the Head of Human Resources and Organisational Development” and insert “the appropriate officer”.
  - (b) the Staff Employment Procedure Rules be amended, as set out in Appendix 4;
  - (c) the powers of the Head of Paid Service in relation to staffing and other matters be amended as set out in Appendix 4;
- 10 the Head of Legal Services and Monitoring Officer be authorised to make such changes to the Constitution as they consider are necessary to give effect to the wishes of the Council in respect of such staffing matters as are considered as the Council meeting of 23 July 2015 in consultation with the Head of Paid Service.
- 11 the proposed changes set out in Appendix 5 (Health and Wellbeing Board) are accepted.
- 12 that paragraph 11(c) below (on page 191 of the Constitution) which permits topical questions be deleted entirely from the Constitution:

“(c) where time permits, questions which are of a topical nature be accepted.”

- 13 that paragraph 11.11 (on page 192 of the Constitution) which deals with the frequency with which questions can be re-submitted, 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 (on page 197 of the Constitution), which deals with changes to the approved calendar of meeting to read:

“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 **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.

- 16 that the Constitution be amended in accordance with the changes set out in Appendix 9 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 be inserted into the Procedural 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 interest. 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 as a Director of any of the Council’s Alternative Service Delivery Vehicles during their term of office.....”****

- 19 that the Audit and Governance 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, like all of the Council’s Committees, must be politically balance. However, the success of the Audit 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 the Council and one independent voting member (a member who is not a Councillor) with the Chairman and Vice-Chairman 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 4 Management of the Constitution):

“2.2 Once the changes to the Constitution have been formally approved or notified to full 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 individual’s declaration of acceptance of office on the Member first being elected to Council.”

- 21 that the Constitution be amended to remove references to members’ pensions from the responsibilities of Council and Constitution Committee as follow:

- (a) paragraph 12 of page 56 be amended by removing the wording in bold 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 bold below:

“7. Overseeing and monitoring the Members’ Allowance budget, **including pensions**, and keeping under review the scheme for payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise the Council on the adoption of 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 Head of Planning & Policy.”

- 24 that paragraph 2(b) of the Strategic 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 following consequential amendments to the figures quoted within the Finance Procedure Rules as follows:

B27 change £250,000 to £400,000  
B28 change £250,000 to £400,000 and then £100,000 to £250,000 and £250,000 to £400,000 later in paragraph  
B29 change £250,000 to £400,000  
B32 change £250,000 to £400,000  
B34 change £250,000 to £400,000  
B47 change £250,000 to £400,000

and the wording of the following be amended

page 278 – take out in consultation with Executive Monitoring Board from A32 third row of table

page 279 - take out via Executive Monitoring Board in third row and take out Executive Monitoring Board in 4<sup>th</sup> row of table at A36.

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

- 27 that the wording of paragraph 3.2 (Constitution page 30) which relates to Task and Finish Groups by the addition of the working in bold as follows:

“The Committee **which sets up each Task and Finish Group** will appoint Chairmen (and Vice-Chairman, if appropriate) of each **Task and Finish** Group and agree the membership. This must be cross party.”

- 28 that paragraph 4.2 of the Constitution on page 49 Chapter 13 – Finance Contracts and Legal Matters be amended by adding the working in bold 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.”

- 29 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.

- 30 that paragraph 22.1 (Constitution page 196) which relates to the Term of Office, Members of Committees and Sub-Committees, be amended as per the wording in bold 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.”

- 31 that paragraph 28.6 of the Constitution (page 198) which related to the minutes of Committees and sub-committees by replacing 1 hour with 24 hours as shown in bold 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.”

- 32 that the Constitution be amended in accordance with the changes set in Appendix 7 (Local Choice Functions).

- 33 that the Constitution is amended in accordance with the changes set out in Appendix 8 (Contract Procedure Rules), with the further deletion of the wording “**it is recommended that service departments use an e-tendering portal.**”

- 34 following the deletion of the post of Executive Director Strategic Commissioning, delegated authority be given to the Head of Legal Services and Monitoring Officer to implement the necessary changes to the Constitution to reflect the re-allocation of delegations within the Officer of Delegation Scheme.

The meeting commenced at 10.30 am and concluded at 12.15 pm

Councillor A Martin (Chairman)

## **Cheshire East Council**

### **Constitution Committee**

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**Date of Meeting:** 17th September 2015

**Report of:** Head of Legal Services and Monitoring Officer

**Subject:** Proposed changes to the Council's Constitution

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#### **1. Report Summary**

- 1.1 On 15<sup>th</sup> July 2015 a report was brought to the Constitution Committee which proposed a number of changes to the Constitution intended to bring benefits to the Council's decision-making and other arrangements.
- 1.2 The Committee decided to recommend the changes contained within that report, subject to a number of amendments, to Council. In the event consideration of those amendments by Council was deferred pending a review of the agreed changes by the Constitution Working Group.
- 1.3 The Constitution Working Group has duly considered the proposed changes and this report contains those changes as refined and amended in accordance with the Constitution Working Group's recommendations.
- 1.4 The Constitution Working Group also requested the inclusion of a further item to take into account the necessary changes to the Proper Officer Functions which have arisen as a result of changes in the staffing structure and officer responsibilities. This report proposes that the ability to make these changes is delegated to the Head of Legal Services and Monitoring Officer.
- 1.5 On 26<sup>th</sup> June 2014 a report was brought to Audit and Governance Committee for the approval of an amended Whistleblowing Policy and its adoption in accordance with the Committee's terms of reference. Accordingly the Audit and Governance Committee resolved that approval be given to the proposed amendments to the Whistleblowing Policy and that the Head of Legal Services and Monitoring Officer report back to the Committee as necessary. The Constitution Committee and Council are asked to note that the amended copy of the Whistleblowing Policy has duly been inserted into the Constitution.

**2. Recommendations**

**The Committee recommends to Council that**

- 2.1 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.
- 2.2 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).

- 2.3 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 reflect that there are to be no substitutes at Planning Committee other than named substitutes
- 2.4 Amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1 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 such that Certificates of Lawfulness may only be signed off under delegated powers following Consultation with the Head of Legal Services and Monitoring Officer.
- 2.5 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, that lobby groups be included within the time allowed for objectors/supporters to speak and that the current practice of allowing the questioning of public speakers should cease, although the discretion of the Chair to ask questions of fact from anyone will remain.
- 2.6 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.
- 2.7 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.
- 2.8 The template agendas set out in Appendix 3 be adopted for use at Annual Council and ordinary Council meetings and incorporated into the Constitution.
- 2.9 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;

- (b) the Staff Employment Procedure Rules be amended as set out in Appendix 4; 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.
- 2.10 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 23<sup>rd</sup> July 2015 and to incorporate the changes that were put before the Committee on the 26<sup>th</sup> March 2015 that have not been superseded by the subsequent changes in the staffing structure.
- 2.11 The proposed changes set out in Appendix 5 (Health and Wellbeing Board Terms of Reference) are accepted.
- 2.12 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.**”.
- 2.13 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.
- 2.14 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.
- 2.15 That the existing list of Category 1 organisations in the Constitution be replaced by Appendix 6.
- 2.16 That the Constitution be amended in accordance with the changes set out in Appendix 9 to effect the removal of the requirement to hold secret ballots from the Council Procedure Rules.



- 2.17 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.”

- 2.18 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.....**”

- 2.19 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.

- 2.20 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;
- 2.21 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 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 of the scheme and on any proposed amendments;"
- 2.22 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;"
- 2.23 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.
- 2.24 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.
- 2.25 That the following consequential amendments be made to the figures quoted within the Finance Procedure Rules as follows:

B27 change £250,000 to £400,000

B28 change £250,000 to £400,000

B29 change £250,000 to £400,000 and then £100,000 to £250,000 and £250,000 to £400,000 later in paragraph

B32 change £250,000 to £400,000

B34 change £250,000 to £400,000

B47 change £250,000 to £400,000

- 2.26 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.

- 2.27 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.”

- 2.28 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.

- 2.29 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.

- 2.30 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.”

- 2.31 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

- 2.32 That the Constitution is amended in accordance with the changes set out in Appendix 7 (Local Choice Functions).
- 2.33 The Committee recommends to Council that the Constitution is amended in accordance with the changes set out in Appendix 8 (Contract Procedure Rules) subject to the agreement of the Procurement Engagement Form/process by the Constitution Committee prior to its implementation.
- 2.34 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.

### **3. Background**

- 3.1 The period following the Council elections is a timely opportunity to review and revise the Council's decision-making and other arrangements.
- 3.2 The existing Constitution, whilst having been in place since the Council's inception in 2009, and whilst having served the Council reasonably well, is now in need of revision. This report highlights a number of issues which now need to be addressed.
- 3.3 The following sub-headings highlight those matters upon which a recommendation of the Committee is sought in respect of Constitutional change. The Committee's recommendations will be presented to the meeting of Council on 22 October 2015.

### **Constitutional changes: delegation to the Head of Legal Services and Monitoring Officer**

- 3.4 In May 2014, the Head of Legal Services and Monitoring Officer was authorised by Council resolution to undertake consequential drafting amendments to the remaining parts of the Council's Constitution to ensure consistency with the revised Scheme of Delegation. This, however, does not provide the flexibility needed by the Head of Legal Services and Monitoring Officer to make timely changes to the Constitution in a range of circumstances:
  - 3.4.1 Where consequential drafting amendments are required in cases other than where consistency is needed with the Officer Scheme of Delegation.
  - 3.4.2 Where other amendments need to be made to the Constitution, which are not major.

3.4.3 Where amendments are required which arise from changes in legislation.

3.4.4 **The Committee is therefore asked to recommend to Council:** that the Head of Legal Services and Monitoring Officer be given delegated authority, in consultation with the Chairman and Vice Chairman 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).

#### **Constitutional changes: approval by Members**

3.5 Currently, subject to minimal delegation to the Head of Legal Services and Monitoring Officer, all constitutional changes must be reported to the Constitution Committee, which must then make a recommendation for consideration by Council (Constitution page 55, Part 3 Responsibility for Functions, and Part 3 Responsibility of the Constitution Committee, page 106). A cross-party Constitution Working Group periodically assists in the development of proposed constitutional changes, prior to reports being made to the Committee.

3.6 The existing processes can lead to lengthy periods before consideration and formal determination by Council, resulting in the Constitution remaining out of date or in need of amendment for too long.

3.7 The delegation of power to the Constitution Committee to make changes to the Constitution which are not major would provide a more streamlined approach to implementing minor constitutional change. It would enable the Constitution to reflect operational changes whilst retaining Member input and control via approval of the members of the Constitution Committee who have been appointed by the Council to oversee and approve constitutional change.

- 3.8 **The Committee is therefore asked to recommend to Council:** that 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 Full Council for approval.

**Size of Planning Committees**

- 3.9 The Council has three planning committees: Strategic Planning Board, and the Northern and Southern Planning Committees; all of which comprise 15 members (Constitution page 87, Planning and Development Control Committee Structure and Delegations).
- 3.10 It is the view of officers that the size of the committees should now be reconsidered. The following are considerations:
- 3.10.1 The Royal Town Planning Institute has conducted a study of planning committees nationally, which concludes that smaller planning committees bring benefits in terms of impartiality, and that larger committees are more likely to suffer from poor attendance, and to be more inconsistent in terms of decision-making.
- 3.10.2 An analysis of planning committees in neighbouring authorities and sample unitary authorities shows that the average membership of planning committee is just over 11. This Council's planning committees are around 35% larger than the average.
- 3.10.3 Smaller sized committees are likely to be more efficient and effective than larger sized committees. For example, one recent meeting lasted for 9 hours, and there is a perception that larger sized committees can sometimes lead to unnecessary repetition of points made during the debate.
- 3.11 Following discussions the Constitution Working Group have recommended that there are to be no substitutes at Planning Committee save for named substitutes who have received planning training and are also members of another planning committee.
- 3.12 **The Committee is therefore asked to recommend to Council:** that
- 3.12.1 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;
- 3.12.2 the political group representation agreed at the Council's Annual Meeting, and the methods, calculations and conventions used in determining this to be amended to reflect the reduced memberships;

- 3.12.3 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
- 3.12.4 the operational effectiveness be kept under review.
- 3.12.5 That the Constitution be amended as set out in Appendix 1 to reflect that there are to be no substitutes at Planning Committee other than named substitutes.

### **Planning Scheme of Delegation to Committee and Officers**

- 3.13 Cheshire East Council (CEC) deals with one of the highest workloads of planning applications in England. In 2014 only 10 authorities out of the 337 in England received a higher number of applications than CEC. However, in the same year, CEC received more major residential applications than any other council in England (109) and only 2 other councils received over 100 major residential applications in 2014.
- 3.14 CEC also deals with one of the highest number of planning appeals dealt with by English Councils. In 2013-14 CEC dealt with a total of 70 appeals whereas in 2014-15 the number of appeals has doubled, including 40 appeals by way of Public Inquiry or Hearing.
- 3.15 This increased workload has caused a strain on resources, including increased pressure on Planning Committees who are not only having to deal with an increased number of applications; they are also having to consider more complex proposals. This means that meetings are longer and there is pressure to deal with more items, thereby sometimes being able to spend less time on some issues.
- 3.16 In order to address the consequences of this increasing workload the Scheme of Delegation has been reviewed to ensure that Planning Committees are able to devote time to the most complex issues. The result will be that officers will be delegated to deal with a slightly increased level of complexity but members will still have the safety net of being able to call applications in if there is a good planning reason to do so. The Director of Planning and Sustainable Development will also have the discretion of referring applications to committee that would otherwise be delegated but which have wider strategic implications.
- 3.17 The proposed changes are:  
  
Strategic Planning Board:  
  
1. The threshold for commercial development increased from 2ha to 4ha.

2. Replans or resubmissions on sites which already have a permission or removal/variation of conditions or details following outline permissions will be delegated as members have already decided the principle. However, there will be a presumption that a call in request by a local ward member will be agreed where the application is for the renewal (or extension of time) of extant unimplemented permissions where the original application was the subject of considerable debate or local interest.
3. Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.
4. Just because an application is accompanied by an Environmental Statement or is for minerals or waste does not automatically mean it should go to committee

### Northern and Southern Planning Committees:

1. The threshold to increase to 20-199 dwellings or between 1ha - 4ha for residential applications and 5,000 – 9,999 square metres or more, or 2ha - 4ha. or more of retail, commercial, industrial or other floorspace.
  2. Replans or resubmissions on sites which already have a permission or removal/variation of conditions or details following outline permissions will be delegated as members have already decided the principle. However, there will be a presumption that a call in request by a local ward member will be agreed where the application is for the renewal (or extension of time) of extant unimplemented permissions where the original application was the subject of considerable debate or local interest.
  3. Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.
  4. Applications by Members or staff will only be referred to committee where there have been objections received, although in such cases refusals can be delegated.
- 3.18 This increases delegation to officers to deal with applications up to the new thresholds where the decision will be in accordance with Council policy. The provision for call-ins will remain but will be amended to extend the period for call ins from 10 to 15 days in order to give members greater flexibility.
- 3.19 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 where the original application was the subject of considerable debate or local interest.
- 3.20 Where the planning application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.



- 3.21 A report will be presented to the Constitution Committee after 6 months to review how these changes are operating in practice. There will also be regular quarterly reports to Strategic Planning Board regarding the call in process, setting out the number of call ins during that quarter.
- 3.22 The changes proposed will ensure that we have the most effective and efficient system to meet our objectives. Increased levels of delegation will reduce the workload of Committees and allow officers to spend less time writing committee reports and more time dealing with applications, member & customer liaison.
- 3.23 There needs to be amendments made to the Scheme of Delegation to reflect the recent organisational changes as well as consideration given to increasing the level of delegation in order to reduce workload and improve efficiency and effectiveness.
- 3.24 Following consideration of the delegation of powers to the Director of Planning and Sustainable Development it has been noted that Certificates of Lawfulness should now be signed off in consultation with the Monitoring Officer. Therefore consequential amendments will need to be made to the proposed Scheme of Delegation and Strategic Planning Board Terms of Reference to reflect this.
- 3.25 **The Committee is asked to recommend to the Council:** that amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1 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 such that Certificates of Lawfulness may only be signed off under delegated powers following Consultation with the Head of Legal Services and Monitoring Officer.

#### **The Protocol on Public Speaking to Planning Committees**

- 3.26 The current system enables engagement by ward members in the pre-application process (which will be the subject of a separate review) and enables the public (either in support or against a scheme), and the applicant, the Ward Member, the Parish Council or local groups/societies to engage with the process by writing in with their views.
- 3.27 In addition, the current protocol does allow for all of the interested parties to address the Committee to explain their standpoint. All interested parties are allowed 3 minutes (apart from the local ward member who has extra time - 5 minutes as the local representative). The Constitution Working Group consider that Lobby Groups should be classified as either objectors or supporters of the application for the purpose of their participation in planning meetings and share the available speaking time with the other respective interested parties. Some wards are single member wards, some multi member but single party and some are multi member and multi party so there is a potential for multiple ward members to speak for 5 minutes each. The

protocol also allows other members, who are not ward members the opportunity to speak.

- 3.28 Although there are specified time limits, the protocol does give the Chair the discretion to extend public speaking time where it is considered that additional time would be beneficial. Therefore, whilst the applicants, public and Parish Council are limited to 3 minutes, there is an opportunity for discretion. In addition, the committee members are also able to ask questions of the speakers where they want clarification so that issues can be properly explored. The Constitution Working Group consider that the current practice of allowing the questioning of public speakers should cease, providing that the existing arrangements, which allow the chairman of the meeting to ask questions of public speakers of a factual nature should continue.
- 3.29 The proposed changes to the system intend to strike a balance between a Residents First approach to our services that encourages and enables public engagement in the process and the efficiency and effectiveness of Committees.
- 3.30 **The Committee is asked to recommend to Council:** that 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, that lobby groups be included within the time allowed for objectors/supporters to speak and that the current practice of allowing the questioning of public speakers should cease, although the discretion of the Chair to ask questions of fact from anyone will remain.

### **The Neighbourhood Planning Scheme of Delegation to the Cabinet Member**

- 3.31 The Authority currently has 24 neighbourhood plans in progress and expects to receive about 25 further applications in the remainder of this year, taking the total plans dealt with to around 50 during 2015.
- 3.32 The current decision making process for sign off of reports includes multiple steps and takes at least one month and significant officer time (across services) to bring such decisions before the portfolio holder. This includes issuing the report for comment to the Neighbourhood Plan task force, legal team, finance team, SMT, democratic services before going to informal cabinet and the Portfolio Holder to sign off.
- 3.33 Increased delegation will reduce officers' time engaged in the decision making process rather than supporting the delivery of plans. Given the existing and anticipated volume of decisions required on neighbourhood plans, delegation of technical decisions to officers can better support Neighbourhood Plan delivery by freeing up staff resource where appropriate to do so.
- 3.34 There are key stages at which the Council must issues decisions or respond to the Neighbourhood Plan (NP) proposals. These are:

1. Neighbourhood area application (where the boundary of the NP is defined)
  2. Regulation 14 consultation (Council response to draft NP)
  3. Proceed to regulation 16 consultation
  4. Proceed to examination
  5. Cheshire East Council adopt plan
- 3.35 These matters are all currently delegated by the Cabinet to the Portfolio Holder for Housing and Planning. Stages 1 and 2 occur during plan preparation by the community and predominantly involve technical assessments. Stages 3-5 are undertaken once the NP has been submitted to Cheshire East Council and require a wider response. Steps 3-5 therefore should not be delegated, however steps 1 & 2 can be delegated to the Director of Planning and Sustainable Development in consultation with the leader and portfolio holder.
- 3.36 Alterations to the delegations to the Portfolio Holder for Housing and Planning in relation to Neighbourhood Planning and to enable more straightforward decisions to be delegated to officers would streamline this process.
- 3.37 **The Committee is asked to recommend to the Council:** that amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1.

### **Motions to Council**

- 3.38 Consideration of Notices of Motion was deferred from the Constitution Committee meeting of the 26<sup>th</sup> March 2015 in order that this issue could be put into the work programme and brought back to the Committee at the earliest opportunity.
- 3.39 The Council's procedure rules (Constitution, pages 192 and 219 Council Procedure Rule 12 and Appendix 2) make provision for Notices of Motion to be placed upon the agenda at Council. Under the current arrangements, the proposer of a motion has up to 5 minutes to speak whilst proposing a Motion and the seconder has an equivalent opportunity to do so. Following this, the rules provide for no other speeches, and the Motion then stands referred to the relevant decision-making body for determination.
- 3.40 The view has been expressed that, under the current arrangements, Notices of Motion receive rather one-sided treatment; given that the proposer and seconder will be supporters of the proposition contained in the motion. They are able to speak for up to a total of 10 minutes on the subject in question, without any contrary views being expressed, and that those views are made in a forum which will not normally be the final decision-making body which determines how the motion should be responded to.
- 3.41 Knowles on Local Authority meetings states as follows:

“Where a motion stands referred without discussion to a committee when proposed and seconded, the proposer has no right to a speech, introductory or otherwise. .... The term “without discussion” means precisely that. No one may speak and there can be no discussion unless the chairman allows the motion to be dealt with at the meeting at which it is brought forward i.e. it does not stand referred.”

- 3.42 It is proposed that Notices of Motion be referred without debate in the manner outlined above which will enable the business of the Council to be conducted in a more streamlined manner.
- 3.43 Currently the Council has no process set out in the constitution which prevents motions being put onto the Council agenda which are irrelevant to the business or functions of the Council even though such motions cannot be considered. In addition, there are no grounds or method for excluding such motions which are improper because, for example, they are vexatious, defamatory or offensive. This has caused consternation for members in the past as there is no clear procedure. It is proposed that such provision is introduced with the Head of Legal Services and Monitoring Officer carrying out a check and deciding if motions are inappropriate.
- 3.44 The suggested amendments to the Council's procedure rules set out at Appendix 2 will achieve the proposals set out above.
- 3.45 **The Committee is therefore asked to recommend to Council 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 Council be recommended to instruct the Head of Legal Services and Monitoring Officer to make changes to the constitution as set out in Appendix 2 of this report.

#### Agendas for Council meetings

- 3.46 For the purposes of clarity and consistency it is proposed that Council meetings follow a formal template agenda. Following analysis of the agendas and order of business at Council meetings two template agendas have been produced (attached at Appendix 3) based on the current practice.
- 3.47 **The Committee is therefore asked to recommend to Council that:** the template agendas set out in Appendix 3 be adopted for use at Annual Council and ordinary Council meetings and incorporated in the Constitution.

Staffing issues

- 3.48 At the meeting of the 26<sup>th</sup> March 2015 the Constitution Committee considered a report which included consideration of amendments to the terms of reference of the Staffing Committee and the powers of the Chief Executive and Scheme of Delegation to Officers.
- 3.49 Further consideration has been given to these matters with a view to enabling operational staffing functions to be delegated as far as possible to the Chief Executive/Head of Paid Service.
- 3.50 Further revised terms of reference of the Staffing Committee, powers of the Chief Executive and Scheme of Delegation to Officers are attached at Appendix 4. It is proposed that the Chief Executive be responsible for the appointment of all officers with the exception of Statutory Officers, namely the Head of Paid Service, the Monitoring Officer and the s151 Officer, Statutory Chief Officers and the post of Executive Director of Economic Growth and Prosperity.
- 3.51 At the meeting of the 18<sup>th</sup> June 2015 the Constitution Committee considered a report which recommended changes to the Staff Employment Procedure Rules and consequential changes to the Constitution which were necessary in order reflect the requirements of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2014 and 2015. Appendix 4 reflects the amendments made to the Staff Employment Procedure Rules recommended on the 18<sup>th</sup> June 2015 and under this report.
- 3.52 As a consequence of the changes to the terms of reference of the Staffing Committee and the powers of the Chief Executive and Scheme of Delegation to Officers, the changes to the Staff Employment Procedure Rules proposed at the Constitution Committee on the 18<sup>th</sup> June 2015 do need to be changed. Those changes are also contained in Appendix 4.
- 3.53 **The Committee therefore recommends to the Council that:**
- (d) 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;
  - (e) the Staff Employment Procedure Rules be amended as set out in Appendix 4; and
  - (f) 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.

### **Officer Powers**

- 3.54 The Committee is asked to note that the Council meeting, of the 23rd July 2015, considered a report relating to the appointment of a Director of Children's Services. The Committee has also considered changes to the officer delegations at its meeting of the 26<sup>th</sup> March 2015 relating to officer roles. It is therefore important to ensure that the officer delegated powers, as set out in the Constitution are properly realigned to take account of the Council's decisions.
- 3.55 **The Committee is therefore asked to recommend to Council that:** 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 and to incorporate the changes that were put before the Committee on the 26<sup>th</sup> March 2015 that have not been superseded by the subsequent changes in the staffing structure.

### **Health and Wellbeing Board Terms of Reference**

- 3.56 Improving the health and wellbeing of the residents of Cheshire East is a priority for the Council and its partners. The Health and Wellbeing Board was set up as a result of the requirements of the Health and Social Care Act 2012 and has a key role to play in setting the priorities for Cheshire East and providing system leadership for health and wellbeing, in particular in relation to integrated working between health and social care commissioners.
- 3.57 The Board has successfully overseen the creation of the Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy, both statutory requirements. A Peer Review of Health and Wellbeing in November 2014 identified a number of strengths of the Board and areas for further development.
- 3.58 As part of this and in line with the review process outlined in the existing Terms of Reference, the Board has identified some amendments to the Terms of Reference that it wishes to have adopted by the Council to improve its ability to deliver its roles and responsibilities in a timely and effective manner. These have to be considered and agreed by the Constitution Committee and then recommended to Council.
- 3.59 The Terms of Reference of the Health and Wellbeing Board were approved by Council in May 2014 (Constitution page 115). However, their gestation had been a long process, which began back in 2011 - 2012 with the establishment of the Shadow Health and Wellbeing Board.
- 3.60 Following the November 2014 Peer Challenge process, a recommendation was to review the membership of the Board. The recent restructuring of Corporate Leadership Board (now Management Group Board) and changes to portfolio holders' responsibilities has also highlighted that the Terms of Reference as written, were too prescriptive.

- 3.61 Consequently a review of the membership section of the Terms of Reference has been undertaken with a view to ensure it can be used as flexibly as possible to accommodate changes to personnel/job titles and political portfolios. At the same time, some other proposed amendments to clarify points or correct errors have been made.
- 3.62 To ensure parity on the Board (emphasised in national guidance as being a prerequisite to effective Health and Wellbeing Boards) an additional independent NHS representative with a vote has been included.
- 3.63 The requirements regarding being quorate have also been re-worded to allow for more flexibility and provide clarity should a meeting not achieve a quorum.
- 3.64 The Health and Social Care Act 2012 requires the Local Authority to establish a Health and Wellbeing Board for its area. Core membership includes at least one local Councillor (nominated by the Council's Leader); the Directors of Adult Social Services, Children's Services and Public Health; a representative of the Local Healthwatch Organisation; and a representative of each Clinical Commissioning Group and the NHS Commissioning Board. The Local Authority may also nominate such other individuals as they consider appropriate.
- 3.65 The Board is a Committee of the Local Authority but regulations under the Health and Social Care Act 2012 modify some of the normal requirements of the Local Government Act 1972. The Board has a number of duties under the Act but specifically is tasked with a duty to encourage integrated working in the provision of health and social care services.
- 3.66 The proposed changes are highlighted as tracked changes in Appendix 5 'Proposed Revisions to Health and Wellbeing Board Terms of Reference June 2015'.
- 3.67 **The Committee is therefore asked to recommend to Council that:** the proposed changes set out in Appendix 5 are accepted.

Speaking and Questions at Council meetings.

- 3.68 The Council's existing rules enable questions to be asked at Council meetings (Constitution pages 191/2, Council Procedure Rule 11 and 11.16). No notice needs to be given of such questions, which may be asked of the Mayor, a Cabinet Member, or Committee Chairman. 30 minutes of Council time is allocated to "question time" and, often, many Members make use of the facility.
- 3.69 Current practice is to seek to ensure that as many Members as wish to do so, have the opportunity to participate in question time at Council meetings. On occasion, the Mayor has had to limit the time available for each question and answer in order to ensure that all questions can be dealt with within the time available.

- 3.70 As a consequence questions may not necessarily deal with the business being considered by council at that particular meeting which can result in insufficient time for questions on the business at hand.
- 3.71 In order to keep questions relevant to the specific business being considered by Council at a particular meeting and to allow sufficient time for questions of a nature relevant to that business to be answered, it is proposed that paragraph 11 (c) (Constitution page 191) which permits questions of a topical nature, be amended to provide the Mayor with a discretion to allow questions of a topical nature if they deem it to be appropriate.
- 3.72 **The Committee is therefore asked to recommend to Council that:** paragraph 11 (c) below be deleted entirely from the Constitution:
- “(c) Where time permits, questions which are of a topical nature may be accepted **where the Mayor deems it to be appropriate.**”
- 3.73 The Council’s current procedure rules (Constitution page 192, Rule 11.11) provide that no questions are allowed which repeat, or are substantially the same as, questions submitted to a meeting of Council during the preceding 3 months.
- 3.74 In view of the frequency at which Council meetings are held this can mean that questions could be re-submitted to the next meeting of the Council where there is no fresh information upon which to provide an answer. This is not the intention of this particular rule. It is proposed that the period in which questions can be resubmitted is extended to 6 months to overcome this issue.
- 3.75 **The Committee is therefore asked to recommend to Council that:** paragraph 11.11 be amended by replacing 3 months with 6 months as per 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.

### **Changes to approved calendar of meetings**

- 3.76 The Council’s procedure rules (Constitution page 197, Council Procedure Rule 26.2) make provision for changes to the approved calendar of meetings, but presume against alterations to the time, date and venue for meetings.
- 3.77 This presumption is quite appropriate, given that Council approves the calendar following consultation, and the published calendar creates an expectation that meetings will take place in line with the published information.
- 3.78 However, experience shows that times, dates, and venues for meetings do need to be changed occasionally for good reasons. Up until relatively recently, the Constitution enabled officers to consult with the Chairman of the meeting in question and to agree to change meeting arrangements where



there was good reason to do so. Reasonable steps would be taken to consult committee members etc.

- 3.79 New Rules, adopted within the last two years, now require consultation with all Members and further require a majority of Members to agree to the proposal. This is felt by officers to be unwieldy, given that they are required to secure a majority of the whole membership of the body in question, not all of whom may be contactable. As is often the case with changes in meeting arrangements, changes need to be agreed within a limited timescale, and more flexible arrangements are therefore felt to be appropriate.
- 3.80 It is proposed that this requirement be changed such that the rule refers to a majority of members who respond within 48 hours of notification.
- 3.81 **The Committee is therefore asked to recommend to Council that:** the existing procedural rule 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 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.

### **Outside organisations**

- 3.82 The Council makes appointments to many outside organisations. These are categorised into “Category 1” organisations, and “Category 2” organisations. Appointments to Category 1 organisations are made by Cabinet, whilst those to Category 2 organisations are made by the Constitution Committee (Constitution page 60, Responsibilities of Council).
- 3.83 The list of Category 1 organisations, contained in the constitution, is out of date. For example, at least 5 outside organisations listed no longer exist; others have changed their name and two organisations need to be added to the list.
- 3.84 Appendix 6 to this report contains the revised list of Category 1 organisations.
- 3.85 **The Committee is asked to recommend to Council:** that the existing list of Category 1 organisations in the constitution be replaced by Appendix 6.

### **The appointment of Members to offices or positions**

- 3.86 The Constitution’s Council Procedure Rules Constitution page 193 Council Procedure Rule 16, pages 198/9 Council Procedure Rule 32, and page 209 Executive Arrangements and Cabinet Procedure Rules Rule 47) currently contain provisions which require that a secret ballot be conducted when

electing Members to certain offices and appointments or when the election for any office or appointment is contested.

- 3.87 Secret ballots enable the voter to remain anonymous or free from outside influence and could be considered to enable individual Members to vote according to their conscience. However, it is the case that Members are democratically elected by the residents of Cheshire East and those residents have a legitimate interest in all aspects of the governance of the Council and the decision making processes in which Members participate.
- 3.88 The conduct of secret ballots is contrary to the Council's commitment to openness and transparency in all aspects of its decision making process. The removal of the existing secret ballot processes from the Council's Procedure Rules will mean that all voting will be by a show of hands or a recorded vote which will reinforce that the Council is committed carrying out its business through an open and transparent democratic process and is accountable to Cheshire East Residents
- 3.89 **The Committee is therefore asked to recommend to Council that:** Constitution be amended in accordance with the changes set out in Appendix 9 to effect the removal of the requirement to hold secret ballots from the Council Procedure Rules.

### **Urgent Decisions Taken Outside of Meetings**

- 3.90 The Council's Procedure Rules contain provisions by which urgent decisions can be taken outside of the usual procedures. Currently the Constitution does not contain a definition of an urgent decision to assist Members and Officers.
- 3.91 It is suggested that the following definition be adopted:
- 3.92 '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'
- 3.93 **The Committee is therefore asked to recommend to Council that:** the suggested definition of an urgent decision is inserted into the Constitution (Part 4 Procedure Rules General Provisions Appendix 4, page 225).

### **Mayoralty Code of Practice**

- 3.94 The Constitution (Mayoralty Code of Practice page 442 paragraph 6) sets out those appointments which the Mayor may or may not carry out or accept during his term of office.
- 3.95 It is proposed that the exclusions be extended.

- 3.96 **The Committee is therefore asked to recommend to Council that:** Paragraph 6 of the Mayoralty Code of Practice 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.....**”

### **Appointment of Independent Person to Audit Committee**

- 3.97 The Constitution (page 109, Audit and Governance Committee) contains the requirements that the Committee be made up of 10 members.
- 3.98 It is proposed that the Audit and Governance Committee be expanded to include an Independent Person.
- 3.99 **The Committee is therefore asked to recommend to Council that:** the Audit and Governance Committee’s terms of Reference be amended by the inclusion of the following wording as an introductory paragraph 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.

### **Management of the Constitution**

- 3.100 It is proposed 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.”
- 3.101 It is proposed 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 Members's declaration of acceptance of office on the Member first being elected to the Council;

3.102 **The Committee is therefore asked to recommend to Council that:** the constitution be amended to reflect the changes set out above.

### **Changes to the Responsibilities of Council and the Constitution Committee Terms of Reference**

3.103 It is proposed that the wording of Paragraph 12 on page 56 (Responsibilities of Council) and Paragraph 7 on page 107 (Constitution Committee) be amended to remove the reference to pension provision for members.

3.104 **The Committee is therefore asked to recommend to Council that:**

(c) 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;

(d) Paragraph 7 of page 107 be amended by removing the wording 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;”

### **Responsibilities of Cabinet**

3.105 It is proposed that paragraph 7 is amended as the function of approving Human Resources policies sits with the Staffing Committee.

3.106 **The Committee is therefore asked to recommend to Council that:** the paragraph 7 (page 62 Constitution) below be amended:

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

### **Strategic Planning Board**

3.107 It is proposed that the first sentence of paragraph 1 (b) of the terms of Reference of the Strategic Planning Board be removed as this function is undertaken by Full Council;

- 3.108 **The Committee is therefore asked to recommend to Council that:** the paragraph 1 (b) be amended as follows:

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

- 3.109 It is proposed that the wording of paragraph 2 (b) be amended to refer to Grade 12 or above as opposed to Tier 2 which wording is obsolete.

- 3.110 **The Committee is therefore asked to recommend to Council that:** the paragraph 2 (b) 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.

### **Executive Monitoring Board**

- 3.111 It is recommended that the financial threshold for referral to the Executive Monitoring Board be increased from £250,000 to £400,000.

- 3.112 **The Committee is therefore asked to recommend to Council that:** the following consequential amendments be made to the figures quoted within the Finance Procedure Rules as follows:

B27 change £250,000 to £400,000  
B28 change £250,000 to £400,000  
B29 change £250,000 to £400,000 and then £100,000 to £250,000 and £250,000 to £400,000 later in paragraph  
B32 change £250,000 to £400,000  
B34 change £250,000 to £400,000  
B47 change £250,000 to £400,000

### **Change of name of Corporate Leadership Board to Management Group Board**

- 3.113 The Corporate Leadership Board has been re-named the Management Group Board and consequential changes will be required to be made throughout the Constitution to reflect this new title.

- 3.114 **The Committee is therefore asked to recommend to Council:** 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.

### **Task and Finish Groups**

3.115 It is intended that each Task and Finish Groups set up by a particular Overview and Scrutiny Committee is appointed by the Chair of each relevant committee. The wording of the Constitution page 30 paragraph 3.2 is not sufficiently clear that this is the intention.

3.116 **The Committee is therefore asked to recommend to Council:** that the wording of paragraph 3.2 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.

### **Signing etc. of documents**

3.117 The Constitution's Contract Procedure Rules provide that Contracts (with a value not exceeding £1,000,000) shall be signed on behalf of the Authority by a duly authorised officer in accordance with the local Scheme of Delegation (Part 5 paragraph 5.2.1 page 347). Also, that in certain circumstances (as set out in Part 5 paragraph 5.2.2 page 347) including where a contract is of a value exceeding £1,000,000 a contract must be executed under seal by Legal Services.

3.118 The Constitution Chapter 13 – Finance, Contracts and Legal Matters page 49 paragraph 4.2 does not specifically refer to the procedures for signature of contracts by officers other than the Head of Legal Services. It is proposed that this sub-paragraph be amended to refer to the Contract Procedure Rules and to provide for any circumstances where an officer cannot be identified to sign a contract by reference to those rules (by enabling the Head of Legal Services to sign in such circumstances).

3.119 The Committee is therefore asked to recommend to Council: that paragraph 4.2 of page 49 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.”

### **Macclesfield Local Service Delivery Committee**

3.120 Following the creation of Macclesfield Town Council, the Macclesfield Local Service Delivery Committee's work in complete and references to it in the Constitution are obsolete.

- 3.121 **The Committee is therefore asked to recommend to Council:** 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.

#### **Term of Office of Members of Committees and sub-committees**

- 3.122 The reference in the Constitution (page 196, paragraph 22.1) to members of Committees and sub-committees remaining on office until their day of until their day of retirement as set out in the Cheshire (Structural Changes) Order 2008 is obsolete (as it relates to the creation of the shadow authority and elections prior to 2011) and is in conflict with the power of Annual Council (Council procedure Rule 17.1) to elect the Chair and Vice-Chair of every Committee.

- 3.123 **The Committee is therefore asked to recommend to Council:** that paragraph 22.1 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.

#### **Minutes of Committees and sub-committees**

- 3.124 The Constitution (page 198, paragraph 28.6) allows a member to submit a question or comment on an exempt, private or confidential Minute within one hour of the start of the meeting.

- 3.125 In order to allow such time to meaningfully consider questions and for the practical arrangements to be made upon receipt of a question, it is proposed that this time limit be increased to 24 hours.

- 3.126 **The Committee is therefore asked to recommend to Council:** that paragraph 28.6 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.”

#### **Local Choice Functions**

- 3.127 Changes are required to be made to the Local Choice Functions set out in the Constitution at page 59 following the recent management re-structure and as a consequence of the repeal of the duty to prepare Local Area Agreements.

- 3.128 The necessary changes are set out in Appendix 7.

- 3.129 **The Committee is therefore asked to recommend to Council:** that the Constitution is amended in accordance with the changes set out in Appendix 7.

### **Contract Procedure Rules**

- 3.130 The Local Government Transparency Code 2015 requires Local Authorities to publish details of every invitation to tender/ quote for contracts to provide goods and/or services with a value that exceeds £5,000. For each invitation the following are required

- reference number
- title
- description of the goods and/or services sought
- start, end and review dates, and
- local authority department responsible.

Local authorities must also publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000. For each contract, the following details must be published

- reference number
- title of agreement
- local authority department responsible
- description of the goods and/or services being provided
- supplier name and details
- sum to be paid over the length of the contract or the estimated annual spending or budget for the contract
- Value Added Tax that cannot be recovered
- start, end and review dates
- whether or not the contract was the result of an invitation to quote or a published invitation to tender, and
- whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number.

### **[Local Government Transparency Code 2015](#)**

At the moment the Council can only publish information for invitations to tender/quote where Procurement has been involved (above £50k). The



proposed changes will ensure the Council fully complies with the Local Government Transparency Code 2015.

- 3.131 The Public Procurement Regulations 2015 (which were introduced in February 2015), require all procurements above £25,000 to be advertised on Contracts Finder and a contract awarded notice to be published. At present Procurement are working with Services and undertaking the majority of procurement from £25,000.
- 3.132 The changes also have advantages as they will help to drive savings by taking advantage of the ability to used best and final offer on lower value contracts. Procurement will have greater control over the contracts register which helps to drives commissioning and forward planning
- 3.133 It will be simpler for SME's to bid for Council work and supports the local agenda through more contracts being advertised and published.
- 3.134 **The Committee is therefore asked to recommend to Council:** that the Constitution is amended in accordance with Appendix 8 subject to the agreement of the Procurement Engagement Form/process by the Constitution Committee prior to its implementation.

### **Changes to the officer scheme of delegation**

- 3.135 Following the deletion of the post of Executive Director Strategic Commissioning the delegation of functions will be split out between the following posts:
- Chief Executive
  - Chief Operating Officer
  - Executive Director of Economic Growth and Prosperity
  - Head of Communities

There is no intention to change the wording or nature of any of the delegations but simply to re-allocate them to the above posts.

- 3.136 It is recommended that the Head of Legal Services and Monitoring Officer is 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.

## **4 Wards Affected and Local Ward Members**

No direct impacts for wards or local ward members arise as a consequence of the proposals contained in this report.

## **5      Implication of Recommendation**

### **5.1      Policy Implications**

5.1.1      The proposals contained within this report seek to bring clarity and efficiency to the Council's decision-making and related arrangements.

### **5.2      Legal Implications**

5.2.1      In making its decision the Constitution Committee and then the Council will be required to have regard to the New Council Constitution Guidance 2000 and amendments, the Local Government Act 1972, the Local Authorities (Standing Orders) Regulations 1993 and 2001, the Localism Act 2011 and the Public Contracts Regulations 2015.

### **5.3      Financial Implications**

5.3.1      No direct financial implications arise as a consequence of the proposals contained in this report.

### **5.4      Equality Implications**

5.4.1      No equality or diversity implications would appear to arise as a consequence of the proposals contained in this report.

### **5.5      Rural Community Implications**

5.5.1      This report has no direct implications for rural communities.

### **5.6      Public Health Implications**

This report has no direct implications for public health.

## **6      Risk Management**

6.1      No risks would appear to arise from the report's recommendations. Indeed, the proposals contained in the report are intended to bring greater clarity to the Council's decision-making and other arrangements; thereby potentially reducing risks.

## **7      Background Papers**

None

### **Contact Information**

Contact details for this report are as follows:-

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## Appendix 1

### Part 1

#### SCHEME OF DELEGATION

(additions are in red type and deletions are struck through)

#### **STRATEGIC PLANNING BOARD**

##### **Terms of Reference**

1. To oversee the division of the Council's Development Management functions and workload in order to ensure timely and consistent decision-making at the most appropriate level, and to that end

(a) to monitor the volume and type of applications determined; assessing the performance of the Development Management service, and, if appropriate

(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 and Sustainable Development.**

(c) to adopt working protocols and procedures: eg: protocols governing the direction of applications between the Planning Committees, public speaking rights, call-in procedure and others.

2. To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Most of these functions are delegated to the Planning Committees and then onwards to the **Director of Planning and Sustainable Development**, but the following are reserved to the Board

(a) applications for Large Scale Major Development: ~~defined from time to time by DCLG. Currently this includes~~

- residential developments of 200 dwellings or more, or 4 ha or more;
- 10,000 square metres or more, or **24ha.** or more of retail, commercial or industrial or other floor space.

**This does not include re-applications for extant schemes or detailed applications where an outline consent has been given or removal/variation of conditions.**

**Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.**

**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 where the original application was the subject of considerable debate or local interest.

(b) applications for major minerals or waste development **other than small scale works which are ancillary to an existing mineral working or waste disposal facility**

(c) applications involving a significant departure from **policy** which a Planning Committee **are recommended** to approve.

~~(c) applications requiring Environmental Impact Assessments~~

(d) any other matters which have strategic implications by reason of their scale, nature or location.

(f) any other matters referred up to it at the discretion of the **Director of Planning and Sustainable Development**, including major development of less than the thresholds set out in (a) above which have wider strategic implications.

**(g) Applications for advertisements, tree work, prior approvals, Certificates of Lawfulness and notifications will not be eligible for call-in and will be dealt with under delegated powers.**

**3.** To exercise a consultation and advisory role, commenting upon the content of proposed planning policy and upon the effectiveness of existing policies employed in development control decisions.

**4.** To exercise on behalf of the Council the function of final approval of the Area Action Plans, and any other document including a Site Allocation Policy, which form part of the Local Plan.

## **NORTHERN AND SOUTHERN PLANNING COMMITTEES**

### **Terms of Reference**

**1.** To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges, set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Some applications have been reserved to the Strategic Planning Board: others are delegated on to the **Director of Planning and Sustainable Development**: the following are retained for the Planning Committees:

(a) Applications for Small Scale Major Development **for:** ~~defined from time to time by DCLG. Currently this includes~~

- residential developments of ~~10-20~~ -199 dwellings or between ~~0.5~~ **1** and 4ha

- retail or commercial/industrial or other floorspace of **between 5,000 – 9,999 square metres, or 2 - 4ha** ~~between 1,000 – 9,999 square metres. or between 1ha – 2 ha.~~

This does not include re-applications for extant schemes or detailed applications where an outline consent has been given or removal/variation of conditions.

Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.

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 where the original application was the subject of considerable debate or local interest.

## 2. To determine any other planning & development control matters

(a) advertised as a departure from policy, which the **Director of Planning and Sustainable Development** is minded to approve.

(b) submitted by a Councillor, senior Council officer (tier 2 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 **where representations objecting to the application have been received. Where objections have been received, applications recommended for refusal can be dealt with by officers under delegated powers.**

(c) **significant applications by involving** the Council either as applicant or land owner. ~~Unless the Head of Planning & Policy identifies some significant factor, this~~ **This** category will not normally include minor developments which accord with planning policy and to which no objection has been made.

(d) referred up to them by a councillor in accordance with the Committees' call-in procedure. **However: -**

- i. Any request must be received within 15 working days of the issue of the electronic notification of the application, and set out the material planning consideration(s) which warrant the application going before committee.
- ii. Applications for householder development, listed building consents to alter/extend and conservation area consents will normally be dealt with under delegated powers.
- iii. Applications for advertisements, tree work, prior approvals, Certificates of Lawfulness and notifications will not be eligible for call-in and will be dealt with under delegated powers.
- iv. 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 where the original application was the subject of considerable debate or local interest.

(e) any other matters referred up to them at the discretion of the **Director of Planning and Sustainable Development**.

(f) Applications for advertisements, tree work, prior approvals, Certificates of Lawfulness and notifications will not be eligible for call-in and will be dealt with under delegated powers.

The Committees will refer up to the Strategic Planning Board matters involving a significant departure from policy which they are minded to approve **contrary to recommendation by the Director of Planning and Sustainable Development**.

## **PLANNING FUNCTIONS – DELEGATION TO OFFICERS**

1. Apart from matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the **Director of Planning and Sustainable Development**.

Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use & development, enforcement, listed buildings and conservation areas. The planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.

Where legislation is amended or replaced by new provisions or where new development control provisions are enacted, then the relevant authority delegated in this Scheme applies to those new provisions.

2. The **Director of Planning and Sustainable Development** will refer up to a Planning Committee or to the Strategic Planning Board any particular matter which they consider suitable for determination at that level.

**Part 2**

(additions are in red type and deletions are struck through)

(Constitution, page 57)

**LOCAL CHOICE FUNCTIONS**

Local Choice Functions <sup>1</sup>	Decision Making Body	Delegation of functions to Committees or officers (to the extent set out below or Section 2C for Council (non-executive) functions and section 3D for executive functions)
Any function relating to contaminated land <sup>11</sup>	Cabinet	Head of Communities
The control of pollution or the management of air quality <sup>12</sup>	Cabinet	Head of Communities
To serve an abatement notice in respect of a statutory nuisance <sup>13</sup>	Cabinet	Head of Communities
To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area <sup>14</sup>	Full Council	
To inspect the authority's area to detect any statutory nuisance <sup>15</sup>	Full Council	Head of Communities
To investigate any complaint about the existence of a statutory nuisance <sup>16</sup>	Full Council	Head of Communities
To obtain information about interests in land <sup>17</sup>	Full Council	Planning Committee <b>Executive</b> Director of Economic Growth and Prosperity <b>Director of Planning and Sustainable Development</b>
To obtain particulars of persons interested in land <sup>18</sup>	Full Council	Executive Director of Economic Growth and Prosperity

(Constitution, page 87)

### **PLANNING AND DEVELOPMENT CONTROL COMMITTEE STRUCTURE AND DELEGATIONS**

Development control functions will be discharged by a Strategic Planning Board, supported by two

Planning Committees and a scheme of delegation as detailed below:

Strategic Planning Board (12)

~~\*including the two Portfolio Holders responsible for Development Management and the Local Development Framework~~

- with the Terms of Reference set out at Appendix A
- with a quorum of 5 ~~3~~ (as an exception to in accordance with Standing Order 27)

Northern Planning Committee (12)

Southern Planning Committee (12)

- with the Terms of Reference set out at Appendix B
- with a quorum of 5 ~~3~~ (as an exception to in accordance with Standing Order 27)
- comprising councillors to be nominated at the first meeting of the Strategic Planning Board
- meeting on a ~~3~~ 4 -weekly cycle
- ~~there are to be no substitutes at Planning Committee save for named substitutes who have received planning training and are members of another planning committee.~~

The scheme of delegation is set out in that section of the Constitution.

(Constitution, page 88)

### **STRATEGIC PLANNING BOARD Terms of Reference**

1. To oversee the division of the Council's Development Management functions and workload in order to ensure timely and consistent decision-making at the most appropriate level, and to that end

(a) to monitor the volume and type of applications determined; assessing the performance of the Development Management service, and, if appropriate

~~(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 and Sustainable Development**.



(c) to adopt working protocols and procedures: eg: protocols governing the direction of applications between the Planning Committees, public speaking rights, call-in procedure and others.

2. To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Most of these functions are delegated to the Planning Committees and then onwards to the **Director of Planning and Sustainable Development** & Policy but the following are reserved to the Board

(a) applications for Large Scale Major Development: ~~defined from time to time by DCLG. Currently this includes~~

- residential developments of 200 dwellings or more, or 4 ha or more;
- 10,000 square metres or more, or **24ha.** or more of retail, commercial or industrial or other floor space.

**This does not include re-applications for extant schemes or detailed applications where an outline consent has been given or removal/variation of conditions.**

**However, there will be a presumption that a call in request by a local member will be agreed where applications are for the renewal (or extension of time) of extant, unimplemented permissions where the original application was the subject of considerable debate or local interest.**

**Where the application is to vary or remove a condition that was imposed by the Planning Committee it will not be delegated.**

(b) applications for major minerals or waste development **other than small scale works which are ancillary to an existing mineral working or waste disposal facility**

~~(c) applications requiring Environmental Impact Assessments~~

(c) applications involving a significant departure from **policy** which a Planning Committee **are recommended** to approve.

(d) any other matters which have strategic implications by reason of their scale, nature or location.

(e) any other matters referred to it at the discretion of the **Director of Planning and Sustainable Development.**

3. To exercise a consultation and advisory role, commenting upon the content of proposed planning policy and upon the effectiveness of existing policies employed in development control decisions.

4. To exercise on behalf of the Council the function of final approval of the Area Action Plans, and any other document including a Site Allocation Policy, which form part of the Local Plan.

## NORTHERN AND SOUTHERN PLANNING COMMITTEES

### Terms of Reference

1. To exercise the Council's functions relating to town and country planning and development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges, set out in the Local Authorities (Functions and Responsibilities)(England) Regulations 2000. Some applications have been reserved to the Strategic Planning Board: others are delegated on to the **Director of Planning and Sustainable Development**: the following are retained for the Planning Committees:

applications for Small Scale Major Development **for:** ~~defined from time to time by DCLG. Currently this includes~~

- residential developments of ~~10~~ **20** -199 dwellings or between ~~0.5~~ **1** and 4ha

- retail or commercial/industrial or other floorspace of **between 5,000 – 9,999 square metres, or 2 - 4ha** ~~between 1,000 – 9,999 square metres. or between 1ha – 2 ha.~~

**This does not include re-applications for extant schemes or detailed applications where an outline consent has been given or removal/variation of conditions.**

**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 where the original application was the subject of considerable debate or local interest.**

**Where the application is to vary or remove a conditions that was imposed by the Planning Committee it will not be delegated.**

2. To determine any other planning & development control matters:

(a) advertised as a departure from policy, which the **Director of Planning and Sustainable Development** is minded to approve.

(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 **where representations objecting to the application have been received. Where objections have been received, applications recommended for refusal can be dealt with by officers under delegated powers.**

(c) **significant applications by** the Council either as applicant or land owner. ~~Unless the Head of Planning & Policy identifies some significant factor, this~~ **This** category will not normally include minor developments which accord with planning policy and to which no objection has been made.

(d) referred up to them by a councillor in accordance with the Committees' call-in procedure.

However: -

- i. Any request must be received within 15 working days of the issue of the electronic notification of the application, and set out the material planning consideration(s) which warrant the application going before committee.
- ii. Applications for householder development, listed building consents to alter/extend and conservation area demolitions will normally be dealt with under delegated powers.
- iii. Applications for advertisements, tree work, prior approvals, Certificates of Lawfulness and notifications will not be eligible for call-in and will be dealt with under delegated powers.
- iv. 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 where the original application was the subject of considerable debate or local interest.

(e) referred up to them at the discretion of the **Director of Planning and Sustainable Development**.

The Committees will refer up to the Strategic Planning Board matters involving a significant departure from policy which they are minded to approve **contrary to recommendation by the Director of Planning and Sustainable Development**.

(Constitution, page 127)

## **SCHEME OF DELEGATION TO OFFICERS**

### **1.0 INTRODUCTION**

1.1 Elected Members set policy, priorities and strategies to reflect local interests and needs and are responsible for allocating funding between individual priority areas and for approval of the methodology of implementation of policies and strategies.

1.2 Officers of the Authority are responsible for implementing these strategies and policies by delivering services and major initiatives. It is Officers who have responsibility for managing the Authority's day to day operations, within a policy and budgetary framework laid down by Members.

1.3 The Authority's Chief Officers (statutory and non-statutory) are listed under Part 2, Chapter 12 . The following Chief Officers comprise the Authority's Corporate Leadership Board (CLB). The Chief Executive, Executive Director of Strategic Commissioning, Chief Operating Officer, **Executive** Director of Economic Growth and Prosperity, Director of Public Health, Director of Adult Services, Director of Children's

Services, **Director of Planning and Sustainable Development**, Head of Legal Services and Monitoring Officer and Head of HR and Organisational Development. Other Officers will attend CLB as necessary.

(Constitution, page 133)

1.32 The Chief Executive, Executive Director of Strategic Commissioning, Chief Operating Officer, **Executive** Director of Economic Growth and Prosperity, Director of Adult Social Care and Independent Living, Director of Children's Services, **Director of Planning and Sustainable Development** and Director of Public Health are authorised to exercise the role of authorising officer and designated person under the Regulation of Investigatory Powers Act 2000.

(Constitution, page 142)

#### **4.0 EXECUTIVE DIRECTOR OF ECONOMIC GROWTH AND PROSPERITY**

4.1 **To have overall management responsibility for Director of Planning and Sustainable Development.** The Director of Economic Growth and Prosperity has overall responsibility for the operational management and implementing all decisions, including the allocation of resources within approved estimates, as are necessary to exercise the functions for which the Service is responsible. It comprises the following main functions:-

- Economic Intelligence and investment planning
- Skills for Work
- 14+Education, Apprenticeships and NEETS
- Adult Education and Lifelong Learning
- Learner Information, Advice and Guidance Services
- Tourism, Visitor Economy, Culture, Arts and Heritage (including Tatton Vision)
- Business Engagement and Support
- Land and Property Acquisition, Disposal and Management
- Strategic infrastructure projects
- Employment Sites
- Housing Strategy and Development
- Strategic/Spatial planning
- Rural Economy/Access
- Sustainable Towns
- Inward Investment and Funding
- Local Enterprise Partnership
- Enterprise
- Development Control (major applications)
- Corporate landlord
- Development Management and Building Control
- Commons

~~4.2 Within the following areas, the Director of Economic Growth and Prosperity is empowered to operate the Service and, except where powers, duties and functions are delegated elsewhere by the Council, to exercise all powers, duties and functions, including, but not limited to the following:~~

**Director of Planning and Sustainable Development:**

The Director of Planning and Sustainable Development will provide a professional focus and lead for Strategic/Spatial Planning, Development Management, Building Control, Land Charges, Street Naming & Numbering and Neighbourhood Planning.  
:

- To be professionally accountable for the effectiveness, availability and value for money of the service;
- To perform a leadership role
- Manage cultural change
- Act as relationship manager with Civcance
  - To improve working practices and customer services; and
- To build and lead effective partnerships.

4.3 To act as Proper Officer in respect of the Ordnance Survey under Section 191 of the Local Government Act 1972

4.4 To act as Proper Officer under Section 1 of the Countryside and Rights of Way Act 2000 relating to the Access

**Development Management and Building Control**

4.5 Apart from matters reserved to the Strategic Planning Board and Planning Committees, to exercise and make decisions in respect of all those Council functions set out in the Local Authorities (Functions & Responsibilities (England) Regulations 2000 which relate to town & country planning and development control under the Town and County Planning Act 1990, including planning applications, permitted development, the protection of important hedgerows, the preservation of trees and the regulation of high hedges.

Note: Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use and development, enforcement, listed buildings and conservation areas. These planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them and will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals

4.6 To exercise all the powers and duties in relation to Building Control under the Building Act 1984 and related legislation and under Building Regulations, including but not limited to the determination of plans and applications, dealing with dangerous structures and all enforcement under the Act and Regulations

4.7 To vary the Standard Fee Scales of the Local Government Association Model Scheme by up to plus or minus 10%

4.8 To exercise all powers and duties relating to Local Land Charges

4.9 To take all action to ensure dangerous trees are removed or made safe or to ensure that they are made safe or removed and to reclaim the costs under the Local Government (Miscellaneous Provisions) Act 1976

## **Part 3**

### **NEIGHBOURHOOD PLANNING – DELEGATION TO OFFICERS**

There are key stages at which the Council must issues decisions or respond to the Neighborhood Plan proposals. These are:

1. Neighbourhood area application
2. Regulation 14 consultation (Council response to draft Neighbourhood Plan)
3. Proceed to regulation 16 consultation
4. Proceed to examination
5. Cheshire East Council adopt plan

These matters are all delegated by the Cabinet to the Cabinet Member for Jobs and Houses. Stages 1 and 2 are during plan preparation by the community and predominantly involve technical assessments and are delegated to the Director of Planning and Sustainable Development.

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## **Appendix 2**

(additions are in red type and deletions are struck through)  
(Constitution pages 219/220)

### **Notices of Motion**

## **APPENDIX 2**

### **PROCEDURE RULES RELATING TO THE COUNCIL: PROCEDURE RULE 12 - NOTICES OF MOTION**

#### **1 Procedure before the Meeting**

Notice of every motion (other than a motion which under Procedure Rule 10 may be moved without notice) shall be given in writing, signed by the Member(s) of the Council giving the notice, and delivered, at least seven clear working days before the next meeting of the Council, to the Head of Legal Services or the Democratic and Registration Services Manager by whom it shall be dated, in the order in which it is received.

Members are permitted to submit Notices of Motion in email and electronic form.

The Head of Legal Services shall, if need be, give a ruling as to whether the Motion is relevant.

If the Head of Legal Services considers the motion, amendment or question to be vexatious, irrelevant, defamatory, frivolous, offensive or otherwise improper the Head of Legal Services will return it to the Member who submitted it along with an explanation in writing to the Member about why it will not be included on the agenda circulated for the meeting.

#### **2 Motions to be set out in Summons**

The agenda papers for every ordinary meeting of the Council will set out the full text of all motions of which notice has been duly given, unless the Member giving the notice has intimated in writing, when giving it, that he/she proposed to move it at some later meeting, or has since withdrawn it. The motions will be listed in the papers according to the order in which they have been received.

No notice of motion which, in the opinion of the Mayor, deals with the same or a similar matter to one which had come before Council during the previous 6 months, shall be included on the Council agenda.

#### **3 Withdrawal of Motion which is before the Council**

A Notice of Motion will be regarded as withdrawn if :

prior to the Council meeting, an indication to this effect is given in writing to at least one of the above-named officers by the Member who submitted the Notice; or

at the Council meeting, oral notice to this effect is given by the Member who submitted the Notice; or

the Notice of Motion is not moved and seconded at the meeting of Council.

#### **4 Procedure at the Meeting**

When a Motion has been moved and seconded **the mover and seconder shall not be entitled to make a speech if the Mayor decides that** it shall stand referred without discussion to such of those bodies as the Mayor may determine, for determination. However, if the Mayor considers it conducive to the despatch of business, the motion may be dealt with at the meeting at which it is initially considered.

#### **5 Procedure after the Meeting**

Each motion will then be referred to the relevant decision-making body for determination, without the need for any reference back to Council except where:

arising from consideration of the motion, the Constitution Committee recommends to the Council a change to the Constitution; or

there is some other legal or Constitutional requirement for the matter to be referred back to Council.

Unless the chairman of the appropriate decision-making body agreed there were good reasons not to do so, notices of motion must be referred to that body within two meeting cycles, and that the proposer of the motion would be consulted before the chairman decided the matter.

**Appendix 3**

**AGENDA FOR ANNUAL COUNCIL MEETING**

<b>Standard Item</b>
Prayers
Apologies for Absence
Declarations of Interest
Election of Mayor and Appointment of Deputy Mayor
Mayor's Announcements
Approval of Minutes of previous meeting
Receive notification of Leader's Appointments to the Cabinet
Leader's Announcements
Political Representation on the Council's Committees
Appointment of Members to Committees
Appointment of Chairmen and Vice Chairmen of the Committees of the Council
Appointments to non executive Organisations and Panels

**AGENDA COUNCIL MEETING**

<b>Standard Item</b>	
Prayers	
Apologies for Absence	
Declarations of Interest	
Approval of Minutes of previous meeting	
Mayor's Announcements	
Public Speaking Time/Open Session	
Recommendations from Cabinet	
Leader's Announcements	
Recommendation from Committees	
Notices of Motion	
Questions from Members	

**APPENDIX 4**

(Constitution pages 105/106)

**PART 3**

**RESPONSIBILITY FOR FUNCTIONS**

**STAFFING COMMITTEE**

8 Members

**Statement of Purpose**

- 1 The Staffing Committee is a key component of Cheshire East's corporate governance. It provides an independent and high level focus on ~~the~~ Human Resources, Organisational Development and Health & Safety matters affecting ~~the~~ Council.
- 2 The purpose of the Staffing Committee is
  - (a) to provide independent assurance to the members of the adequacy of the HR service and staffing related matters,
  - (b) with regard to the Head of Paid Service, Monitoring Officer and s151 Officer (Statutory Officers):
    - To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules; and
    - Make a recommendation to the Council to approve the proposed appointment before an offer of appointment is made to that person.
  - (c) appoint/dismiss the Statutory Chief Officers, namely:
    - The Director of Children's Services (Chief Education Officer),
    - Director of Adult Social Services; and
    - Director of Public Health.
  - including undertaking the recruitment and selection process.
  - (d) to appoint/dismiss the Executive Director of Economic Growth and Prosperity including undertaking the recruitment and selection process.
  - (e) to approve "in year" salary or other benefit increased to the Head of Paid Service

## Functions of the Committee

### Recruitment and Selection

- 3 With regard to Statutory Officers:
  - To undertake the recruitment and selection process in accordance with the Staff Employment Procedure Rules~~for the appointment of all of the Corporate Leadership Board;~~ and
  - make a ~~formulating~~ recommendations to the Council to approve the proposed appointment before an offer of ~~regarding the appointment~~ is made to that person ~~and dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.~~
- 4 ~~To approve the designation of an officer to act as Monitoring Officer and Chief Finance Officer, in accordance with legislation and the appropriate procedures~~ To make a recommendation to the Council to approve the dismissal of any of the Statutory Officers prior to notice being given to that person, and provided that the procedure set out in the Staff Employment Procedure Rules has been complied with.
5. appoint/dismiss Statutory Chief Officers and the Executive Director of Economic Growth and Prosperity.

### HR Policies

- 65.1 To approve all human resources policies including pay and grading structures (except those that must be approved in law by the Council and the implementation of national terms and conditions which will be undertaken by the Chief Executive/Head of Paid Service), employees' terms and conditions of employment, including changes to those terms and conditions and to approve policies on how the Council exercises its functions under the Local Government Pension Scheme and any other relevant pension scheme.
- 65.2 To have the opportunity to review the Council's HR Policies and Procedures as required and to make recommendations to the Portfolio Holder. It is noted that the authority to approve HR Policies remains with the Executive To make recommendations to Council in relation to the annual Pay Policy Statement and any amendments to such statement.
- 65.3 To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more.
- 65.4 To make decisions in relation to proposed severance packages with a value of £100,000 or more.

## Appeals

76 For a Staffing Appeals Sub Committee:

- -to consider appeals from Staff in the following circumstances:
  - Appeals against dismissal
  - Appeals against grievance
  - Appeals against policy (but only the first appeal where the appeals are based on the same issues/circumstances)

~~Group appeals covering more than one Department~~

~~Appeals which have initially been heard by the Chief Executive, e.g.~~

~~appeals raised by members of the Senior Management Team~~

~~Exceptionally where both sides agree referral to Members is appropriate~~

## ~~Corporate Leadership Board Appraisal Board~~

~~7 To establish and oversee an Appraisal Board for all members of the Corporate Leadership Board.~~

## Organisational HR Performance

8 To receive regular updates on HR and Health & Safety performance information measures, as detailed below, on a quarterly basis in order to assess the effectiveness of current HR Human Resources Organisational Development and Health & Safety policies and practices arrangements. These will include as a minimum:

- Headcount Data
- Sickness Absence
- Turnover
- HR Casework (including disciplinary, grievance and capability)
- Health and Safety Accidents Records
- Health and Safety Training

## SCHEME OF DELEGATION TO SENIOR OFFICERS

### 1.0 INTRODUCTION

1.11 Any power delegated or cascaded under this Scheme can be exercised by the Chief Officer and in all cases by the Chief Executive personally. The Chief Executive may take the powers of any Chief Officer and delegate it elsewhere for a temporary period.

### STAFFING

1.22 The Chief Executive in consultation with the Leader is authorised to consider and implement major staffing pay and organisational reviews and to report the outcome to Staffing Committee.

122A Subject to the exceptions below, the Head of Paid Service is authorised:

- to appoint and dismiss the Chief Officers subject to and in accordance with the Staff Employment Procedure Rules,
- to deal with the full range of employment and staff management issues as set in 122B below in relation to Chief Officers.

### Exceptions:

Recruitment and dismissal of Statutory Officers, Statutory Chief Officers and the Executive Director of Growth and Prosperity shall be undertaken only via Staffing Committee, including the approval of job descriptions and person specifications.

1.22B Chief Officers are authorised to deal with the full range of employment and staff management issues, below Chief Officer GLB level including but not limited to appointments, terms and conditions (other than those negotiated nationally) training, discipline, dismissal, performance, progression, promotion, shifts and working hours, grievance, grading, emoluments, expenses, allowances, sick pay, leave, equal opportunities and health and safety in accordance with approved policies and the Staff Employment Procedure Rules. ~~This delegation shall not include:~~

- ~~making a post redundant,~~
- ~~conducting appeals against dismissal~~
- ~~conducting appeals on the outcome of grievance hearings~~



~~**Note:** Recruitment of Chief Officers shall be undertaken only via Staffing Committee, including the approval of job descriptions and person specifications~~

~~1.23 Chief Officers are authorised, subject to prior notification of the Head of HR and Organisational Development and prior consultation with all appropriate parties affected by the decision, including any Trade Union, to implement changes to staffing structures except where the restructure:~~

~~Involves the loss of one or more posts not currently vacant  
Involves the regrading of posts or the grading of new posts  
Involves the changes to existing National or Local Agreements and policies  
Cannot be achieved within delegated powers in respect of budgets~~

~~This delegation will be exercised in accordance with paragraph 1.8 of the scheme of delegation to officers approved by Council on the 14<sup>th</sup> May 2014 which reads as:~~

~~*“Before taking delegated decisions, all officers are under a duty to satisfy themselves that they have the duly delegated power to do so and that they have undertaken appropriate consultation, including consultation with Portfolio Holders. Appropriate advice must be taken where the matter involves professional or technical considerations that are not within the officer’s sphere of competence.”*~~

~~Decisions in respect of matters identified as exceptions above are delegated to the Chief Operating Officer in consultation with the Head of Human Resources and Organisational Development for determination.~~

1.23 The Chief Executive and Chief Officers are authorised, subject to the advice of appropriate officers and prior consultation with all appropriate parties affected by the decision, including any Trade union, to implement changes to staffing structures.

Except where the restructure:

- Involves the loss of one or more posts not currently vacant.
- Involves regrading of posts or the grading of new posts.
- Involves changes to existing National or Local Agreements and policies.
- Cannot be achieved within the delegated powers in respect of budgets.

Decisions in respect of matters identified as exceptions above are delegated to the Chief Operating Officer in consultation with ~~the Head of Human Resources and Organisational Development~~ appropriate officers for determination.

The delegations in paragraph 1.23 will be exercised in accordance with paragraph 1.8 of the scheme of delegation to senior officers.

- 1.24 The Chief Executive and Chief Officers are authorised to enter into reciprocal arrangements for the authorisation and appointment of Officers to facilitate cross-border co-operation in the discharge of delegated functions with any other local authority and to transfer enforcement functions to another enforcement authority, subject to approval by Cabinet.
- 1.33 Whenever legislation is amended or replaced by new provisions, then the relevant delegated authority in this scheme applies to those new provisions. Whenever new legislation relevant or related to the functions exercised by the Chief Officer is introduced that Officer will have the delegated authority to exercise powers or otherwise take action under that legislation until such time as the Council, Cabinet, a committee or the Chief Executive decides who to allocate responsibility for the new legislation to.

NOTE: It is expected that formal delegation will be approved within 6 months.

## **1.0 CHIEF EXECUTIVE**

- 2.1 The Council's Chief Executive is the Council's Head of Paid Service appointed by Council. Under Section 4 of the Local Government and Housing Act 1989 the responsibility of the Head of Paid Service is to make proposals to the Authority about ~~in~~ the manner in which the discharge of the Authority's functions are co-ordinated and the numbers, grades and organisation of staff required and the proper management of those staff. In respect of the Chief Executive role the responsibility is to develop for Member approval a strategic vision and to provide strategic leadership for the Council.
- 2.2 ~~Within the following areas~~ The Chief Executive is empowered to operate all the sServices of the council Authority and except where powers, duties and functions are delegated to a member decision-making body or Cabinet member elsewhere by the Council, to exercise all powers, duties and functions of the council, including those delegated to other officers but not limited to the following:
- 2.3 To act as the Authority's Proper Officer in respect of the following under the Local Government Act 1972 unless stated:
- Declaration of acceptance of office by chairman, vice-chairman or Councillor (Section 83)
  - Receipt of resignation of office by person elected (Section 84)
  - Keeping the rolle of Freeman (Section 248 (2))
  - Convening Council meeting to fill casual vacancy in office of chairman (Section 88(2))

- Signature of summons to Council meetings and receipt of notices to which summons to meeting is to be sent (Schedule 12 para 4)
  - Receipt of notice of casual vacancy of Councillor (Section 80 (1) (b) of the Local Government Act
  - The Electoral Registration Officer for the registration of electors under Section 8 of the Representation of the People Act 1983
  - The Returning Officer for the election of Councillors for the District and Parishes within the District under Section 35 of the Representation of the People 1983 Act
  - The Acting Returning Officer at UK Parliamentary elections; the Local Returning Officer at European Parliamentary Elections and for the Police and Crime Commissioner Elections
  - Compile list of Politically Restricted Posts under Section 2 of the Local Government and Housing Act 1989
  - Receipt of Notices relating to political groups (Section 15 – 17 of the Local Government and Housing Act 1989)
- 2.4 To be the Authority's principal officer representative and to promote its good image and reputation
- 2.5 To undertake the communications, marketing and media functions of the authority and promote good public relations
- 2.6 To exercise the powers and responsibilities of any Chief Officer in his or her absence.
- 2.7 To lead and direct the strategic management of the Authority
- 2.8 To ensure the effective pursuit and achievement of the Authority's objectives
- 2.9 To ensure the Authority's activities are carried out with maximum effectiveness and efficiency
- 2.10 To discharge emergency planning and civil protection functions
- 2.11 To take such steps (including the incurring of expenditure where necessary) as may be required in the event of any national or local emergency requiring immediate action by the Authority
- 2.12 To sign settlement agreements for employees/ex-employees, in consultation with the Leader of the Council and Chairman of the Staffing Committee

- 2.13 Subject to 1.23 above, to approve the pay, terms and conditions of service and training of any employee except where an approval would be contrary to the provisions of the annual Senior Officer Pay Policy Statement which is reserved to full Council or where an approval falls within the responsibilities of the Staffing Committee or would be contrary to the employment policies of the Council.
- 2.14 To make decisions affecting the remuneration of any existing post whose remuneration is or is proposed to be or would become £100,000 p.a. or more in consultation with the Leader and Chairman of the Staffing Committee.

(Constitution pages 351 - 357)

(Original recommendations to Committee in red, new deletions shown ruled through in black and additions in blue).

## **STAFF EMPLOYMENT PROCEDURE RULES**

### **1 General**

- 1.1 Staff within the organisation are employed, appointed, designated or engaged on behalf of the whole Council and not by parts of the organisation or individuals.
- 1.2 The employment, appointment, designation or engagement of all staff will be in compliance with the law and any policies and practices of the Council.
- 1.3 Persons employed, appointed, designated or engaged by contractors under specific agreements or contracts are not staff of the Council, but are employees engaged by the contractor.
- 1.4 The Council will provide the necessary resources to support the appointed officer structure.
- 1.5 Generally (except for certain senior staff appointments) the function of appointment and dismissal of, and taking disciplinary action against a member of staff of the Council must be discharged on behalf of the authority by the Head of the Paid Service or by an officer nominated by him/her.

### **2 Recruitment and Appointment of Staff**

- 2.1 Subject to the provisions of these Procedures, the recruitment, designation and appointment of staff will be conducted in accordance with the law and the Council's policies and procedures.
- 2.2 Any candidate for any designation or appointment with the Council who knows that he/she is related to a Member or employee of the Council shall, when making application, disclose, in writing, that relationship to the Head of Human Resources. A person who deliberately fails to disclose such a relationship shall be disqualified from designation or appointment and, if designated or appointed, shall be liable to dismissal.
- 2.3 Every Member and employee of the Council shall disclose to the Head of Human Resources any relationship known to him/her to exist between him/herself and any person he/she knows is a candidate for a designation or appointment by the Council.
- 2.4 Any candidate for designation or appointment who directly or indirectly seeks the support of a Councillor or officer of the Council in any designation or appointment shall be disqualified and, if designated or appointed, shall be liable to dismissal. A Councillor shall not solicit for any person in respect of

any designation or appointment with the Council, but may give a written testimonial of a candidate's ability, experience or character.

- 2.5 Persons shall be deemed to be related to a candidate or officer if they are a spouse, partner (i.e. member of a couple living together) parent, parent-in-law, grandparent, child, stepchild, adopted child, grandchild, child of partner, brother, sister, uncle, aunt, nephew or niece or the spouse or partner of any of the preceding persons.
- 2.6 In the case of a dispute under paragraph 2.5 above about the status of a relationship in relation to an appointment, the Head of Human Resources will rule and such ruling will be applied.
- 2.7 The Head of Human Resources will ensure that the provisions of these Rules are reflected, as appropriate, in application forms or in any accompanying detailed procedures for each post, following advertisement.

### ~~3~~ — **Responsibilities for Human Resources Matters**

- ~~3.1 Subject to any matters reserved to the Council, the Cabinet is responsible for the development of corporate personnel policies and for determining and monitoring such policies and for the operational implementation of those policies, including the development of practices and procedures to support those policies.~~

### **43 Responsibility of the Staffing Committee**

- ~~43.1~~ The responsibilities of the Staffing Committee are set out in this Constitution within "Responsibility for Functions" and these Rules.
- ~~43.2~~ Subject to the provisions of these Rules, the Committee is also responsible for hearing and determining appeals as set out in the Staffing Committee Terms of Reference under the Council's employment-related policies, ~~the suspension of sick pay and the review and determination of matters relating to any fixed term contracts.~~ In determining these matters the Committee will have regard to the appropriate provisions of this procedure. The Committee may agree to discharge some of these functions through a Sub-Committee.
- ~~3.3~~ Subject to any matters reserved to the Council, the Staffing Committee is responsible for the approval of corporate personnel policies and for determining and monitoring such policies and for the operational implementation of those policies.
- ~~3.4~~ The Cabinet Member with responsibilities for individual Departments or Services and the associated resources is required to ensure that corporate personnel policies and procedures are applied by the Council, including training, matters relating to discipline, workforce performance management, and grievance. ~~(other than determining appeals).~~

## **5 Appointment of Head of the Paid Service**

- 5.1 The appointment of Head of the Paid Service is subject to specific requirements as set out below.
- 5.2 Where the Council proposes to appoint to the Head of the Paid Service, the Staffing Committee will oversee the arrangements for filling the vacancy. For this purpose the Committee shall include at least one Member of the Cabinet in its membership.
- 5.3 The Staffing Committee shall:
- draw up a statement specifying the duties of the officer concerned and any qualifications or guidelines to be sought in the person to be appointed;
  - make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
  - make arrangements for a copy of the statement mentioned above to be sent to any person on request;
  - where a post has been advertised as required above, the Committee will select from the applications a short list of qualified candidates and will then interview those included in the short list.
- 5.4 Following the interview of candidates, the Committee will come to a view as to the most suitable person for the position.
- 5.5 The Committee must advise the Head of Human Resources of:
- the name of the person in question;
  - any other particulars which the Committee consider are relevant to the appointment.
- 5.6 Within two clear working days of receiving the notification in 5.5 above, the Head of Human Resources will notify each Member of the Cabinet of:
- the information notified under paragraph 5.5 above;
  - the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Head of Human Resources; such period shall not exceed five clear working days.
- 5.7 An offer of appointment must wait until:
- the Leader has, within the period of the notice under paragraph 5.6 above, notified the Committee through the Head of Human Resources that neither he/she nor any Member of the Cabinet has any objection to the making of the offer; or

- the Head of Human Resources has notified the Committee that no objections have been received by him or her within the period of the notice under 5.6 above; or
  - the Committee is satisfied that any objection received from the Leader within the notice period is not material or is not well founded. In this regard, where necessary, the advice of the Head of Legal Services and Monitoring Officer should be sought.
- 5.8 Where following the above procedure there are no objections to the proposed appointment or any objections are not up-held, the Committee will recommend that person for appointment at the next meeting of the full Council or at a specially convened meeting of the Council. If the Council approve the recommendation, then a formal offer of appointment can be made.
- 5.9 Where following the interviews the Committee are of the view that there is no suitable candidate, it will re-advertise the post.
- 5.10 Where the Council do not approve the recommendation of the Committee, it shall indicate how it wishes to proceed.

## **65 Appointment/dismissal of Head of Paid Service, Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers**

The requirements of the Local Authorities (Standing Orders)(England) Regulations 2001 as amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2014 and 2015 ("the Regulations") will be adhered to in respect of those posts which fall within the definitions of Head of Ppaid Service, Statutory Chief Officer, Non-Statutory Chief Officer and Deputy Chief Officer. The requirements of the Regulations include the following, which is an extract from those Regulations:

### ***Part II***

#### ***Authority with Leader and Cabinet Executive***

##### ***1***

*In this Part--*

*"the 1989 Act" means the Local Government and Housing Act 1989;*

*"the 2000 Act" means the Local Government Act 2000;*

*"disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;*

*"executive" and "executive leader" have the same meaning as in Part II of the 2000 Act;*

*"member of staff" means a person appointed to or holding a paid office or employment under the authority; and*



*"proper officer" means an officer appointed by the authority for the purposes of the provisions in this Part.*

2

*Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him.*

3

*Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against--*

- (a) the officer designated as the head of the authority's paid service;*
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);*
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;*
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or*
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).*

4

*(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person.*

*(1A) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that dismissal before notice is given to that person. (1) —Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment or dismissal of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to him or, as the case may be, must approve that dismissal before notice of dismissal is given to him.*

*(2) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3, at least one member of the executive must be a member of that committee or sub-committee.*

5

(1) *In this paragraph, "appointor" means, in relation to the appointment of a person as an officer of the authority, the authority or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the authority, that committee, sub-committee or officer, as the case may be.*

(2) *An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be made by the appointor until--*

(a) *the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;*

(b) *the proper officer has notified every member of the executive of the authority of--*

(i) *the name of the person to whom the appointor wishes to make the offer;*

(ii) *any other particulars relevant to the appointment which the appointor has notified to the proper officer; and*

(iii) *the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and*

(c) *either--*

(i) *the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the executive has any objection to the making of the offer;*

(ii) *the proper officer has notified the appointor that no objection was received by him within that period from the executive leader; or*

(iii) *the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.*

6

(1) *In this paragraph, "dismissor" means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case may be.*

(2) *Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be given by the dismissor until--*

(a) *the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;*

(b) *the proper officer has notified every member of the executive of the authority of--*

(i) *the name of the person who the dismissor wishes to dismiss;*

(ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and

(iii) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the proper officer; and

(c) either--

(i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the executive has any objection to the dismissal;

(ii) the proper officer has notified the dismissor that no objection was received by him within that period from the executive leader; or

(iii) the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well-founded.

7

Nothing in paragraph 2 shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by-

(a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or

(b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

## ~~7. Less senior appointments/dismissals~~

~~Where any appointments are made to less senior positions than those referred to in paragraph 6 above, or where such persons are dismissed, these shall be the responsibility of the Head of the Paid Service, or another officer to whom he/she has delegated that responsibility.~~

## Schedule

### 1.

In the following paragraphs—

(a) “the 2011 Act” means the Localism Act 2011;

(b) “chief finance officer”, “disciplinary action”, “head of the authority’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;

(c) “independent person” means a person appointed under section 28(7) of the 2011 Act;

(d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts;

(e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;

(f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and

(g) “relevant officer” means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.

**2.**

A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

**3.**

The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

**4.**

In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

**5.**

Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—

(a) a relevant independent person who has been appointed by the authority and who is a local government elector;

(b) any other relevant independent person who has been appointed by the authority;

(c) a relevant independent person who has been appointed by another authority or authorities.

**6.**

An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

**7.**

The authority must appoint any Panel at least 20 working days before the relevant meeting.

**8.**

Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—

(a) any advice, views or recommendations of the Panel;

(b) the conclusions of any investigation into the proposed dismissal; and

(c) any representations from the relevant officer.

**9.**

Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.”

## **Consequential changes to Constitution as a result of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015**

(Constitution page 26)

Under “Functions of the Full Council”:

4.4.13 appointing the Council’s Monitoring Officer and Section 151 Officer and, ~~if appropriate,~~ approving their dismissal:

(Constitution page 56)

Under “Responsibilities of Council”:

13. will appoint/dismiss the Head of Paid Service, appoint/dismiss the Monitoring Officer and Chief Finance Officer, designate an officer to act as Monitoring Officer and an officer to act as Chief Finance Officer.

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Appendix 5**Cheshire East Statutory Health and Wellbeing Board****Terms of Reference:****1. Context**

- 1.1 The full name shall be the Cheshire East Health and Wellbeing Board.
- 1.2 The Board assumes statutory responsibility from April 2013.
- 1.3 The Health and Social Care Act 2012 and subsequent regulations provide the statutory framework for Health and Wellbeing Boards (HWB).
- 1.4 For the avoidance of doubt, except where specifically disapplied by these Terms of Reference, the Council Procedure Rules (as set out in its Constitution) will apply.

**2. Purpose**

- To work in partnership to make a positive difference to the health and wellbeing of the residents of Cheshire East through an evidence based focus on improved outcomes and reducing health inequalities.
- To prepare and keep up to date the Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs), which is a duty of local authorities and clinical commissioning groups (CCGs).
- To lead integrated working between health and social care commissioners, including providing advice, assistance or other support to encourage arrangements under section 75 of the National Health Service Act 2006 (ie lead commissioning, pooled budgets and/or integrated provision) in connection with the provision of health and social care services.
- To lead close working between commissioners of health-related services and the board itself.
- To lead close working between commissioners of health-related services (such as housing and many other local government services) and commissioners of health and social care services
- Any other functions that may be delegated by the council under section 196(2) of the Health and Social Care Act 2012. Such delegated functions need not be confined to public health and social care.



- To provide advice assistance and support for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services.

### **3. Roles and Responsibilities**

- 3.1 To work together effectively to ensure the delivery of the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy.
- 3.2 To work within the Board to build a collaborative partnership to key decision making that embeds health and wellbeing challenge, issue resolution and provides strategic system leadership.
- 3.3 To participate in Board discussions to reflect the views of their partner organisations, being sufficiently briefed to be able to make recommendations about future policy developments and service delivery.
- 3.4 To champion the work of the Board in their wider work and networks and in all individual community engagement activities.
- 3.5 To ensure that there are communication mechanisms in place within partner organisation[s] to enable information about the Health and Wellbeing Board's priorities and recommendations to be effectively disseminated.
- 3.6 To share any, changes to strategy, policy, and the system consequences of such on budgets and service delivery within their own partner organisations with the Board to consider the wider system implications.

### **4. Accountability**

- 4.1 The Board carries no formal delegated authority from any of the individual statutory bodies.
- 4.2 Core Members of the board have responsibility and accountability to their individual duties and to their role on the Board.
- 4.3 The Board will discharge its responsibilities by means of recommendations to the relevant partner organisations, which will act in accordance with their respective powers and duties.
- 4.4 The Council's Core Members will ensure that they keep Cabinet and wider Council advised of the work of the Board.
- 4.5 The Board will report to Full Council and to both NHS Clinical Commissioning Groups (CCG's) Governing Bodies by ensuring access to meeting minutes and presenting papers as required.



- 4.6 The Board will not exercise scrutiny duties around health or adult social care services directly. This will remain the role of the Cheshire East Health and Adult Social Care Wellbeing Overview and Scrutiny Committee and in respect of children's health, the Children and Families Overview and Scrutiny Committee. Decisions taken and work progressed by the Board will be subject to scrutiny by theis Health and Adult Social Care Overview and Scrutiny eCommittee.
- 4.7 The Board will provide information to the public through publications, local media, and wider public activities by publishing the minutes of its meetings on the Council's website. The Board is supported by an Engagement and Communications Network across Board organisations to ensure this function can operate successfully.

## 5. Membership

- 5.1 The Core membership of the Board will comprise the following:

### Voting members:

- Three councillors from the local authority
- The Director of Adult Services
- The Director of Children's Services
- A local Healthwatch representative
- Two representatives of NHS Eastern Cheshire CCG
- Two representatives of NHS South Cheshire CCG
- Independent NHS representative (nominated by the CCGs)

### Non-voting members

- The Chief Executive of the Council
- The Director of Public Health
- A nominated representative of NHS England

The councillor membership of the Board is nominated by the Executive Leader. The Executive Leader can be a member of the board as one of the three nominated councillors.

- ~~Portfolio Holder — Children & Families,~~
- ~~Major Opposition Group Member~~
- ~~The Director of Public Health,~~
- ~~The Director of Children's Services,~~
- ~~The Director of Adult Social Care and Independent Living~~
- ~~The Chief Executive of the Council (Associate Non-Voting Member)~~
- ~~The Executive Director of Strategic Commissioning (Associate Non-Voting Member)~~
- ~~Accountable Officer of the South Cheshire Clinical Commissioning Group~~
- ~~Chair, GP Lead of the South Cheshire Clinical Commissioning Group~~
- ~~Accountable Officer of the Eastern Cheshire Clinical Commissioning Group~~

- ~~• Chair, GP Lead of the Eastern Cheshire Clinical Commissioning Group~~
- ~~• A designated representative from Local HealthWatch~~
- ~~• Member of NHS England Local Area Team (Associate Non Voting Member)~~

- 5.2 The Core Members will keep under review the Membership of the Board and if appropriate will make recommendations to Council on any changes to the Core Membership.
- 5.3 The above Core Members <sup>1</sup> through a majority vote have the authority to appoint individuals as Non Voting Associate Members of the Board. (Committee Procedure Rule 20.1 refers). The length of their membership will be for up to one year and will be subject to re-selection at the next Annual General Meeting "AGM". Associate Members will assist the board in achieving the priorities agreed within the Joint Health and Wellbeing Strategy and may indeed be chairs of sub structure forums where they are not actual Core Members of the Board.
- 5.4 The above Core Members <sup>2</sup> through a majority vote have the authority to recommend to Council that individuals be appointed as Voting Associate Members of the Board. The length of their membership will be for up to one year and will be subject to re-selection at the next Annual General Meeting "AGM".
- 5.5 Each Core Member has the power to nominate a single named substitute. If a Substitute Member be required, advance notice of not less than 2 working days should be given to the Council whenever practicable. The Substitute Members shall have the same powers and responsibilities as the Core Members.

## **6. Frequency of Meetings**

- 6.1 There will be no fewer than six public meetings per year (including an AGM), usually once every two months as a formal Board.
- 6.2 Additional meetings of the Board may be convened with agreement of the Board's Chairman.

## **7. Agenda and Notice of Meetings**

- 7.1 Any agenda items or reports to be tabled at the meeting should be submitted to the Council's Democratic Services no later than seven working days in advance of the next meeting. No business will be conducted that is not on the agenda.

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<sup>1</sup> Regulation 5(1) removes this restriction in relation to health and wellbeing boards by disapplying section 104(1) of the 1972 Act to enable the local authority directors specified in the 2012 Act to become members of health and wellbeing boards

<sup>2</sup> Regulation 5(1) removes this restriction in relation to health and wellbeing boards by disapplying section 104(1) of the 1972 Act to enable the local authority directors specified in the 2012 Act to become members of health and wellbeing boards



- 7.2 In accordance with the Access to Information legislation, Democratic Services will circulate and publish the agenda and reports prior to the next meeting. Exempt or Confidential Information shall only be circulated to Core Members.

## **8. Annual General Meeting**

- 8.1 The Board shall elect the Chairman and Vice Chairman at each AGM, the appointment will be by majority vote of all Core Members present at the meeting.
- 8.2 The Board will approve the representative nominations by the partner organisations as Core Members.

## **9. Quorum**

- 9.1 Any full meeting of the Board shall be quorate if ~~there is representation of any four of the following statutory members: following are represented – NHS Eastern Cheshire CCG, NHS South Cheshire CCG, Local Health Watch, a Councillor~~ Portfolio Holder, and an Officer of Cheshire East Council.
- 9.2 Failure to achieve a quorum within ~~thirty~~ fifteen minutes of the scheduled start of the meeting, or should the meeting become inquorate after it has started, shall mean that the meeting will proceed as an informal meeting but that any decisions shall require appropriate ratification at the next quorate meeting. ~~render the meeting adjourned until the next scheduled meeting of the Board. This will also be the case when attending development or informal Board meetings.~~

## **10. Procedure at Meetings**

- 10.1 General meetings of the Board are open to the public and in accordance with the Council's Committee Procedure Rules will include a Public Question Time Session. Papers, agendas and minutes will be published on the Cheshire East Health and Wellbeing website.
- 10.2 The Council's Committee Procedure Rules will apply in respect of formal meetings subject to the following:-
- 10.3 The Board will also hold development/informal sessions throughout the year where all members are expected to attend and partake as the agenda suggests.
- 10.4 Core Members are entitled to speak through the Chairman. Associate Members are entitled to speak at the invitation of the Chairman.
- 10.5 With the agreement of the Board, subgroups can be set up to consider distinct areas of work. The subgroup will be responsible for arranging the frequency and venue of their meetings. The Board will approve the membership of the subgroups.

10.6 Any recommendations of the subgroup will be made to the Board who will consider them in accordance with these terms of reference and their relevance to the priorities within the Joint Health and Wellbeing Strategy and its delivery plan.

10.7 Whenever possible decisions will be reached by consensus or failing that a simple majority vote by those members entitled to vote.

## **11. Expenses**

11.1 The partnership organisations are responsible for meeting the expenses of their own representatives.

11.2 A modest Board Budget will be agreed annually to support Engagement and Communication and the Business of the Board.

## **12. Conflict of Interest**

12.1 In accordance with the Council's Committee Procedure Rules, at the commencement of all meetings all Board Members shall declare disclosable pecuniary or non-pecuniary interests and any conflicts of interest.

12.2 In the case of non pecuniary matters Members may remain for all or part of the meeting, participate and vote at the meeting on the item in question.

12.3 In the case of pecuniary matters Members must leave the meeting during consideration of that item.

## **13. Conduct of Core Members at Meetings**

13.1 Board members will agree to adhere to the seven principles outlined in the Board Code of Conduct when carrying out their duties as a Board member [Appendix 1].

## **14. Review**

14.1 The above terms of reference will be reviewed annually at the Health and Wellbeing Board AGM.

14.2 Any amendments shall only be included by consensus or a simple majority vote, prior to referral to the Constitution Committee and Council.

**March 2014**  
**August 2015**

***Definition***

***Exempt Information***



*Which is information falling within any of the descriptions set out in Part I of Schedule 12A to the Local Government Act 1972 subject to the qualifications set out in Part II and the interpretation provisions set out in Part III of the said Schedule in each case read as if references therein to “the authority” were references to “Board” or any of the partner organisations.*

**Confidential Information**

*Information furnished to, partner organisations or the Board by a government department upon terms (however expressed) which forbid the disclosure of the information to the public; and information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court are to be discussed.*

**Conflict of Interest**

*You have a Conflict of interest if the issue being discussed in the meeting affects you, your family or your close associates in the following ways;*

- *The issue affects their well being more than most other people who live in the area.*
- *The issue affect their finances or any regulatory functions and*
- *A reasonable member of the public with knowledge of the facts would believe it likely to harm or impair your ability to judge the public interest.*

**Associate Members**

*Associate Member status is appropriate for those who are requested to chair sub groups of the board.*

**Health Services**

*Means services that are provided as part of the health service.*

**Health-Related Services** *means services that may have an effect on the health of individuals but are not health services or social care services.*

**Social Care Services**

*Means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970*

**Appendix 1**

## **Cheshire East Shadow Health and Wellbeing Board Member Code of Conduct**

### **1. Selflessness**

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Members of the Cheshire East Health and Wellbeing Board should act solely in terms of the interest of and benefit to the public/patients of Cheshire East. They should not do so in order to gain financial or other benefits for themselves, their family or their friends

### **2. Integrity**

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Members of the Cheshire East Health and Wellbeing Board should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their duties and responsibilities as a Board member

### **3. Objectivity**

---

In carrying out their duties and responsibilities members of the Cheshire East Health and Wellbeing Board should make choices based on merit and informed by a sound evidence base

### **4. Accountability**

---

Members of the Cheshire East Health and Wellbeing Board are accountable for their decisions and actions to the public/patients of Cheshire East and must submit themselves to whatever scrutiny is appropriate

### **5. Openness**

---

Members of the Cheshire East Health and Wellbeing Board should be as transparent as possible about all the decisions and actions that they take as part of or on behalf of the Board. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

### **6. Honesty**

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Members of the Cheshire East Health and Wellbeing Board have a duty to declare any private interests relating to their responsibilities and duties as Board members and to take steps to resolve any conflicts arising in a way that protects the public interest and integrity of the Cheshire East Health and Wellbeing Board

### **7. Leadership**

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Members of the Cheshire East Health and Wellbeing Board should promote and support these principles by leadership and example

## **Appendix 6**

(additions are in red type and deletions are struck through)

(Constitution page 60)

Appointments to all Category 1 organisations (ie those which are statutory or top level strategic organisations) are made by the Cabinet or by individual Portfolio Holders. The current list is as follows:

- ~~Beth Johnson Housing~~
- ~~Bridgewater Canal Trust~~
- Cheshire Local Access Forum
- Cheshire and Wirral Partnership NHS Foundation Trust (Mental Health Services)
- Cheshire Peaks and Plains Housing Trust
- County Councils Network
- Environment Agency (NW) Regional Flood Defence Committee (North West)
- Environment Agency Liaison Group
- EU Structural Funds Governance Group
- European Chemicals Regions Network
- FBCA Federation of Burial and Cremation Authorities
- Local Government Association General Assembly
- ~~Local Government Association Rural Commission~~
- ~~Local Government Association Urban Commission~~
- Local Government Association People and Places Board
- Marketing Cheshire
- Manchester Airport Consultative Committee
- North West Employers Organisation
- North-West Rail Campaign
- PATROL
- Peak District National Park Authority
- Peaks and Plains of Cheshire Tourism
- Plus Dane Housing
- ~~Supporting People Strategic Partnership~~
- The Silk Heritage Trust
- West Coast Rail 250
- Wulvern Housing
- Joint Cheshire Pensions Investment Panel
- Mid Cheshire Hospitals NHS Foundation Trust

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**Appendix 7**

(additions are in red type and deletions are struck through)

(Constitution page 59)

<b>Local Choice Functions<sup>1</sup></b>	<b>Decision Making Body</b>	<b>Delegation of functions to Committees or officers</b> (to the extent set out below or Section 2C for Council (non-executive) functions and section 3D for executive functions)
To make arrangements for the execution of highways works <sup>19</sup>	Cabinet	Executive Director of Strategic Commissioning <b>Head of Communities</b> Corporate Manager Commissioning – Highways <sup>1</sup>
<b>To appoint any individual</b>  (a) to any office other than an office in which he is employed by the authority (b) to any body other than – (i) the authority; (ii) a joint Committee of two or more authorities; or (c) to any Committee or sub Committee of such a body  and to revoke any such appointment	Cabinet or individual Portfolio Holders in respect of Category 1 organisations as listed below and the Full Council in respect of other organisations.	In respect of appointments by Full Council delegated to the Constitution Committee.
<b>To make agreements with other local authorities for the placing of staff at the disposal of those other authorities</b>	Cabinet	Corporate Leadership Board <b>Management Group Board.</b>
<b>Functions relating to local area agreements<sup>2</sup></b>	Cabinet	

<sup>19</sup> s278 Highways Act 1980<sup>1</sup> Upon terms acceptable to the Borough Solicitor **Head of Legal Services and Monitoring Officer.**<sup>2</sup> Sections 106, 110, 111 and 113 of the Local Government and Public Involvement in Health Act 2007

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**Appendix 8**

(additions are in red type and deletions are struck through)  
 (Constitution page 341)

**Procurement Thresholds****Thresholds****Contract Procedure Rules – Changed January 2015**

a)	<del>Less than £1,000</del> Between 0 up to £5,000	3 quotes are advisable but not mandatory (local firms being preferable)
b)	<del>Between £1,000 and up to £10,000</del>	<del>A minimum of three quotations shall be sought and evidence retained for audit purposes</del>
c)	<del>Between £10,000 £5,000 - £50,000</del> £25,000	A minimum of three quotations shall be sought, subject to a procurement risk assessment being carried via a Procurement Engagement Form / Process <del>out by the CPU</del> , which will determine the route to market using an appropriate Request for Quotation (RFQ) and contract type (see below for the risk table). All quotations should be sent to Procurement to ensure compliance with these Rules and the Local Government Transparency Code 2015. (It is not mandatory to use an e-tendering portal but it is preferable).
d)	<del>Between £50,000 and up to the applicable 'EU Threshold'</del> £250,000	A minimum of three quotations shall be sought via an e-tendering portal, subject to a procurement risk assessment being carried out by Procurement <del>the CPU</del> , which will determine the route to market using an appropriate Request for Quotation (RFQ)

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## **Appendix 9**

Deletions to each page of the Constitution which refers to a secret ballot.

(additions are in red type and deletions are struck through)

(Constitution page 193)

### **14 Rescission of Earlier Resolution**

- 14.1 Subject to Rule 14.2, at a meeting of the Council, no motion or amendment shall be moved to rescind any resolution of the Council which was passed within the preceding six months or which is to the same effect as one which has been rejected within that period.
- 14.2 Such a motion may be moved if:
1. it is recommended by the Cabinet or a Committee; or
  2. notice of such motion has been given under Procedure Rule 12 and signed by at least 8 elected Members of the Council.

### **15 Voting**

- 15.1 Voting will be by a show of hands.
- 15.2 When a Member asks for a recorded vote to be taken, and 8 other Members stand in their places to support the request, the vote will be recorded to show whether each Member voted for or against the motion or abstained.
- 15.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 15.4 Members must be in their designated seats for their vote to be counted. The Mayor may agree to waive this requirement before the vote is taken.
- 15.5 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or abstained.
- 15.6 A Member may, immediately after the item of business is voted upon, request that a lost motion or amendment be recorded in the minutes.
- 15.7 Where there are equal votes cast for a motion or amendment the Mayor or the person presiding will have a second or casting vote.

### **16 Offices and Appointments**

- 16.1 A ~~secret ballot~~ **vote** will be held to elect or appoint the Mayor and Deputy Mayor of the Council, the Leader of the Council or Members to any office or position where more than one person is nominated.

- 16.2 ~~If a secret ballot is held and no person receives more than half of the votes cast, the name of the person with the least number of votes will be withdrawn. Further ballots will be held until one person receives a clear majority.~~  
If more than one person is nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

(additions are in red type and deletions are struck through)  
(Constitution pages 198/199)

- 28.5 Members may ask a question or comment on any Minute. The Chairman of the Sub-Committee will then reply. There will be no debate on any question or comment raised under this procedure and no further motions can be moved.
- 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 one hour before the start of the meeting.

### **29 Motions moved without Notice at Committees and Sub-Committees**

- 29.1 Appendix 1 lists those motions and amendments which can be moved without notice.

### **30 Rules of Debate at Committees and Sub-Committees**

- 30.1 Appendix 3 sets out the rules of debate.

### **31 Voting**

- 31.1 Voting at Committee and Sub-Committee meetings will be by a show of hands.
- 31.2 When a Member asks for a recorded vote to be taken, and one other Member supports the request, the vote will be recorded to show whether each Member present voted for or against the motion or abstained.
- 31.3 A recorded vote will not be taken if the vote has already begun to be taken by a show of hands.
- 31.4 A Member may require, after a vote is completed, that the Minutes of the meeting record how he/she voted or that he/she abstained.
- 31.5 A Member may request that a lost motion or amendment be recorded in the minutes by requesting this immediately after the vote is taken.
- 31.6 Where there are equal votes cast for a motion or amendment, the person presiding at the meeting will be entitled to, and may exercise, a second or

casting vote. However, where there is an equality of votes in respect of a motion, the motion will be lost.

## **32 Offices and Appointments**

32.1 An ~~secret ballot~~ will be held to elect or appoint Members to any office or position where more than one person is nominated.

32.2 ~~If a secret ballot is held where more than two nominations are made and no person receives more than half the votes cast, the name of the person with the least number of votes will be withdrawn. Further ballots will be held until one person receives a clear majority.~~

If more than one person is nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

32.3 Procedure Rule 31.6 will apply in cases where the votes are equal.

## **33 Mover of a Motion at Council under Procedure Rule 12: Attendance at Committee and Sub-Committee**

33.1 Where a motion has been referred under Procedure Rule 12 from the Council to a Committee or Sub-Committee for consideration and report, the mover of the motion has the right to attend the meeting and to explain the motion.

33.2 The mover of the motion will be advised of the date and time of the meeting at which the matter is to be considered and he/she will be sent a copy of the relevant papers.

## **34 Requests by Members for items of business to be included on agendas of a Committee or Sub-Committee**

Appendix 6 to these Procedure Rules sets out details of the process by which a Member of the Council can ask for an item of business to be included on the agenda of Committee or Sub-Committee meeting.

## **35 Questions Submitted by Members of the Public**

35.1 The Council has a procedure to enable members of the public to submit questions at ordinary meetings of its Committees and Sub-Committees. This is set out in Appendix 7. The procedure does not apply to meetings of the Council's Planning, Licensing and Scrutiny committees and sub-committees which have separate arrangements in place for public involvement.

**36 Reference of a Decision to the Parent Committee or Council**

- 36.1 Where a decision is made by a Committee or Sub-Committee, the resolution may be referred, by notice, to the Council or parent Committee, as appropriate, for reconsideration.
- 36.2 The notice must be in writing and be signed by 8 Members of the Council. The notice must be given to the Monitoring Officer, in writing, not later than 5.00 pm on the fifth full working day after the meeting.
- 36.3 No action must be taken on the decision prior to its determination by the Council or Committee. Where action is necessary before the relevant meeting, the Chief Executive will consider whether a special meeting of the Committee or the Council, as appropriate, should be convened.

(additions are in red type and deletions are struck through)

(Constitution pages 209)

- 46.15 A written record of all Cabinet decisions will be kept by the Monitoring Officer and these will be made available publicly as soon as practicable after the decision has been taken (excluding the disclosure of confidential and exempt information and in accordance with the Overview and Scrutiny Procedure Rules). In recording decisions of the Cabinet, the Monitoring Officer will set out the decision, the reasons for the decision and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.

**47 Voting at Cabinet Meetings**

- 47.1 Voting at Cabinet meetings will be by a show of hands and any Member may require, immediately after the vote is taken, that the Minutes of the meeting record how he/she voted or that he/she abstained. Where there are equal votes cast and the Leader or person presiding has voted, the Leader or person presiding will have a second or casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by ~~secret ballot~~ a vote conducted in accordance with Council Procedure Rules.

**48 Cabinet Committees/Sub-Committees and Task Groups**

- 48.1 The Leader or the Cabinet may appoint such Committees or Sub-Committees as are considered necessary and appropriate to assist in the discharge of executive functions. In making such appointments, the name of the Committee/Sub-Committee must be specified, along with its membership (including its Chairman and, if appropriate, Vice-Chairman) and its powers.
- 48.2 The Cabinet may also appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Council.



**49 Decision Making By Individual Portfolio Holders**

- 49.1 Where the Leader has delegated decision making powers to individual Portfolio Holder they will exercise their powers and duties in accordance with these rules and Part 3 of this Constitution.

**50 Motion Under Standing Order 12**

- 50.1 A mover of a motion under Standing Order 12 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers. This does not affect the right of the mover or seconder of the motion to attend a Scrutiny body when his/her motion is being considered.

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## CHESHIRE EAST COUNCIL

### Constitution Committee

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**Date of Meeting:** 17 September 2015  
**Report of:** Head of Governance and Democratic Services  
**Subject/Title:** Council Flag Flying Policy

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#### **1.0 Report Summary**

- 1.1 This report, which follows a discussion at the Civic Sub Committee on 8 September 2015, makes recommendations in respect of a number of detailed issues in relation to the Council's flag flying policy and asks the Committee to make a number of amendments to the current policy which has been in operation since 2010.
- 1.2 The recommendations of the Civic Sub Committee have been incorporated into a proposed revised Flag Flying policy outlined in Appendix I.

#### **2.0 Recommendation**

- 2.1 That the Council Flag Flying Policy is amended in accordance with Appendix I of this report.

#### **3.0 Reasons for Recommendations**

- 3.1 The Council's current policy in relation to the flying of flags was set in 2010. After five years it is suggested that it would be appropriate to review the policy in the light of operational and practical issues that have arisen, and to reflect current practices.

#### **4.0 Wards Affected**

- 4.1 All

#### **5.0 Local Ward Members**

- 5.1 All

#### **6.0 Policy Implications**

- 6.1 Apart from the implications for the Flag Flying policy itself, there are no additional policy implications from reviewing or changing this policy.

## **7.0 Financial Implications**

- 7.1 There are no financial implications.

## **8.0 Legal Implications**

- 8.1 There are no legal implications from reviewing or changing this policy.

## **9.0 Risk Management**

- 9.1 There are no risk management implications from reviewing or changing this policy.

## **10.0 Background and Options**

- 10.1 The current Council Flag Flying Policy was set in 2010. The beginning of a new quadrennial period is an appropriate time for the policy to be reviewed.
- 10.2 The policy outlines those occasions when the Cheshire East flag should be flown at half-mast, including following the death of a serving Member, Honorary Alderman or Honorary Freemen. Current policy is that the flag remains at half-mast from the day the death occurs until sunset on the day of the funeral. On one occasion strict adherence to this policy resulted in the flag being flown at half-mast for over three weeks. On two other occasions it was flown at half-mast for over two weeks. On average the flag has been flown at half-mast for ten days following the death of a serving Member, Honorary Alderman or Honorary Freemen.
- 10.3 Councils and other public bodies have differing policies on the period of time during which flags should be flown at half-mast following the death of a current or former civic leader / dignitary. There is no one policy in operation across the country. It is recommended that it would be helpful for the Cheshire East policy to be made slightly more flexible, giving the Leader of the Council the discretion to vary the period of time flags are flown at half-mast on those occasions when a funeral is delayed.
- 10.4 The Policy also outlines those days when the Union Flag should be flown, this includes the Queen's Birthday and her Official Birthday. Over the last three or so years the Union Flag has been flown on the birthday of a number of other members of the Royal Family, including the Duke of Edinburgh and the Prince of Wales. The Civic Sub Committee was of the view that custom and practise should be regularised. Revised lists of dates are proposed in Appendix I.
- 10.5 The Council has since 2009 flown the Union Flag at half-mast following the death on active service of a soldier from the 1<sup>st</sup> Battalion Mercian Regiment. The Sub Committee were of the view that to reflect changes within the Regiment, this should be changed to include the death, on active service of any Mercian soldier.

## **11.0 Access to Information**

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

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## Appendix 1

### PROPOSED FLAG FLYING POLICY AT CHESHIRE EAST COUNCIL

#### 1 General

The Cheshire East Borough Flag will be flown permanently at full mast on all Cheshire East establishments where a safe and serviceable flag pole exists. It will be the responsibility of the Property Team to ensure that the Cheshire East Flag is suitably maintained and flown.

The Cheshire East Flag will only be flown at half-mast on the death of the following, until sunset on the day of the funeral. On occasions when a funeral is delayed the Leader of the Council will have the authority to vary these timings.

A Member of the Council  
An ex Mayor of the Borough  
An ex Leader of the Council  
An Honorary Freeman  
An Honorary Alderman  
A serving Member of Parliament of a Parliamentary Constituency within the Borough

Set out below are those occasions when an alternative flag will be flown at the administrative centres in Sandbach, Macclesfield and Crewe only.

#### 2 Union Flag

The Union Flag will be flown full mast on the following days:

19 February - Birthday of Prince Andrew  
Second Monday in March - Commonwealth Day  
10 March - Birthday of Prince Edward  
21 April - Birthday of Her Majesty the Queen  
10 June - Birthday of Prince Phillip  
13 June - Official birthday of Her Majesty the Queen  
21 June - Birthday of Prince William  
22 July - Birthday of Prince George  
15 August - Birthday of Princess Ann, Princess Royal  
Second Sunday in November - Remembrance Sunday  
14 November - Birthday of Prince Charles

The Union Flag should be flown at half-mast on the day of the death of the following:

The Sovereign  
or  
The Mayor

The flag will remain half-mast until after the funeral (except in the case of the Sovereign when flags are hoisted right up from 11am to sunset on the Proclamation Day, and then lowered back to half-mast after sunset until the funeral).

In the case of deaths within the Royal Family (except the Sovereign), the flag will be flown on the day of the funeral and subject to special commands from the Sovereign in each case.

The Union flag will be flown at half-mast following the death on active service of a serving member of the Mercian Regiment.

The Union Flag will be flown to support the Great British Team during the Olympics and Paralympics.

### **3 National Flag of England**

St George's Day 23 April.

The National Flag will be flown to support the English Team during the Commonwealth Games and, at the discretion of the Leader of the Council, in support of other national teams.

### **4 Armed Forces**

The following flags will be flown in support of the Armed Forces:

Army - 18 June (Waterloo)  
Merchant Navy - 3 September (Red Ensign)  
Royal Air Force - 15 September (Battle of Britain)  
Royal Navy - 21 October (Trafalgar)  
Armed Forces Week - June each year

### **5 Overseas Visitors**

The relevant national flag will be flown when Cheshire East Borough formally receives visitors from overseas.

### **6 Mark of Respect**

The Leader of the Council will determine when Cheshire East Council will fly its flags at half-mast as a mark of respect to express the sympathies of the Council in appropriate circumstances.

### **7 Other Occasions**

Ad hoc requests to fly flags that are not covered by this policy will be determined by the Leader of the Council.

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## CHESHIRE EAST COUNCIL

### Constitution Committee

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**Date of Meeting:** 17 September 2015  
**Report of:** Head of Governance and Democratic Services  
**Subject/Title:** Appointment of Honorary Aldermen and Freemen

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#### **1.0 Report Summary**

- 1.1 This report follows a discussion at Civic Sub Committee on 8 September 2015 and makes recommendations endorsed by the Sub Committee in relation to the convening of a Special meeting of Council to appoint Honorary Aldermen and Freemen.
- 1.2 The report also summaries who can be appointed to these positions and the rights and privileges that they enjoy.

#### **2.0 Recommendation**

- 2.1 That a Special Meeting of Council is convened on Thursday 17 December 2015 to enable Honorary Aldermen and Freemen to be appointed as proposed in paragraphs 10.5 to 10.8 of this report.

#### **3.0 Reasons for Recommendations**

- 3.1 To enable the Council to appoint new Honorary Aldermen and Freemen in accordance with Council policy and the requirements of the Local Government Act 1972.

#### **4.0 Wards Affected**

- 4.1 All Wards.

#### **5.0 Local Ward Members**

- 5.1 Not applicable.

#### **6.0 Policy Implications**

- 6.1 There are no policy implications.

#### **7.0 Financial Implications**

- 7.1 There would be a modest cost associated with convening a Special Meeting of Council and hosting a Civic Reception. These costs would be met from

existing budgets. A regular meeting of Council will take place on 17 December; holding the two meetings on the same day will significantly reduce costs.

### **8.0 Legal Implications**

8.1 There are no legal implications.

### **9.0 Risk Management**

9.1 There are no risk management implications

### **10.0 Background and Options**

10.1 Section 249 of the Local Government Act 1972 allows Local Authorities such as Cheshire East to appoint both Honorary Freemen and Honorary Aldermen. The criteria for appointment as Freemen is that an individual should be a “person of distinction” and have “rendered eminent service to the place or area”. The criteria for appointment as an Alderman are that an individual “should have rendered eminent service to the Council as [a] past Member of that Council”. There is no bar on an individual being both an Honorary Freemen and an Honorary Aldermen.

10.2 Those individuals or organisations who were Freemen of any of the three demised Boroughs automatically became Freemen of Cheshire East on 1 April 2009. Since its creation in 2009 Cheshire East has appointed seven individuals as Freemen (all 2012 Olympic or Paralympic medallists) together with the Mercian Regiment. The former County Council could not appoint Freemen. Seven former Members of Cheshire East became Honorary Aldermen following the 2011 elections.

10.3 Cheshire East policy in relation to the appointment of Honorary Aldermen is that a former Member must 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.

10.4 The Local Government Act specifies that both Honorary Freemen 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.

10.5 There are a number of former Members whose service on Cheshire East and / or one of the demised authorities would qualify them for appointment as an Honorary Alderman; these individuals are:

- David Brickhill
- Roy Cartlidge
- Ken Edwards
- Wesley Fitzgerald
- Shirley Jones

- Frank Keegan
- Peggy Martin
- Brendan Murphy
- David Neilson
- Andrew Thwaite
- David Topping
- Roger West

10.6 The Leader 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 of the Borough. Those Members named by the Leader all satisfy the test of having rendered eminent service to Cheshire East. The now former Members are:

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

10.7 It will be noted that former Councillors Brickhill, Jones and Topping would, if the recommendations of Civic Sub Committee are followed, be appointed to the position of Honorary Aldermen and Honorary Freeman, which is permissible. It is suggested that the Special Meeting of Council is structured in such a way as to first appoint Honorary Aldermen and then conclude with the appointment of Honorary Freeman, meaning that in effect there would be two separate ceremonies held within the Special Meeting of Council.

10.8 Civic Sub Committee endorsed the names listed in paragraphs 10.5 and 10.6 above, and were of the view that the most appropriate date for a Special meeting of Council would be Thursday 17 December; the day of a scheduled meeting of Council. If the Special Meeting of Council were held in the morning a short Civic Reception could be held at lunchtime, followed by the regular meeting of Council in the afternoon.

10.9 Cheshire East policy, endorsed by Council in 2010, is that Honorary Freeman and Aldermen enjoy a limited range of privileges; these are:

- The right to attend meetings of Council;
- The right to be kept updated about the work of the Borough;
- The right to be invited to civic events (an example would be the Mayor's Civic Service); and
- Two free tickets for the RHS and Cheshire Shows each year.

10.10 Honorary Freeman and Aldermen are not eligible to claim any expenses.

#### **11.0 Access to Information**

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

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