

Constitution Committee

Agenda

Date: Thursday, 30th November, 2017
Time: 10.00 am
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

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

It should be noted that Part 1 items of Cheshire East Council decision-making meetings are audio recorded and the recordings are uploaded to the Council's website.

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

1. **Apologies for Absence**
2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

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

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

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

4. **Members Speaking**

To provide an opportunity for visiting members to speak in relation to the review of the constitution.

5. **Minutes of Previous meeting** (Pages 3 - 6)

To approve the minutes of the meeting held on 5th October 2017.

6. **Minutes of the Constitution Sub-Committee** (Pages 7 - 38)

To receive the minutes of the meetings of the Constitution Sub-Committee held on the following dates and to approve the recommendations contained within:

23rd August 2017
15th September 2017
29th September 2017
3rd November 2017
17th November 2017

7. **Review of the Constitution** (Pages 39 - 92)

To consider a report recommending the adoption of a revised constitution for Cheshire East Council.

8. **Review of the Constitution: General Issues** (Pages 93 - 104)

To consider a report which enables the Committee to consider any issues which may be required, so as to ensure that the draft Constitution, to be presented to Council for adoption, is complete and incorporates all required amendments.

9. **Calendar of Meetings for 2018-19** (Pages 105 - 110)

To consider the draft Calendar of Meetings for Cheshire East Council for 2018-19.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 5th October, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)

Councillors G Baxendale, L Durham, S Edgar, H Gaddum, S Hogben,
L Jeuda, D Mahon, N Mannion, R Menlove, G Williams and S Pochin (for Cllr
Deakin)

Officers

Dan Dickinson, Acting Director of Legal Services
Brian Reed, Head of Governance and Democratic Services
Martin Middleton, Business Improvement and Change Manager
Julie Gregory, Solicitor
Paul Mountford, Executive Democratic Services Officer

External Adviser (Bevan Brittan)

Richard Armstrong

Other Members present

Councillors T Dean, P Groves, J Nicholas and B Walmsley

Apologies

Councillor M Deakin

5 DECLARATIONS OF INTEREST

There were no declarations of interest.

6 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

7 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 4th August 2017 be approved as a
correct record.

8 PROGRESS ON THE REVIEW OF THE CONSTITUTION

The Committee considered a progress report on the review of the
constitution.

The Constitution Sub-Committee, which had been appointed by the Committee to oversee the detailed work of the review, had met on 23rd August, and on 15th and 29th September. It had approved the creation of five work packages as follows, each with its own working group, lead member and officer:

- Work Package 1 – The overall style and presentation of the Constitution
- Work Package 2 – Decision-making – Terms of Reference of Member Bodies
- Work Package 3 – Decision-making – Officer Scheme of Delegation
- Work Package 4 – Procedure Rules
- Work Package 5 – Codes/Protocols and Members' Allowances

The working groups had met independently to work on the detail of the review. The Council's external advisers, Bevan Brittan, had then drafted revised sections of the constitution based on the work of the working groups and had submitted these to the Constitution Sub-Committee for consideration. The Sub-Committee had so far agreed the content for work package 1 whilst noting progress with the other work packages.

An initial joint officer/member working group, facilitated by Bevan Brittan, had been held on 31st August 2017 in Sandbach Town Hall. The notes from the workshop had been fed into the working groups.

At its meeting on 15th September, the Sub-Committee had approved the principle that any substantive proposed changes to the constitution would be highlighted to the Sub-Committee, the Constitution Committee and Council.

It was proposed, as part of a wider member engagement process, that drop-in sessions for all members would be held on 12th and 13th October at Westfields in order to provide an informal briefing on how the review of the Constitution had been conducted and to explain the key changes that were proposed. Presentations had also been offered to the political groups, and a briefing for group leaders was being arranged.

To provide an indication of the progress with the review, officers circulated copies of the draft revised sections of the constitution together with explanatory notes of any changes. Further work would be needed to the documents before they were submitted formally for members' consideration.

Although substantial progress had been made with the review of the constitution, a considerable amount of work still needed to be done on drafting the new sections and supporting documents, and taking on board the outcome of the two drop-in sessions. The Constitution Sub-Committee on 29th September 2017 had considered the timescale of the review and had agreed a revised timetable which would lead to the adoption of the new constitution at the December Council meeting. This would provide

further opportunities for all members to engage fully with the process and feed in their comments. The proposed revised timetable was as follows:

Group Leaders' Briefing – 9th October 2017

Group Briefings - TBC

Member Briefing (drop-in) Sessions – 12th/13th October 2017

Constitution Sub-Committee – mid to late October
(to approve work packages 2, 3 and elements of 4)

Council – 19th October 2017
(to receive an update on progress)

Constitution Sub-Committee – w/c 13th November 2017
(to approve the rest of work package 4 and all of 5)

Constitution Committee – 30th November 2017
(to recommend the full redrafted Constitution to Council)

Council – 14th December 2017
(to approve the full redrafted Constitution)

Members made a number of general comments on the approach to the review:

- Whilst it was acknowledged that the review process involved a considerable amount of detailed work, it was important that members were given ample opportunity to absorb the content of papers and feed into the process.
- There was a need for an audit trail to enable members to monitor significant changes to the constitution.
- It was important that the work packages were not developed in silos and that there was consistency and coherence across all areas of work.

The officers responded that the papers before members today were intended to provide a flavour of the progress made so far. There would be full member involvement in considering the detailed changes to the constitution at every stage of the process before anything was submitted to Council. Up to now, the detailed work had been undertaken in the member/officer working groups and the outcome of that work would now be fed into the Sub-Committee and Committee meetings for consideration. This would be supported by a further extensive round of member engagement as mentioned earlier.

RESOLVED

That

1. The current progress with the review of the constitution be noted; and
2. The revised timetable for the review, leading to the adoption of the new constitution at the December 2017 meeting of the Council, be approved.

The meeting commenced at 2.00 pm and concluded at 3.04 pm

Councillor A Martin (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Sub-Committee**
held on Wednesday, 23rd August, 2017 at West Committee Room -
Municipal Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillors G Baxendale, B Burkhill, M Deakin, S Hogben, N Mannion,
A Martin and J Weatherill (as substitute for Cllr Edgar)

Officers

Dan Dickinson, Acting Director of Legal Services and Monitoring Officer
Brian Reed, Head of Governance and Democratic Services
Julie Gregory, Solicitor
Martin Middleton, Business Improvement and Change Manager
Chris Allman, Senior Manager, Project and Change
Paul Mountford, Executive Democratic Services Officer

External Adviser

Bethan Evans of Bevan Brittan

Apologies

Councillors S Edgar and H Gaddum

1 APPOINTMENT OF CHAIRMAN**RESOLVED**

That Councillor A Martin be appointed Chairman of the Sub-Committee.

2 APPOINTMENT OF VICE-CHAIRMAN**RESOLVED**

That Councillor B Burkhill be appointed Vice-Chairman of the Sub-Committee.

3 DECLARATIONS OF INTEREST

Councillor S Hogben declared a non-pecuniary interest as a director of ANSA in relation to the consideration of governance arrangements for the Council's ASDVs.

4 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

5 REVIEW OF THE CONSTITUTION

The Sub-Committee had been appointed by the Constitution Committee on 4th August 2017 to take forward a full review of the Council's constitution.

The report proposed a work programme and timetable to achieve a timely adoption of a new constitution. The report also set out a proposed outline format and general principles for a new constitution to guide the proposed work programme.

The work programme comprised five work packages, each focussing on a different section of the constitution as follows:

Work Package 1 – The overall style and presentation of the Constitution

Work Package 2 – Decision-making – Terms of Reference of Member Bodies

Work Package 3 – Decision-making – Officer Scheme of Delegation

Work Package 4 – Procedure Rules

Work Package 5 – Codes/Protocols and Members' Allowances

Details of each work package were set out in the report.

The Sub-Committee gave consideration to Work Package 1. The proposed content and structure of a new constitution were set out in Appendix 2 to the report. Members agreed on the need for any future constitution to be available in a digital format with hyperlinks to assist navigation both within the document and to provide links to related documents and websites. It was suggested that an ICT officer attend a future meeting of the Sub-Committee.

It was proposed that each of the other four work packages would be dealt with by a small working group of members and officers, with a lead member drawn from the membership of the Sub-Committee and a lead officer being appointed to each group. The groups would report back to the Sub-Committee as appropriate.

It was suggested that there would be merit in the working groups reviewing member and officer decision-making commencing with a joint workshop, facilitated by the Council's external advisers, Bevan Brittan, to ensure a co-ordinated approach to member and officer decision-making.

RESOLVED

That

1. the overall style and presentation of the constitution as set out in Work Package 1 be agreed;
2. the proposed work packages 2 to 5 be agreed;

3. joint member and officer working groups be appointed to deliver each of work packages 2 to 5 with a view to submitting recommendations via the Sub-Committee to a meeting of the Constitution Committee in October;
4. the member leads for the working groups be appointed on a cross-party basis (2 Con; 1 Lab; 1 Ind) as follows:

Work Package 2 – Councillor G Baxendale

Work Package 3 – Councillor N Mannion

Work Package 4 – Councillor A Martin

Work Package 5 – Councillor B Burkhill

5. the working groups reviewing member and officer decision-making commence with a joint workshop, facilitated by Bevan Brittan, in order to ensure that a co-ordinated approach is taken to reviewing member and officer decision-making, the workshop to be held at 10.00 am on 31st August 2017.

6 NEXT AND FUTURE MEETINGS

To be confirmed following consultation with members.

The meeting commenced at 10.00 am and concluded at 11.14 am

Councillor A Martin (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Sub-Committee**
held on Friday, 15th September, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor B Burkhill (Vice-Chairman)

Councillors G Baxendale, M Deakin, S Edgar, H Gaddum, L Jeuda and
B Roberts

Officers

Peter Bates, Chief Operating Officer
Brian Reed, Head of Governance and Democratic Services
Chris Allman, Senior Manager, Project and Change
Martin Middleton, Business Improvement and Change Manager
Julie Gregory, Solicitor
Paul Mountford, Executive Democratic Services Officer

7 APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillors S Hogben and
N Mannion.

8 DECLARATIONS OF INTEREST

There were no declarations of interest.

9 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

10 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 23rd August 2017 be confirmed as
a correct record.

11 JOINT MEMBER/OFFICER WORKING GROUPS - TERMS OF REFERENCE

The Sub-Committee considered draft terms of reference for the Joint
Member/Officer Working Groups as appended to the report. These set out
the approach to be adopted by the Working Groups in conducting the
review, including the reporting arrangements. A key aspect was the need

to adopt a consistent approach across all areas of work. The reporting arrangements in place ensured that there was oversight of the whole process.

RESOLVED

That the terms of reference be agreed.

12 HOUSE STYLE AND FORMAT OF CONSTITUTION

The Sub-Committee considered a first draft of the proposed new Part 1 of the Constitution presented in the proposed house style. It was proposed to observe plain English principles when drafting and to adopt a clear, modern approach to layout, utilising hyperlinks where possible.

The Sub Committee asked if the members' code of conduct and the officers' code of conduct needed to be in the Constitution or if it could be hyperlinked. It was agreed that Officers would report back after checking the statutory list of documents required in a Constitution.

Members requested that references to the Council's Alternative Services Delivery Vehicles should be included in the Constitution. It was also suggested that the Constitution should have a search facility.

RESOLVED

That

1. The overall style and presentation of the constitution and the content of the proposed new Part 1 as appended to the report be approved;
2. Officers be permitted to use their discretion (this to be exercised with caution) in bringing to the attention of the Sub Committee only matters of substance when constitutional changes are proposed.

13 NEXT MEETING

The next meeting would be held on Friday, 29th September 2017 at 10.00 am in the Municipal Buildings, Crewe (venue to be confirmed).

The meeting commenced at 3.00 pm and concluded at 3.35 pm

Councillor A Martin (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Sub-Committee**
held on Friday, 29th September, 2017 at West Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor A Martin (Chairman)

Councillors G Baxendale, C Browne (for Cllr Burkhill), S Edgar, S Hogben and
N Mannion

Officers

Brian Reed, Head of Governance and Democratic Services
Paul Mountford, Executive Democratic Services Officer

Bevan Brittan (external advisers)

Judith Barnes
Richard Armstrong

Other Members present

Councillors L Jeuda and A Stott

Apologies

Councillors B Burkhill and H Gaddum

14 DECLARATIONS OF INTEREST

There were no declarations of interest.

15 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

16 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 15th September 2017 be
confirmed as a correct record.

17 PROGRESS ON CONSTITUTION REVIEW

The Sub-Committee received a progress report on the review of the
constitution.

Work package 1, focussing on the overall style and presentation of the
constitution and the content of Part 1, was complete. The outcome of the
joint workshop on 31st August had been fed into work packages 2 and 3,

which were now nearing completion. Substantial progress had been made on work packages 4 and 5. The comments received from members and officers during the consultation period had been fed into the work on all packages. Bevan Brittan were now drafting new sections of the constitution which would be brought forward for members' consideration.

RESOLVED

That the progress with the review of the constitution be noted.

18 WORK PACKAGES AND PROPOSED AMENDMENTS TO CONSTITUTION

The Sub-Committee considered first drafts of the following documents:

Part 2 (a) to (d): Responsibility for Functions

This was a fundamental rewriting of Parts 2 and 3 of the original constitution: Introductory Chapters and Responsibility for Functions. Of particular note was the proposal, widely supported at the joint workshop, that in future decisions by individual Portfolio Holders, other than key decisions, would not require a formal decision-making meeting.

Part 2 (e): Officer Scheme of Delegation

This was a fundamental rewriting of rewriting of the Scheme of Delegation to Senior Officers. Much of what was in the original constitution would now appear in local schemes of delegation which would be accessed through a hyperlink in the main Scheme. The local schemes would be drafted by Bevan Brittan and brought to members for consideration. There would also be a Specific Delegation Register which would capture and record one-off delegations, eg by Cabinet.

Proper Officer Register (as referred to in Part 2 (e))

This was referred to in the Officer Scheme of Delegation. It would be a separate document accessible through a hyperlink in the Scheme.

With regard to the proposal for individual Portfolio Holder decisions to be taken in private, members sought assurances that advance notice of such decisions would still be given, with access to the report to be considered by the Portfolio Holder, that such decisions would be published on the website and notified to all councillors, and that such decisions, key or non-key, would be subject to call-in. It was also acknowledged that a mechanism would be needed which would prevent spurious use of call-in for Portfolio Holder decisions. Officers undertook to report back with details of how the new arrangements would work.

Members also asked about how they would be able to track the changes to the constitution to ensure that everything was accounted for and that nothing had been changed or added. Bevan Brittan advised that it would be difficult to make direct comparisons with the existing constitution as the new document adopted a very different approach. The officers reiterated

the undertaking given at the previous meeting, and in line with the Constitution Committee, that they would exercise caution in bringing changes of substance to the Sub-Committee's and the Committee's attention.

It was proposed, as part of a wider member engagement process, that drop-in sessions for all members would be held on 12th and 13th October at Westfields in order to provide an informal briefing on how the review of the Constitution had been conducted and to explain the key changes that had been approved by the Constitution Committee. Presentations had also been offered to the political groups, and a briefing for Group Leaders was in the process of being arranged.

RESOLVED

That

1. the initial drafts of the new Part 2 of the constitution and Proper Officer Register be noted;
2. the officers report back with detailed arrangements for the proposed Portfolio Holder decision-making process; and
3. consideration be given to including in the constitution clearer reference to the Council's processes in relation to 'WARNS' (Waivers and Record of Non-Adherence Notifications).

19 TIMETABLE FOR THE REVIEW

Earlier in the meeting, the officers reported that substantial progress had been made with the review of the constitution. Nevertheless, a considerable amount of work still needed to be done on drafting the new sections and supporting documents, and taking on board the outcome of the two drop-in sessions planned for mid-October. It was proposed therefore that an interim progress report would be made to Council on 19th October with a view to taking a final report to Council on 14th December. This would provide an opportunity to convene additional meetings of the Constitution Sub-Committee and to feed into a rescheduled Constitution Committee in late November. The proposed revised timetable was as follows:

Constitution Committee – 5th September

Council – 19th October (to receive an interim progress report)

Constitution Sub-Committee – mid to late October (to review and approve Work Packages 2, 3 and elements of 4)

Constitution Sub-Committee – w/c 13th November 2017 (to review and approve the remaining elements of Work Package 4 (including Finance Procedure Rules) and all of Work Package 5)

Constitution Committee – 30th November 2017 (rescheduled from 23rd November) (to receive the recommendations of the Sub-Committee and make final recommendations to Council)

Council – 14th December 2017 (to receive the recommendations of the Constitution Committee and approve and adopt the new constitution)

RESOLVED

That

1. the revised timetable be agreed;
2. a meeting of the Sub-Committee be held after the member drop-in sessions; and
3. members of the Sub-Committee be canvassed on the dates for the Sub-Committee's meetings.

The meeting commenced at 10.00 am and concluded at 11.10 am

Councillor A Martin (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Sub-Committee**
held on Friday, 3rd November, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor B Burkhill (Vice-Chairman)

Councillors G Baxendale, S Edgar, S Hogben, J P Findlow (for Cllr Gaddum),
A Kolker (for Cllr Beanland) and B Roberts (for Cllr Mannion)

Officers

Brian Reed, Head of Governance and Democratic Services
Julie Gregory, Solicitor
Chris Allman, Senior Manager, Project and Change
Paul Mountford, Executive Democratic Services Officer

Bevan Brittan (external advisers)

Judith Barnes

Other Members present

Councillors Rhoda Bailey, P Butterill, P Groves, J Jackson, G Merry,
J Nicholas, A Stott and B Walmsley

Apologies

Councillors M Beanland, H Gaddum and N Mannion

20 DECLARATIONS OF INTEREST

There were no declarations of interest.

21 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

22 MEMBERS SPEAKING

Councillor A Stott asked how members would know what had changed in the constitution. Judith Barnes of Bevan Brittan referred to the authority given to officers by members to report any substantive changes to the Sub-Committee. Brian Reed added that any member concerned about a change could discuss it with him.

Councillor J Jackson commented that she did not agree with the proposed changes to the planning committees as set out in the agenda and added that reserved matters on outline planning applications should be returned to the planning committees. She also disagreed with any proposals to

deny officers on lower grades the opportunity to be heard by the Staffing Appeals Sub-Committee. She also urged careful consideration of the filtering process in relation to the IDC Committee.

Councillor G Merry, as Chairman of the Strategic Planning Board, indicated that she had not been consulted on the proposed reduction in the size of the planning committees. She also supported the retention of substitutes.

23 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 29th September 2017 be confirmed as a correct record.

24 REVIEW OF THE CONSTITUTION - PRINCIPLES

The Sub-Committee considered a report on mechanisms to ensure that the revised Constitution was concise, user-friendly and future-proof.

A key principle of the review had been to be concise, covering only those essential issues which needed to be in the formal Constitution and sign-posting to other documents and sources. The Sub-Committee considered an Advice Note by Bevan Brittan which explained in more detail how this would work in practice, including the use of 'hyperlinking' and the status and ownership of each hyperlinked document in the proposed revised Constitution. The Advice Note is attached as Appendix A to these minutes.

The Sub-Committee also considered a schedule of sections/documents to be taken out of the constitution and linked to it where appropriate. The schedule made suggestions for the appropriate ownership and review processes for each document. A number of questions had been highlighted in the Schedule for members' consideration. The schedule is attached as Appendix B to these minutes.

Much feedback had been received on the most appropriate mechanism for highlighting changes from the existing Constitution to the new revised document, including a request for 'tracked changes'. Bevan Brittan had advised that the redrafted Constitution, whilst taking much of the content from the current one, was a significantly changed document, especially in terms of its layout. This had required a significant restructuring and editing of repetitious, superfluous or outdated content. As such, a large part of the New Constitution was essentially a new document, not an amended one, and the facility to 'track all changes' did not lend itself to this kind of rewrite. It was difficult, if not impossible, to use the 'tracked changes' functionality within Microsoft Word and attempts to highlight these changes manually through notation, high-lighting, colour-coding or other methods often obscured rather than enlighten, when trying to review the new material. Such an approach could not therefore be recommended.

Bevan Brittan proposed instead to bring to the attention of Members the substantive areas of change within an Explanatory Note/Schedule of Substantive Changes.

The Sub-Committee had endorsed this approach at its meeting on 15th September 2017 when it resolved that Officers be permitted to use their discretion (this to be exercised with caution) in bringing to the attention of the Sub Committee only matters of substance when constitutional changes are proposed. It was therefore proposed that offices would:

- draw attention to all substantive changes (exercising caution) in the Explanatory Note (List of Substantive Changes);
- provide printed copies of both the existing Constitution and the revised Constitution to any Member that requested them; and
- highlight any specific changes (with page number references for both documents) as requested by Members on a case-by-case basis if these were not immediately apparent and/or incorporated within the Explanatory Note (List of Substantive Changes).

RESOLVED

That the Constitution Committee be recommended to approve:

1. the overall proposed approach to hyperlinking as set out in the Bevan Brittan Advice Note (Appendix A to these minutes) subject to all hyperlinked documents being linked to the public website as well as the Intranet;
2. that with regard to the specific questions raised in the schedule at Appendix B:
 - (a) the terms of reference of committee chairmen be removed from the Constitution and be hyperlinked and the Constitution Committee retain responsibility for the document;
 - (b) the Whistleblowing Policy be removed from the Constitution and be hyperlinked and ownership of the Policy remain with the Audit and Governance Committee;
 - (c) the Planning Protocol of Conduct and the Protocol on Public Speaking Rights at planning committee meetings be removed from the Constitution and be hyperlinked and responsibility for the documents be passed to the Strategic Planning Board; and
 - (d) the Local Ward Member Protocol be removed from the Constitution and be hyperlinked and responsibility for the document remain with the Constitution Committee;

3. subject to resolution 2 above, the proposals set out in Appendix B, subject to the inclusion of a hyperlink to the Fire Authority website; and
4. the approach to highlighting substantive changes to the Constitution to Members as set out above.

25 REVIEW OF THE CONSTITUTION - WORK PACKAGE 2: DECISION-MAKING: TERMS OF REFERENCE OF MEMBER BODIES

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 2, and a redrafted element of Work Package 2 – Decision-making: Terms of Reference of Member Bodies (New Constitution Section 2 (a) to (d)).

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval (although these will be minimal as the original Bevan Brittan review confirmed that the Constitution was compliant)

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each one.

(The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and will be incorporated into a single document for consideration by the Constitution Committee.)

RESOLVED

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
 - (a) the proposed Substantive Issues as set out in the Explanatory Note (Schedule of Substantive Issues) Sections I & II;
 - (b) the specific recommendation in respect of each individual issue as

set out in the Explanatory Note (Schedule of Substantive Issues) Section III; and

- (c) the revised draft of Section 2 (a) to (d) of the Constitution (Work Package 2) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

26 REVIEW OF THE CONSTITUTION - WORK PACKAGE 3: DECISION-MAKING: OFFICER SCHEME OF DELEGATION

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 3, and a redrafted element of Work Package 3 – Decision-making: Officer Scheme of Delegation (New Constitution Section 2 (e)).

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval (although these will be minimal as the original Bevan Brittan review confirmed that the Constitution was compliant)

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each one.

(The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and will be incorporated into a single document for consideration by the Constitution Committee.)

RESOLVED

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
 - (a) the proposed Substantive Issues as set out in the Explanatory Note (Schedule of Substantive Issues) Section II;
 - (b) the specific recommendation in respect of each individual issue as

set out in the Explanatory Note (Schedule of Substantive Issues) Section III; and

- (c) the revised draft of Section 2 (e) of the Constitution (Work Package 3) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

27 REVIEW OF THE CONSTITUTION - WORK PACKAGE 4: PROCEDURE RULES

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 4, and a redrafted element of Work Package 4 – Procedure Rules (New Constitution Section 3)

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval (although these will be minimal as the original Bevan Brittan review confirmed that the Constitution was compliant)

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each one.

(The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and will be incorporated into a single document for consideration by the Constitution Committee.)

RESOLVED

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
 - (a) the proposed Substantive Issues as set out in the Explanatory Note (Schedule of Substantive Issues) Sections I & II;
 - (b) the specific recommendation in respect of each individual issue as

set out in the Explanatory Note (Schedule of Substantive Issues) Section III; and

- (c) the revised draft of Section 3 of the Constitution (Work Package 4) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

28 NEXT MEETING

The next meeting of the Sub-Committee would be held on Friday, 17th November 2017 at 10.00 am in the Committee Suite at Westfields.

The meeting commenced at 2.30 pm and concluded at 5.00 pm

Councillor A Martin (Chairman)

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APPENDIX A

Cheshire East Council Constitution

Note on proposed use of hyperlinks within the Constitution

24 October 2017



1 USE OF HYPERLINKS

- 1.1 The Constitution Committee at its meeting on 4 August 2017 agreed the principles which are underpinning the current review of the Constitution. These include that the new Constitution should:-
 - be modern in its language, format and presentation; and
 - be concise, covering only those essential issues which need to be in the formal Constitution and sign-posting to other documents and sources.
- 1.2 The Committee discussed and agreed that the use of hyperlinks would be very helpful to achieve these aims. Hyperlinks allow readers to click on certain words or phrases which are highlighted in the document and be taken to other places in the Constitution or to other documents which sit outside the Constitution itself. There are a number of advantages to this including that the core Constitution can be shorter/easier to read/understand and the links allow easy navigation around the document.
- 1.3 It is recognised that members want to be confident that key issues are not relegated to documents outside the Constitution which are then not visible or are then open to amendment without the necessary scrutiny. This is not the intention of the use of hyperlinks (although it is the case that a number of parts of the current Constitution are not statutorily required to be in the core document and can therefore be safely moved outside it).
- 1.4 Even where it is proposed that a current section of the Constitution is moved outside the core document, it is essential that, depending on the nature of the document, it has a clear process for review/amendment etc. It is suggested that any examples of this are clearly flagged as the new Constitution emerges and members agree any new proposals for keeping such "ancillary" documents under review.
- 1.5 It is important to clarify that there are different types of hyperlinks which will be used in the new document. These are set out in paragraphs 2 – 5 below.

2 TIER ONE LINKS

- 2.1 **Tier One links** are links which take readers to factual documents which are required to be part of the Constitution and will need to be updated from time to time but which are self-standing. For example, the Constitution will direct readers to:-
 - The list of elected members;
 - The register of members' interests; and
 - The management team structure.
- 2.2 These documents are strictly part of the Constitution but if they are embedded completely in the text of the main document as now (particularly in hard copy) the whole core document has to be changed whenever an update is needed and it goes out of date very quickly. Going forward, it is proposed that the changes to these type of documents which are factual and therefore non contentious, will be made simply through the Monitoring Officer using his/her delegated powers which are proposed to include the following delegation:-

"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 and 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; and

- to reflect new officer structures and job titles, properly approved through Council processes".

- 2.3 So the Monitoring Officer will be able to make changes following, for example a by-election which changes the details of the elected members on the Council.
- 2.4 If these documents are accessed through hyperlinks they can simply be factually updated without disturbing any other part of the Constitution and the hyperlink will ensure that the reader always accesses an accurate version of the information.
- 2.5 This approach lends itself well to Constitutions held on Council's IT systems i.e. not held in hard copy. Unfortunately the rules on whether a Council now needs to have a hard copy of its Constitution are not clear and have not necessarily kept up with new technology. The requirements are set out in s.9P of the Local Government Act 200 and are as follows:-
- "A local authority must prepare and keep up to date a "document...". The Act does not specify whether hard copy or not, and it is not defined elsewhere in the Act;
 - The local authority must ensure that "copies of its constitution are available at its principle office for inspection"; and
 - The local authority must "supply a copy of its constitution to any person who requests a copy...".
- 2.6 To be prudent given the need to provide a copy of the Constitution to people who ask for one and also recognising that the Council will probably want all members to have a hard copy of the new Constitution as it is debated through meetings over the next few months, it is suggested that these Tier Two type documents are added in hard copy at the end of the new Constitution.

3 TIER TWO LINKS

- 3.1 **Tier Two links** are links which take readers to documents which support the Constitution but are not required legally to be part of it – we will call these "ancillary documents". These can be different types of documents and could include:-
- Codes;
 - Guidance;
 - Parts of the current financial regulations; and
 - Proper Officer Register.
- 3.2 These type of documents have probably been added to the Constitution because this seemed a sensible location for the document to be stored. However, it has been recognised by the Constitution Committee that this has meant the Constitution becoming a depository of useful and often important information which has to be kept somewhere and easily accessed, but it does not strictly have to be part of the Constitution.
- 3.3 It is this tier of links/documents which, it is anticipated, members will want to track to ensure their removal from the core Constitution does not mean their disappearance from visibility or scrutiny.
- 3.4 It is therefore proposed that any such sections/documents will be identified in the reports to the Constitution Committee and Council recommending the new Constitution and will clearly set out:-
- whose responsibility the document will be going forward (which could be the Constitution Committee, could be another relevant member body or could be officers depending on the nature of the particular document); and
 - what the process is for updating/reviewing.

4 TIER THREE LINKS

- 4.1 **Tier Three links** are links which take readers to documents completely outside the Constitution and possibly outside the Council itself but where it is useful to signpost readers to a particular source e.g. an external complaints route/Ombudsman contact details/outside bodies.

5 TIER FOUR LINKS

- 5.1 **Tier Four links** are links which take readers quickly from one part of the Constitution to another e.g. a link from an introductory list of contents to the substantive section or a link from the terms of reference of a meeting to the procedural rules which cover that meeting.
- 5.2 These are not links to other documents but simply help navigation around the Constitution and ensure a reader can see clearly what other parts of the document might be relevant to them.

Bevan Brittan LLP
24 October 2017

Cheshire East Council Constitution

Summary table of sections/documents to come out of Constitution

APPENDIX B

Work Package	Element	Where it has moved to
2	Introductory Chapters	All necessary content from this section will be covered elsewhere in the revised Constitution.
2	Cheshire Police and Crime Panel Terms of Reference	This will be hyperlinked from 'Joint Arrangements' section to relevant external website.
2	Shared Services Joint Committee	Following consideration, we advise that this needs to remain in the Constitution as it is a (joint) body of the Council.
2	Job Description of Committee Chairmen	Hyperlink from 'Committees' section to Member area of CEntranet Responsibility for reviewing this and updating as required could still rest with the Constitution Committee or with the Audit and Governance Committee? [Q.1]
3	Officer Delegations and Proper Officer Register	Although there will still be an important section of the new Constitution (Part 2 (e) Responsibility for Functions – Officer Delegations) this will be much shorter than it is now. It will deal with delegations to the most senior officers and the statutory officers of the Council and then allows that officer to decide on the delegations which he/she wishes to cascade to officers in their own team/departments. The Register of Proper Officer functions will be maintained by the relevant officer and accessed through a hyperlink as will the Local Schemes of Delegation.
4	Contract Procedure Rules	Following consideration, we advise that this needs to remain in the Constitution.

Work Package	Element	Where it has moved to
4	Finance Procedure Rules	Following consideration, we advise that this needs to remain in the Constitution. The issue is that they contain a lot of information which is not necessary in a set of Finance Procedure Rules and could be in ancillary documents – this will have to be assessed when the rules are reviewed. BB's note [BB272] to the FPRs in the original review is set out below for reference ¹ .
5	Whistleblowing Policy	This does not have to be in the Constitution. It could be referenced somewhere in the document and hyperlinked with ownership and responsibility for reviewing/updating passing to the Staffing Committee? [Q.2]
5	Planning Protocol of Conduct in relation to the determination of planning matters	This does not have to be in the Constitution. It could be referenced in the main Member Code of Conduct and also in the terms of reference of the Strategic Planning Board and could be accessed by hyperlink. Ownership could pass to the Strategic Planning Board? [Q.3]
5	Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committee	This does not have to be in the Constitution. It is mentioned in the Committee and Sub-Committee Procedure Rules and could simply be accessed by this hyperlink with ownership for it passing to the Strategic Planning Board? If it stays in the Constitution it would be better placed with the Appendix 7 to the Rules of Procedure in Part 3 [Q.4]
5	Local Ward Member Protocol	This does not have to be in the Constitution. Responsibility for reviewing this and updating as required could still rest with the Constitution Committee or with the Audit and Governance Committee? [Q.5]
5	Councillor Call for Action Protocol	This detailed protocol is not required. The process will be included in the Council Procedure Rules.
5	Mayoralty Code of Practice	This will be taken out of the Constitution altogether. We understand that this is an important document for the Council, but strictly speaking it is an internal document for the Council, and it does not need to appear in the Constitution.

Work Package	Element	Where it has moved to
5	Petitions Scheme	This detailed protocol is not required. Petitions will be referred to within the Council Procedure Rules.

ⁱ **Note on Finance Procedure Rules in initial review of Constitution**

Before looking at the sets of rules on financial related issues, it is worth revisiting the statutory requirements setting out what has to be included in a local authority constitution

a description of the rules and procedures for the management of its financial, contractual and legal affairs including:

- i. procedures for auditing of the local authority;*
- ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise;*
- iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and*
- iv. rules and procedures in respect of legal proceedings brought by and against the local authority*

Although it is usual for councils to include far more than this statutory minimum, it is not essential to have lengthy financial processes and procedures in the constitution itself. To make the document more manageable, we suggest that a rigorous review is carried out of what the Council considers is essential to have in the core document and what could better be dealt with by links through to other documents/web pages.

At the moment this section stands at over 66 pages and there is much of it (whilst essential to the effective running of a council) which does not need to be in the formal Constitution

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Sub-Committee**
held on Friday, 17th November, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor B Burkhill (Vice-Chairman)

Councillors G Baxendale, S Edgar, S Hogben, N Mannion, D Bebbington (for Cllr Beanland) and P Groves (for Cllr Gaddum)

Officers

Dan Dickinson, Acting Director of Legal Services
Jan Willis, Director of Finance and Procurement
Brian Reed, Head of Governance and Democratic Services
Julie Gregory, Solicitor
Paul Mountford, Executive Democratic Services Officer

Other Members present

Councillors J Nicholas, S Pochin and A Stott

Apologies

Councillors M Beanland and H Gaddum

29 DECLARATIONS OF INTEREST

There were no declarations of interest.

30 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

31 MEMBERS SPEAKING

Councillor S Pochin referred to the revised Member Code of Conduct and suggested that where a complaint had been made against a member by the Leader of the Council, the Monitoring Officer may have a conflict of interest. She asked whether in those circumstances it would be appropriate for a Monitoring Officer from another council to consider the complaint. The Director of Legal Services responded that the Monitoring Officer was a statutory officer and was independent of the Council's leadership. In addition, the law required the appointment of an independent person to sit alongside the Monitoring Officer in considering complaints under the Member Code of Conduct; the Council had three such independent persons. If it were supposed that there had been a breach of the Code, the matter would be considered by a sub-committee

of members with the independent person. Finally, there would be an issue of confidentiality in bringing in a Monitoring Officer from outside the authority. The Director was therefore satisfied that there was enough independence in the Council's existing process which was similar to that of other local authorities.

Councillor Pochin also referred to a statement made in a report at the previous meeting in relation to proposed changes to the planning committees that the planning chairmen and vice-chairmen had been consulted. This had turned out not to be the case and she wondered how the statement could have found its way into the agenda papers. She wondered if there were other statements in the agenda papers which claimed that members had been consulted when they had not. The Chairman responded that the specific matter relating to the planning chairmen had been discussed at the previous meeting and the proposed changes to the planning committees had not been accepted. The Head of Governance and Democratic Services indicated that the particular point had been raised with the Acting Chief Executive and that she was looking into the matter. He added that the minutes of the previous meeting had recorded Councillor G Merry's statement that she as Chairman of the Strategic Planning Board had not been consulted on the proposals. He also reaffirmed the officers' commitment to being open and transparent and to bringing any substantive issues to the attention of members.

32 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 3rd November 2017 be confirmed as a correct record.

33 REVIEW OF THE CONSTITUTION - GENERAL

The Sub-Committee considered a report recommending a process to ensure that the revised constitution, to be presented to the Constitution Committee for consideration, was complete and incorporated all requested amendments.

The review of the whole constitution had been a substantial exercise. This had required the segmentation of the constitution into five separate work packages which had been considered by the Sub-Committee over a number of meetings.

It would be necessary, however, to bring the work packages together into a single cohesive document for presentation to the Constitution Committee on 30th November 2017. This would necessarily change all the paragraph referencing and page numbering of the content previously presented to the Sub-Committee. It would also be necessary to provide reassurance to the Constitution Committee that all requests and recommendations of the Sub-Committee had been addressed and incorporated where necessary.

In order to achieve this, and to ensure consistency between the different work packages as part of the collation exercise, the following approach was proposed:

- A new draft Constitution presented in whole as a single document which took into account those matters agreed as part of the various work packages, together with all changes and other recommendations of the Sub-Committee.
- A combined Explanatory Note (List of Substantive Changes) listing all of the original substantive issues raised with the Sub-Committee, in accordance with the agreed approach, together with a note against each one which recorded the recommendations of the Sub-Committee.
- A general report highlighting any changes arising from the collation process, together with any additional issues that could arise between the meetings of the Sub-Committee and presentation of the final set of recommendations to the Constitution Committee.
- A combined document of all content previously held within the Constitution that was now proposed to sit outside the Constitution, in accordance with the process agreed at the Sub-Committee on 3rd November 2017.

The officers had already committed to the following additional processes if requested:

- Provide printed copies of both the existing Constitution and the revised Constitution to any Member that requested them.
- Highlight any specific changes (with page number references for both documents) as requested by Members on a case-by-case basis, if these were not immediately apparent and/or incorporated within the Explanatory Note (List of Substantive Changes).

Any changes requested by the Constitution Committee on 30th November 2017 would be incorporated into the documentation ahead of presentation to Council on 14th December 2017. Any further consequential changes arising between presentation to the Constitution Committee on 30th November 2017 and the Council on 14th December 2017 would be dealt with under delegated powers by the Monitoring Officer, subject to drawing full attention to these in the general report.

RESOLVED

That the Constitution Committee be recommended to approve the proposed approach to collating and summarising the revised content and Explanatory Notes (Lists of Substantive Changes) as set out above.

34 REVIEW OF THE CONSTITUTION - WORK PACKAGE 4: PROCEDURE RULES

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 4, and a redrafted element of Work Package 4 – Procedure Rules (New Constitution Section 3).

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

Sections of the Work Package had previously been presented to the Sub-Committee on 3rd November 2017 and the comments received had been incorporated into the updated version.

The Sub-Committee considered those substantive changes not previously considered and agreed an appropriate course of action in respect of each.

(The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and will be incorporated into a single document for consideration by the Constitution Committee.)

RESOLVED

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
 - (a) the proposed Substantive Issues as set out the Explanatory Note (Schedule of Substantive Issues) Sections I & II;
 - (b) the specific recommendation in respect of each individual issue as set out in the Explanatory Note (Schedule of Substantive Issues) Section III;
 - (c) the table of Financial Limits for insertion into the Finance

Procedure Rules as set out in pages 228-232 of the agenda; and

- (d) the revised draft of Section 3 of the Constitution (Work Package 4) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

35 REVIEW OF THE CONSTITUTION - WORK PACKAGE 5: CODES AND PROTOCOLS

The Sub-Committee considered a draft revised Explanatory Note (Schedule of Substantive Issues) for Work Package 5, and a redrafted element of Work Package 5 – Codes and Protocols (New Constitution Section 4).

The Explanatory Note (Schedule of Substantive Issues) highlighted proposed changes to the constitution in three categories:

Section I – substantive changes required by law for approval

Section II – substantive changes based on best practice recommended for approval

Section III – substantive changes for consideration by the Sub-Committee

The Sub-Committee considered the substantive changes and agreed an appropriate course of action in respect of each.

(The Explanatory Note (Schedule of Substantive Changes) has since been updated to reflect the Sub-Committee's decisions and will be incorporated into a single document for consideration by the Constitution Committee.)

RESOLVED

That

1. the content of the report and the significant progress made to date be noted;
2. the Constitution Committee be recommended to approve:
 - (a) the proposed Substantive Issues as set out in the Explanatory Note (Schedule of Substantive Issues) Sections I & II;
 - (b) the specific recommendation in respect of each individual issue as set out in the Explanatory Note (Schedule of Substantive Issues) Section III; and

- (c) the revised draft of Section 4 of the Constitution (Work Package 5) as set out in Appendix B to the report and the accompanying Explanatory Note (Schedule of Substantive Issues), subject to the specific responses agreed by the Sub-Committee.

The meeting commenced at 10.00 am and concluded at 12.50 pm

Councillor A Martin (Chairman)

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	30 th November 2017
Report of:	Acting Director of Legal Services (Acting Monitoring Officer)
Subject/Title:	Review of the Constitution

1.0 Report Summary

- 1.1 The Council has undertaken a comprehensive review of the current Constitution to ensure that it complies with all relevant statutory requirements, and examined how its current processes and procedures should be altered to improve organisational efficiency and achieve good governance.
- 1.2 This report brings the product of that review to the Constitution Committee.

2.0 Recommendations

- 2.1 That Council be recommended to adopt the revised Constitution of Cheshire East Council, as appended to this report.
- 2.2 That the Committee endorses the approach to any further necessary amendments as set out in the accompanying General Issues report and approved by the Constitution Sub-Committee on 3rd November 2017.

3.0 Reasons for Recommendations

- 3.1 The Council has undertaken a comprehensive review of the Constitution to ensure that it complies with all relevant statutory requirements, and examined how its current processes and procedures may be altered to improve organisational efficiency and achieve good governance.
- 3.2 The Council commissioned Bevan Brittan Solicitors to carry out a desktop review of the current Constitution. The proposals arising from that review were brought before the Constitution Committee for approval and endorsement on 4th August 2017.
- 3.3 The Committee appointed a Sub-Committee in order to take forward a full review of the Constitution, taking into account the views of stakeholders, and to present a new draft Constitution to the Constitution Committee for approval and recommendation to full Council.

- 3.4 The agreed timescale for the adoption of a new Constitution was noted at the meeting of Full Council in December 2017. Council resolved as follows: *“That the progress made in respect of the review of the Constitution and the timescale for the completion of the review be noted”*.
- 3.5 The adoption of seven key principles (set out below in paragraph 4.2 of this report) by the Constitution Committee provided a clear touchstone for the efficient development of the new document and associated guidance.
- 3.6 A work programme, driven by the Sub-Committee, identified the key areas of the Constitution, involved all relevant stakeholders in consideration of the key issues and oversaw development of a new document within a clear and accountable timescale.

4.0 Background and Options

- 4.1 A paper setting out the proposed approach was approved at the Constitution Committee on 4th August 2017.
- 4.2 The Council adopted seven key principles to this review, those being that the new document should:
1. recognise the Council's democratic leadership role;
 2. support, not hinder, the efficient exercise of democratic decision making, good governance and the delivery of services;
 3. be modern in its language, format and presentation;
 4. be concise – covering only those essential issues which need to be in the formal Constitution and sign posting to other documents/sources;
 5. recognise the new ways in which the Council operates (for example through ASDVs and shared services);
 6. delegate decision making to the most appropriate level with the right checks, balances and scrutiny and
 7. be future proof, not requiring constant revisiting and updating.
- 4.3 This initial paper also recommended the appointment of a Constitution Sub-Committee.
- 4.4 The Sub-Committee met on 23rd August 2017 to take forward the approach and approved the creation of five “work packages” with working groups – and nominated Lead Members and Lead Officers – for each work package, as set out below:
- 4.2.1 **The overall style and presentation of the Constitution** (Work Package 1)

4.2.2 **Decision-making: Terms of Reference of Member Bodies** (Work Package 2)

- Lead Member: Cllr. Gordon Baxendale
- Lead Officer: Daniel Dickinson

4.2.3 **Decision-making: Officer Scheme of Delegation** (Work Package 3)

- Lead Member: Cllr. Nick Mannion
- Lead Officer: Daniel Dickinson

4.2.4 **Procedure Rules** (Work Package 4)

- Lead Member: Cllr. Andrew Martin
- Lead Officer: Brian Reed

4.2.5 **Codes & Protocols** (Work Package 5)

- Lead Member: Cllr. Barry Burkhill
- Lead Officer: Brian Reed

4.5 As part of that approach, an initial joint Member / officer workshop– facilitated by Bevan Brittan – was held on 31st August 2017 at Sandbach Town Hall. The notes from this workshop were fed into the Working Groups.

4.6 The Sub-Committee met on 15th September 2017 and received updates from the Lead Officers on progress, including the Terms of Reference for the Working Groups and revised content for Work Package 1, which was approved. The Sub-Committee also approved the principle of proposed changes to the Constitution being brought to the attention of the Sub-Committee, in order for recommendations to be made to the Constitution Committee and then to Council at the conclusion of the review. These are now set out for consideration by the Committee in the Explanatory Note (List of Substantive Issues) at Appendix C.

4.7 In addition, a range of Member engagement opportunities were put in place, as set out below:

- Group Leader Briefing, 9th October 2017
- Drop-In Session, 12th October 2017
- Drop-In Session, 13th October 2017
- Drop-In Session, 18th October 2017

- Drop-In Session, 19th October 2017
 - Presentations to the Council's political groups
 - Presentations to the political group representatives on the Constitution Sub-Committee and the Constitution Committee
 - Discussions with Group Leaders and individual Members, where requested.
- 4.8 In total, it is believed that over 60 of the Council's 82 Members have been directly engaged in this process.
- 4.9 Further Sub-Committee meetings were held, approving the revised content and reports of substantive changes as follows:
- 4.9.1 Work Packages 2 and 3 – approved on 3rd November 2017, subject to amendments identified in the minutes of that meeting
- 4.9.2 Work Packages 4 and 5 – approved on 17th November 2017, subject to amendments identified in the minutes of that meeting.
- 4.10 The seven key principles set out at paragraph 4.2 of this report have been fulfilled:
- 4.10.1 The draft Constitution clarifies and strengthens the Council's democratic leadership role in a number of ways. Greater clarity has been brought to the core documentation which comprises the Constitution, and which defines the Council's democratic role, as well as strengthening the arrangements around keeping ward members informed of issues within their local areas.
- 4.10.2 The changes made to the draft constitution support, and do not hinder the efficient exercise of democratic decision making, good governance and the delivery of services. All decision-making processes have been reviewed to ensure that they are fit for purpose and inefficiencies in current decision-making arrangements have been removed. The involvement of Bevan Brittan solicitors, who have wide experience of decision-making arrangements nationally have been able to add-value to this exercise, as have the involvement of others, such as the Council's Interim Section 151 Officer, who has brought a wealth of experience to the process, drawn from other local authorities.
- 4.10.3 The new draft Constitution is modern in its language, format and presentation. The whole document has been reviewed and plain English has been used in the new document. Hyperlinks to documents which no longer need to be contained within the Constitution, have been used to reduce the bulk of the document, whilst preserving appropriate oversight of those documents by members.

The new Constitution will be much easier to navigate by members of the public, Councillors and officers, and references to outdated/replaced guidance and legislation have been removed/corrected.

- 4.10.4 The new Constitution will be concise – covering only those essential issues which need to be in the formal Constitution and sign posting to other documents/sources. The use of plain English and hyperlinks has achieved this. The new Constitution will be much shorter than the existing document, to the benefit of the user. However, the importance of hyperlinked documents, and the ownership of them have been secured.
 - 4.10.5 The new ways in which the Council operates have been, for the first time, properly recognised in the draft Constitution. The Council's approach to ASDVs¹ and shared services are now set out in the document: an important improvement in terms of keeping members of the public, Councillors and officers properly informed of the Council's working arrangements.
 - 4.10.6 The new Constitution will delegate decision-making to the most appropriate level, with the right checks, balances and scrutiny. The terms of reference of decision-making bodies have been reviewed, as have the delegations to officers, which have been streamlined and simplified. Finance and Contract Procedure Rules have been reviewed and made fit for purpose.
- 4.11 This report now appends four documents:
- 4.11.1 The composite Explanatory Note of substantive issues, which have been considered by the Sub-Committee, together with the Sub-Committee's recommendation against each issue, which are reflected in the draft Constitution. This is contained at Appendix A to this report.
 - 4.11.2 The draft Constitution itself, which is now recommended for approval by the Committee, and adoption by Full Council. This forms Appendix B to this report and is a separate document.
 - 4.11.3 Those documents which form part of the current Constitution, but which the Sub-Committee recommends should no longer be in the Constitution, together with a summary front-sheet which provides information as to "ownership" of each. This forms Appendix C to this report and is a separate document.

¹ A separate review of ASDV governance is currently underway at the Council. On conclusion of that review, any necessary changes or clarifications in the Constitution in relation to the ASDVs will be brought back to Constitution Committee and Council for consideration. This is also referred to in the Explanatory Note

- 4.11.4 One document which, whilst not part of the current Constitution or part of the proposed new draft Constitution, is required by law and will be referenced and hyperlinked from the revised Member Code of Conduct. This has been amended, and the proposed amendments approved by Sub-Committee. This forms Appendix D to this report and is a separate document.

5.0 Wards Affected and Local Ward Members

- 5.1 All wards are affected.

6.0 Implications of Recommendation(s)

6.1 Policy Implications

- 6.1.1 These are identified in the Explanatory Note (Appendix A).

6.2 Legal Implications

- 6.2.1 Section 37 of the Local Government Act 2000 and the guidance issued under it requires the Council to keep its Constitution up to date and regularly review it.

6.3 Financial Implications

- 6.3.1 The Constitution incorporates the Finance and Contract Procedure Rules which identify important parameters for managing the Council's resources. The work to review the Constitution has no direct budgetary implications.

- 6.3.2 The Financial Implications of a revised Constitution have been considered as part of the review process, with input from the Council's s.151 Officer and the Constitution Sub-Committee. This ensures that the Constitution supports the statutory responsibilities of the s.151 role.

6.4 Human Resources Implications

- 6.4.1 There are no human resources implications.

6.5 Equality Implications

- 6.5.1 There are no specific equality implications.

6.6 Health and Wellbeing Implications

- 6.6.1 There are no specific implications for health and wellbeing.

6.7 Implications for Children and Young People

6.7.1 There are no specific implications for children and young people.

6.8 Rural Community Implications

6.8.1 There are no specific implications for rural communities.

6.9 Overview and Scrutiny Committee Implications

6.9.1 The proposals have been made available for close scrutiny by all Members of the Council.

6.10 Risk Management Implications

6.10.1 These were identified and factored in at each stage of the review, as part of weekly Project Board meetings chaired by the Acting Director of Legal Services (in his role as Senior Responsible Owner).

7.0 Background Papers

7.1 The approved papers of the Constitution Committee and Sub-Committee provide the necessary background to this review.

8.0 Access to Information

8.1 Those papers are available on the Council's website.

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Cheshire East Council – New Constitution

Explanatory note of Substantive Changes

We have described the changes that we have made in three categories:

- I. Substantive changes required by law for approval
- II. Substantive changes based on best practice recommended for approval
- III. Substantive changes which were recommended for consideration by the Sub-Committee

I. Substantive changes required by law for approval

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee ¹
61	Audit and Governance Committee TOR's	This section has been amended to make it clear that the independent member of the committee (who is not a councillor) is not entitled to vote. This is a legal requirement.	The proposal was supported.
N/A	Throughout the Procedure Rules	All references have been updated dates to ensure compliance with the latest legislation including the Accounts and Audit Regulations and Procurement Regulations.	The proposal was supported.
252	Other Chief Officers and Deputy Chief Officers	We have inserted a section relating to the executive objection process relating to the appointment and dismissal of those Chief Officers and Deputy Chief Officers who are not covered by paragraphs 4 and 5. This rectifies an omission in the current constitution.	<i>This issue was not specifically discussed at the Sub-Committee and it is now recommended to the Constitution Committee.</i>

¹ The Constitution Sub-Committee met on 3 November 2017 and 17 November 2017, and its recommendations are noted in this column. Where the recommendations have resulted in changes being required to the version of the Draft Constitution which the sub-committee was considering, this has been indicated in ***Bold Italics***.

II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
15	Policy Framework	The following have been removed from the Policy Framework as they are no longer required by law to be included: <ul style="list-style-type: none"> • Sustainable Community Strategy; • Business Plan; and • Adult Learning Plan. 	The proposal was supported.
16	Local Choice Functions	A comment has been received that these need to be explained more clearly – the wording has been amended to try to do this but this is a specific statutory requirement for the Council to set out in its Constitution.	The proposal was supported.
18	Appointment to Outside Organisations	It has been suggested that the list of organisations could be taken out of the Constitution and linked to elsewhere. We have inserted a link which will navigate to a page on the Council's website.	It was agreed that reference to outside organisations being made by Cabinet or Portfolio Holders should more fully explain appointments to the full range of outside organisations This will be included in the hyperlink.
19	Role of the Mayor	Following feedback from Members we have re-inserted (as the first responsibility) the phrase "the Mayor is the conscience of the Council" which was missing from earlier drafts. A query was raised as to whether this should be included in the job description of all councillors. Although the sentiment of every	The proposed emphasis on the Role of the Mayor was supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		Councillor needing to be the conscience of the Chair is understood, this does not seem to reflect what members collectively felt at the last working groups/sub-committee which was that it is a prime responsibility of the Chair.	
25	Responsibilities of all Cabinet Members	We have updated and strengthened this list following very helpful wording suggest by respondents.	The proposal was supported.
26	Portfolio Holder responsibilities for Leader	We note that the term "devolution" can have different meanings in different contexts. Following officer feedback we have made it clear that devolution in this context means the devolution of powers from Central Government to combined authorities and the Council, and from the Council to Town and Parish Councils.	The proposal was supported. <i>The recommendation of the Sub-Committee was noted and the amendment has been made.</i>
43	Strategic Planning Board	Members have commented that the Strategic Planning Board no longer nominates Councillors to sit on the Northern and Southern Planning Committee. Reference to this has been removed from the draft Constitution.	The proposal was supported.
50	Staffing Committee - Recruitment and Selection	Purpose and functions have been merged to avoid repetition.	The proposal was supported.
58	Constitution Committee	Following officer comments we have removed the requirement for the Constitution Committee to approve appointments to the Independent Persons Panel as this is not a requirement.	The proposal was supported.
67	Health and Wellbeing Board	We suggest changing the terminology from core/non-core members to voting/non-voting members to better reflect their respective roles. We have also added a link to the Code of Conduct for the HWB.	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
78	Introduction, paragraph 7	<p>The current constitution defines the Chief Officers as being:</p> <ul style="list-style-type: none"> • Chief Executive • Executive Director People and Deputy Chief Executive • Chief Operating Officer (Section 151 Officer) • Executive Director Place • Strategic Director of Adult Social Care and Health • Director of Legal Services (Monitoring Officer) <p>Following feedback from Members we have redefined the Chief Officers as:</p> <ul style="list-style-type: none"> • Chief Executive • Executive Director (People) • Executive Director (Place) • Chief Operating Officer • Section 151 Officer • Monitoring Officer <p>Note that we have listed the COO and the Section 151 Officer separately to accommodate the reality that although they may be performed by the same person, this is not always the case.</p>	<p>This proposal was supported, subject to Chief Executive and Head of Paid services being inserted as appropriate.</p> <p><i>The Sub-Committee's recommendation was noted and amendment has been made.</i></p>
79	General Principles relating to Officer Delegation	<p>This section has been completely re drafted, taking best practice from the previous Constitution and making the remit of officers exercising delegated powers much clearer to ensure transparency and accountability.</p> <p>A number of provisions make it more future proof –</p> <ul style="list-style-type: none"> • the delegation will apply to the post-holder with the relevant 	<p>This proposal was supported.</p>

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		<p>functions so the Constitution will not need updating if changes are made to job titles/roles</p> <ul style="list-style-type: none"> the delegation is not linked to named statutes/legal provisions but to areas of service responsibility. <p>There are changes to the obligations for consultation by officers exercising their delegated powers. In the new Office Scheme of Delegation the relevant wording now states as follows:-</p> <p>"An officer in exercising delegated powers may consult the relevant portfolio holder or chair of committee if he/she considers it appropriate to do so and shall consult other officers for professional advice including legal, financial and technical officers and shall have regard to any views and advice received".</p> <p>This approach is in accordance with the principle agreed by the Constitution Committee i.e. to</p> <ul style="list-style-type: none"> delegate decision-making to the most appropriate level with the right checks, balances and scrutiny 	
92	Proper Officer functions	<p>In the current Constitution this is somewhat dispersed.</p> <p>The revised Constitution consolidates this at the highest level within the organisation i.e. Chief Executive/Head of Paid Service, with the facility for explicit delegation down the organisation as required.</p>	This proposal was supported.
Committee and Sub Committee Procedure Rules			
102	Attendance of Members at	The Current Constitution allows members to attend committees of which they are not members where private and confidential or exempt	The proposal was not

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
	Committees and Sub-Committees of which they are not Appointed Members	<p>business is to be conducted.</p> <p>Following feedback from the Working Group, we have suggested introducing a "need to know" basis, whereby the Member's attendance at such a meeting would have to be agreed in advance by the Monitoring Officer and the Chair of the Meeting.</p>	<p>supported. It was agreed that the existing constitutional provisions would remain in place, but that the operation of these would be reviewed in 6 months' time.</p> <p>17.11.17 – there was further discussion and agreement that the relevant paragraph be split into two paragraphs for clarity between:</p> <ul style="list-style-type: none"> • right to attend meeting and separate issue of • agreement of MO and Chair when exempt or private and confidential information on basis of "need to know". <p><i>The Sub-Committee's recommendation was noted and the amendment has been made.</i></p>
106	Attending and speaking at Cabinet Meetings	<p>The current Constitution states that questions will not be allowed which repeat or are substantially the same as questions asked at a meeting of Council or Cabinet within the preceding 3 months.</p> <p>We have changed this to 6 months (and have standardised this time scale for all other similar references throughout the Constitution).</p>	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
110	Members Access to exempt or confidential documents	We have added the words "of that body" to the end of paragraph 47 for clarity.	The proposal was supported.
116	Petitions	Proposed new procedure rule for petitions in place of the petitions scheme	The proposal was supported.
128	Councillor Call for Action	Reflected in procedure rules at Appendix 6	The proposal was supported.
Access to Information Procedure Rules			
139	Period of Forward Plan	<p>The period of the Forward Plan has been reduced from 4 months to read: <i>"Forward plans will be prepared by the Leader to cover a period of 28 clear days (longer where this is possible) beginning with the first day of any month. They will contain outstanding matters from the previous forward plan"</i></p> <p>This is to ensure that the Forward Plan is kept up to date on a shorter timeline to reflect the 2012 Regulations.</p>	<p>The proposal was supported subject to amendment of "28 clear days" to "one month"</p> <p><i>The Sub-Committee's recommendation was noted and the amendment has been made.</i></p>
139	Publication in newspapers	Recommended for removal as no longer a legal requirement	<p>The proposal was supported</p> <p><i>The Sub-Committee's recommendation was noted and the amendment has been made.</i></p>
141	Reports to Council	This section has been significantly shortened, with the procedure for the OSC requiring a report and the Cabinet's report to Council being	It was agreed that the existing constitutional provisions (16.1,

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		taken out.	16.2 and 16.3) would remain in place <i>The Sub-Committee's recommendation is noted and the previous provisions have been reinstated.</i>
142	Members access to Exempt or Confidential Documents	<p>The words in italics below have been added. This is part of a wider review of access to information, and Bevan Brittan have produced an advice note which addresses concerns about the possible risks to the Council of not taking sufficient steps to control the circulation of exempt and confidential documents.</p> <p>We recommend removal of "<i>In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:</i></p> <ul style="list-style-type: none"> ▪ <i>Group Leaders</i> ▪ <i>Local Ward Members for the Ward affected, in accordance with the Ward Member Protocol</i> ▪ <i>Relevant overview and scrutiny committee Chairmen and Vice-Chairmen</i> ▪ <i>Members visiting the meeting in question (with the agreement of the Monitoring Officer and Chairman of the meeting) who would receive the papers upon arrival"</i> 	<p>As per comment above - it was agreed that the existing constitutional provisions would continue to remain in place, but that the operation of these would be reviewed in 6 months' time.</p> <p><i>The Sub-Committee's recommendation was noted and the original provisions remain in place.</i></p>
143	Scheme of Delegation to Senior Officers	<p>Whilst strictly part of WP2, this is part of a wider consideration of access to information.</p> <p>The current constitution has at paragraph 1.28 of the delegation to Senior Officers the following wording:</p>	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		<p><i>"Chief Officers shall implement and ensure compliance with the Authority's procedures relating to data protection, Environmental Information Regulations, freedom of information, human rights and surveillance activities and shall only withhold the publication of requested information with the permission of the relevant Portfolio Holder, whose refusal shall not override the Scheme of Publication"</i></p> <p>None of this provision appears in the draft constitution in this form. Bevan Brittan believes that it is covered by a general requirement to follow "any appropriate legislative, regulatory, consultation, equalities, or procedural requirements that may be required" which does appear in the Scheme of Delegation at paragraph 20.5, but if members require it to be made more explicit then this can be achieved.</p> <p>If members require the need for Portfolio Holders to permit the withholding of information then this can also be reinserted. Bevan Brittan advises that any judgement on these matters is a professional and technical one, and there are risks if members seek to take such decisions. We advise that this requirement is not re-inserted.</p>	
Contract Rules			
General	All	Following Officer feedback, references to "the Authority" are now references to "The Council" – this is consistent throughout the document.	The proposal was supported
225	Definition of Chief Officer	Following Officer feedback references to The Chief Officer are now references to the "Executive Director". This is to ensure consistency with the Finance Procedure Rules and the rest of the constitution.	The proposal was supported
226	Introduction	We understand that the Procurement Board has changed to the	The proposal was supported

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		Commissioning and Procurement Board. We have defined the board and included a hyperlink to the detailed terms of reference.	<i>A hyperlink will be included.</i>
231	Contracts Register	Following Officer feedback we have made it clear that all contracts with a value above £5,000 must be recorded in the Contracts Register. This is required by the Government's Transparency Agenda.	The proposal was supported
234	Best and Final Offer	Following Officer Feedback we have made it clearer that Legal Services must be involved in the decision to include a Best and Final Offer (BAFO) stage in procurement process.	The proposal was supported
238	Method of Opening Bids	Following Officer feedback we have amended this section to include provisions that in addition to the Procurement Manager, a Category Manager can verify bids from the EU threshold up to £1,000,000 provided that they have not been involved in the tender in question.	The proposal was supported
243	Monitoring Contracts	We have included a requirement for monitoring of insurance.	The proposal was supported
245	Waiver Process/Breach	We understand that the Procurement Board will be changing to the Commissioning and Procurement Board. We have left in reference to the Procurement Board for now.	The proposal was supported <i>All references have been amended to refer to the Commissioning and Procurement Board following the Sub-Committees consideration of the same issue in respect of p226.</i>

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
Employment Rules			
N/A	Throughout	All unnecessary references which simply repeated the legal and statutory basis for the procedures and the relevant regulations have been stripped out	The proposal was supported
Codes and Protocols			
292	Whistleblowing Policy	This does not have to be in the Constitution and is up-to-date and already accessible on the Council's internet and intranet sites. It was recommended by Sub-Committee on 03.11.17 that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink with ownership and responsibility for reviewing/updating passing to the Audit & Governance Committee.	The proposal was supported.
N/A	Planning Protocol of Conduct in relation to the determination of planning matters	This does not have to be in the Constitution. It was recommended by Sub-Committee on 03.11.17 that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink within Section 2 of the Constitution with ownership and responsibility for reviewing/updating passing to the Strategic Planning Board.	The proposal was supported.
N/A	Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committee	This does not have to be in the Constitution. It was recommended by Sub-Committee on 03.11.17 that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink within Section 2 of the Constitution with ownership and responsibility for reviewing/updating passing to the Strategic Planning Board.	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
N/A	Councillor Call for Action Protocol	<p>Our current Constitution contains a Protocol which seeks to “provide Members with a means of escalating matters of ward concern to a scrutiny committee...”. The Protocol is 5 pages long.</p> <p>Our legal advisers, Bevan Brittan, query the necessity of the Protocol. They point out that “the basic right is for members to put something on the agenda of an overview and scrutiny committee, and have it discussed” (unless it is an excluded matter under legislation). They further advise that “The Protocol is very repetitive and seeks to curtail the statutory right of a member to put something on the agenda for scrutiny”.</p> <p>Bevan Brittan advise that the right of members to put items on scrutiny committee agendas could be mentioned in an appropriate procedure rule, and also that a link should be provided to the relevant Centre for Public Scrutiny guidance.</p> <p>It is therefore recommended that Bevan Brittan’s advice be followed; that the basic right of members to place something on scrutiny agendas be relied upon instead of a Protocol; that this is supported by appropriate information in procedure rules; and that an appropriate link should also be provided to the Centre for Public Scrutiny guidance.</p>	<p>The proposal was supported subject to the addition of a hyperlink and appropriate explanation about how Members go about placing a matter on a scrutiny agenda.</p>
N/A	Petitions Scheme	<p>The existing Constitution includes a lengthy document, which contains complex provisions relating to petitions. Information is included as to how individuals can submit petitions, as well as identifying five different types of petitions and how they should be dealt with. Depending upon the number of signatories to a petition, a debate at Full Council can be forced. This has only happened once in the history of the Council.</p> <p>However, a good number of petitions are submitted from time to time and are appropriately administered by officers who ensure that the relevant elected member or decision-making body is informed.</p>	<p>The proposal was supported subject to a hyperlink being inserted in an appropriate place within the new Constitution linking to the Petitions Scheme.</p> <p><i>The Sub-Committee's comments have been noted and the document has been linked from page 116.</i></p>

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		<p>Bevan Brittan state that the guidance upon which local authority petitions schemes have been prepared has now been revoked.</p> <p>The Working Group concluded that the most important issues are that individuals submitting petitions should have clear information as to how they can do this, and what will happen to the petition they submit; and that officers have a clear understanding of how petitions should be dealt with, once submitted.</p> <p>The Sub-Committee is therefore recommended to agree that the existing Petitions Scheme, based on revoked guidance, is now dispensed with and is replaced by a link in an appropriate place in the Constitution which guides members of the public and officers as to how petitions will be dealt with once submitted.</p>	

III. Substantive changes which were presented for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
11	Introduction - Key Decision	It has been proposed that operational treasury management decisions (for example investment decisions relating to the Council's reserves) should be excluded from the definition of a Key Decision (which otherwise remains the same as now) whatever the financial implications.	The proposal was supported.
N/A	Chairman or Chair?	This page refers to the allocation of "chairmen" and "vice chairmen" to committees and sub-committees. These are the current terms used in the new document and the Sub-Committee is asked to consider if they support the continuation of these terms or would prefer to move to the use of the gender neutral terms "Chair" and Vice Chair" throughout the new	It was agreed that that the presumption would be in favour of the use of the term "chairman" or "vice chairman", but that the wishes of

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		Constitution?	<p>individuals would be respected.</p> <p><i>The Constitution now reflects the use of the word Chairman throughout</i></p>
21	The Cabinet	A query has been raised on whether in practice the Leader does present a written record of delegations and information about executive functions as currently required (7.2). This is not a statutory requirement.	<p>It was agreed that this does not need to happen in future.</p> <p><i>The paragraph which refers to this practice has been removed.</i></p>
26	Responsibilities of Portfolio Holders	Responsibilities for the overall interface with ASDVs needs to be identified and allocated appropriately to Cabinet/Portfolio Holders	<p>The proposal was supported.</p> <p><i>There is currently a review of ASDVs Governance Arrangements underway. Any changes to decision making arising from this will need to be incorporated in the Constitution at that time.</i></p>
34	Procedure for Taking Portfolio Holder Decisions	<p>The requirement for an individual Portfolio Holder to hold a meeting to make a decision has been removed. This approach was supported at the Sub-Committee meeting of 29 September.</p> <p>It should be noted of course that, as a matter of law, Key Decisions need to be publicised in advance of being taken (under Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to</p>	<p>It was agreed that the requirement for formal Portfolio Holder decision making meetings would no longer continue, and that officers would be given responsibility for designing an appropriate</p>

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		<p>Information) (England) Regulations 2012). We understand that Key Decisions will continue to be made with 28 clear days' notice and be identified in the Forward Plan.</p> <p>So if an individual Portfolio Holder is to make a decision which is a Key Decision they will have to publish the time of when they are to make it etc. (although this does not then need to be made at a "meeting").</p> <p>Members have raised concerns that removing the requirement for Portfolio Holder meetings for decisions could make it more difficult for Members to scrutinise in advance the decisions that are being made. It was suggested that an internal procedure be agreed to determine how information is circulated in advance of Portfolio Holders' decisions being taken.</p> <p>Members have suggested that they would like to have advance notice of all decisions, whether Key Decisions or not. This is an administrative procedure for the Council to determine and does not necessarily need to be recorded in the Constitution (but it may be helpful to include it). There is no legal requirement to circulate details in advance of non-key decisions being made, but the Council should decide whether it wishes to adopt such a procedure, which could include publishing details of non-key decisions in the Forward Plan.</p>	administrative process which will address the issues identified in the comments section.
35	Role of Deputy Cabinet Members	We have amended this to reflect concerns at the previous drafting which went beyond what is a legitimate role.	The proposal was supported.
37	Functions of Committees	The Council may wish to consider including the Public Rights of Way Committee functions elsewhere e.g. a sub-committee of the Planning Board or the Planning Committees.	The proposal was not supported.
38	Overview and	A query has been raised on whether it is best practice for Scrutiny	This should remain as it is in

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
	Scrutiny Committees	<p>Committees to be chaired by opposition members.</p> <p>There is no legal requirement that a Chair is from an opposition party. Practice varies on this. It is correct that a number of academic studies have advocated that scrutiny chairs should be drawn from elsewhere than the majority party but practice varies across councils.</p> <p>DCLG Guidance on scrutiny says</p> <p>"Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent governor representatives. Overview and scrutiny should be constructive and not merely be there either always to oppose the executive or to rubberstamp the executive's decisions."</p> <p>But LGA guidance makes clear that the chair of the scrutiny committee can represent any political party.</p> <p>It is a matter for the Council – in our experience the effectiveness of scrutiny can be less about the party the Chair represents and more about the overall approach and culture of a council and the skills of the members on the committee (including the Chair).</p>	<p>the current constitution.</p> <p><i>The Sub-Committee's recommendation is noted and no changes have been made.</i></p>
41	Specific Responsibilities of Overview and Scrutiny Committees	New wording has been include to recognise that the Scrutiny remits mirror the remits of the Portfolio Holder so if the Leader changes the portfolios of the Cabinet, the Monitoring Officer will automatically be able to change the Scrutiny remits to mirror this.	The proposal was supported.
43	Strategic Planning Board	Following feedback from the Director of Planning and Sustainable Development we have made a number of changes:	The proposal was not supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
		<p>Membership of SPB reduced from 12 to 10</p> <p>Membership of North and South planning committees has been reduced from 12 to 7.</p> <p>Reference to cross party pool of Planning Substitutes has been removed, and no substitutes will be allowed. This approach was supported by the Chairs and Vice Chairs of the Planning Committees.</p> <p>Although this position has Council support, the risk of removing the ability to use substitutes needs to be recognised in relation to situations where it is not possible to find a quorum and/or where members might wish to recuse themselves from a meeting in order to represent a constituent etc.</p>	<i>The Sub-Committee's recommendation is noted and the original wording has been retained.</i>
44	Strategic Planning Board	<p>Officers have suggested that SPB will determine applications involving a significant departure from council policy only where the matter has been referred to SPB by the Planning Committees.</p> <p>The prohibition on applications to vary or remove conditions which were imposed by committee being delegated has been removed.</p>	<p>The proposal was not supported.</p> <p><i>The Sub-Committee's recommendation is noted and the original wording has been reverted to.</i></p>
44	Strategic Planning Board	<p>Suggestions have been made to the definition of Large Scale Major Development. These are noted. We propose that to ensure flexibility the definition of Large Scale Major Development be moved to a hyper linked document. The proposed substantive changes are:</p> <p>Threshold for developments being retained by the SPB to be increased from 200 dwellings to 250 dwellings and from 4 ha and above to 5ha and above.</p>	<p>The proposal was not supported.</p> <p><i>The Sub-Committee's recommendation is noted and the original wording has been reverted to.</i></p>
45	Northern and	Following Officer Feedback the threshold for developments being retained	The proposal was not

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
	Southern Planning Committees	by the Planning Committees to be increased: From 20-199 dwellings to 100-249 Dwellings. From 1-4ha to 3-5ha. The prohibition on applications to vary or remove conditions which were imposed by committee being delegated has been removed.	supported. <i>The Sub-Committee's recommendation is noted and the original wording has been reverted to.</i>
45	Planning Committees Terms of Reference	It has been noted that the use of the term "call-in" to refer to the challenge of a delegated officer planning decision is confusing. The term call-in is a specific term relating to the functions of the Overview and Scrutiny Committee. It was suggested that an alternative phrase be adopted. "Member Challenge", or "Referral" were proposed by members, and Bevan Brittan could suggest further alternatives. The Council should confirm the term it wishes to adopt.	It was agreed that the alternative term "referral" should be used. <i>The Sub-Committee's recommendation was noted and this change has been made.</i>
47	Licensing	We have re-written this section significantly taking into account officer comments and what we understand to be the aim. For discussion is whether the political proportionality waiver at paragraph (4) that applies to the sub-committees at paragraph (3) should also apply to the sub-committees at paragraph (2). All references to officer delegations have been taken out as these will be picked up in the local schemes of delegation.	The proposal was supported.
50	Staffing Committee – HR Policies	We have added to paragraph 47, which concerns new posts where the remuneration exceeds £100,000, the proviso that the Staffing Committee is not required to make recommendations to Council affecting the remuneration of a new post where remuneration for that post is already included within the Council's annually approved Pay Policy Statement.	The proposal was supported.

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
51	Staffing Committee – appeals	Officers are considering whether there an appropriate level below which appeals will be dealt with by officers e.g. Principal Officer grades?	The proposal was not supported. The existing arrangements to remain the same. <i>The Sub-Committee's recommendation was noted and no change has been made.</i>
52	Investigatory and Disciplinary Committee – Receiving Investigating Officer's Report, para 54.	A Councillor has raised a concern that in a previous version (April 2017) of the Constitution that a sentence had been added to the Terms of Reference to the Investigatory and Disciplinary Committee which gives the MO and the Chair of the staffing Committee the ability to "filter out and deal with allegations which are clearly unfounded, trivial or can be dealt with under some other procedure". Bevan Brittan notes that similar wording appears in the Chief Executives' National Salary Framework and Conditions of Service, dated 13.10.16 Bevan Brittan recommends that the decision is delegated to the MO, unless the complaint is against the MO, in which case the delegation should be to the chief executive. In both cases we advise that the delegation should be "in consultation with the Chair of the IDC".	It was agreed that the decision should be delegated to the MO, in consultation with the Chair of the IDC, and thereafter the matter should be reported to the IDC. <i>The Sub-Committee's recommendation is noted and a change has been made.</i>
59	Lay Members Appointment Committee	This function could be added to the Terms of Reference of the Constitution Committee.	The proposal was supported. <i>The Sub-Committee's recommendation was noted and the function has been added to the Terms of</i>

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
			<i>Reference of the Constitution Committee</i>
N/A	Polling Districts and Polling Places Review Sub-Committee	The functions of the sub-committee could be delegated to officers.	<p>It was agreed that the functions of the sub-committee be delegated to the Electoral Registration Officer, or his/her Deputy. It was also agreed that the functions of the Civic Sub Committee and the Outside Organisations Sub Committee be performed, with effect from the new municipal year, by the Constitution Committee.</p> <p><i>The Sub-Committee's recommendation was noted and this committee has been removed. The Chief Operating Officer's local scheme of delegation will need to specify that these functions are further delegated to the Electoral Registration Officer or his/her deputy.</i></p> <p><i>The Civic Sub Committee and the Outside Organisations Sub Committee have been left in</i></p>

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
			<i>place for now, but it is recommended that they be abolished for the next municipal year.</i>
61	Audit and Governance Committee – Functions	<p>We have taken out much of the previous detail for this committee as the detailed list of activities of the Committee is not necessary – the headline areas are sufficient for this section. We have suggested the details are hyperlinked.</p> <p>We have extracted what look to be the most important formal/statutory and listed them. Officers/member comments on this are welcome.</p> <p>If the Initial Assessment Panel and Local Resolution Panel are standing bodies, their membership and terms of reference need to be included here.</p>	<p>Agreed, subject to the approval of the Annual Governance Statement being written in.</p> <p><i>The Sub-Committee's recommendation was noted and a paragraph has been added making clear that the review and approval of the Annual Governance Statement is a function of the Audit and Governance Committee.</i></p>
70	Health and Wellbeing Board – Agenda and notice of Meetings	Should this be amended so that exempt and confidential information be circulated to all members of the Board?	<p>The proposal was supported, so that exempt and confidential information will be circulated to members of the Board.</p> <p><i>The Sub-Committee's recommendation was noted and this amendment has been made.</i></p>
73	Shared Services Joint Committee	Are there any other joint arrangements with other Councils? – if so they need to be included here.	It was agreed that, whilst no other joint arrangements could be identified, these could be added to the documentation as

Page	Section	Comment and/or area for consideration	Recommendation of Sub-Committee
			and when they arose.
Council Procedure Rules			
94	Council Procedure Rule	Five members can call a Special Council – it has been queried as to whether this number is too low. This number cannot be increased as it is specified by Paragraph 3 of Schedule 12 of the Local Government Act 1972.	It was agreed that the existing provisions of the current constitution be retained
95	Questions at Council Meetings	Clarification on how responses should be given was needed (1.18)	Additional wording has been added to clarify that the response will be given within 10 working days by written answer with a copy to all other Members (except where the response contains exempt or confidential information).
97	Notices of Motion	An issue has been raised as to whether motions should always be debated or at least should the proposer be able to explain it. At the moment the wording has been left as in the previous Constitution. Practice varies in councils as to how motions are dealt with. The risk of allowing them to be debated in detail is that (1) the Full Council may not be (and often is not) the correct decision making body to deal with the issue so the matter will have to be re-run and (2) the debate will not be informed by a report setting out the issues, implications and options. However, it is not unreasonable for consideration to be given to the proposer of the motion to be able to explain it briefly – for discussion.	It was agreed that the provisions of the current constitution be retained
120	Rules of Debate	An issue has been raised requesting that members should have the Right	It was agreed that the existing

		<p>to Speak at Council at any point, and not only as determined by the Chair</p> <p>This is not usual practice and would potentially cause an unmanageable meeting. The Constitution has not been changed in this respect.</p>	<p>arrangements should be retained</p>
124	Council Procedure Rule – Appendix 4	<p>The definition of an urgent decision, for the purposes of this section, has been widened following feedback from the Chief Operating Officer. It was previously defined as where "any delay likely to be caused by following the usual procedures would seriously prejudice the Council's or the Public's interest." It now reads:</p> <p><i>"A decision will be urgent in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE or in his/her absence the CFO has declared that an urgent decision is required"</i></p>	<p>Noted and Agreed.</p>
146	Table of Financial Limits	<p>A table of Financial Limits has been inserted into the Constitution. Its purpose is to assist users of the Constitution to be able to see at a glance where the Constitution imposes financial limits and or sets thresholds for various decisions and procedures.</p> <p>Appendix A.1 of to this Explanatory Note includes:</p> <p>A) A table which evidences the input from the Chief Operating Officer on the current financial limits and which, where appropriate, recommends that the levels are amended; and</p> <p>B) A draft table of financial limits to be inserted into the Constitution.</p>	<p><i>The Sub-Committee approved the amended levels proposed to them and the agreed table of financial limits has been inserted into the Constitution. The draft Constitution now reflects the agreed financial limits.</i></p> <p><i>Some consequential amendments to the Officer Schemes of Delegation will be required to give effect to the agreed financial limits.</i></p>

Finance Procedure Rules			
N/A	<u>General</u>	References to Authority amended to Council throughout.	The proposal was supported.
N/A	<u>General</u>	References to Cabinet Member for Finance and Assets amended to Cabinet Member for Finance and Communications throughout.	The proposal was supported.
159	<u>Foreword – Paragraph 1</u>	Decision makers required to check that they have authority to incur financial consequences arising from any decisions they may make.	The proposal was supported.
159	Foreword Paragraph 2 –	A requirement to maintain a written record of delegated decision making has been added – covered in detail at A24 and A26 to A27.	The proposal was supported.
159	Foreword Paragraph 4 –	Responsibility of COO to report breaches of FCPRs amended from Cabinet and Council to Audit & Governance Committee.	The proposal was supported.
159	Foreword Paragraph 6 –	Amended to remove reference to role of internal audit and Corporate Governance and Audit Manager (covered in detail under internal audit and risk management section of FPRs)	The proposal was supported.
160	Foreword Paragraph 7 –	Clarifies that advice should be sought from COO before decisions are taken where the interpretation of the FPRs is unclear.	The proposal was supported.
162	Section A – Financial Management (para 8) –	Additional wording to clarify that when making decisions Members must check they have authority to incur financial consequences arising from their decisions.	The proposal was supported.
163	Section A – Financial Management (para 10) –	Clarifies that A&G Committee has right of access to information required for the effective discharge of its responsibilities.	The proposal was supported.

164	Section A – Financial Management – (para 20)	Expanded commentary on actions that may be considered contrary to budget	The proposal was supported.
166	Section A – Financial Management – (para 25)	Designated Deputy s151 Officer amended from Finance Manager to Head of Finance & Performance	The proposal was supported.
167	Section A – Financial Management – (para 28)	Members of Corporate Leadership Team updated	The proposal was supported.
167	Section A – Financial Management – (Section A, para 31)	Expanded commentary on objectives of Schemes of Financial Delegation	The proposal was supported.
169	Section A – Financial Management – (para 37.6)	Additional bullet point clarifying that administrative virements do not require Member approval.	The proposal was supported.
171	Section A – Financial Management – (para 39, 43)	Supplementary Estimates section split into revenue and capital	The proposal was supported.
171	Section A – Financial Management – (para 41)	New table added with separate approval limits for SREs funded from earmarked reserves and contingencies	The proposal was supported.
171	Section A – Financial Management –	Clarifies that SREs funded wholly or in part from general reserves or general purpose funding require Council approval regardless of value.	Noted and agreed subject to the addition of “regardless of value” as per A38.

	(para 42)		<i>The Sub-Committee's recommendation was noted and this amendment has been made</i>
172	Section A – Financial Management – (para 43)	Clarifies that Supplementary Capital Estimates funded wholly or in part from additional Council resources such as capital reserves, borrowing and capital receipts, regardless of value, must be approved by Council. Council approval also required where there are significant revenue implications for future year's budgets.	The proposal was supported.
173	Section A – Financial Management – (para 49)	Clarifies that requests for carry forward of underspends should not be submitted where directorate budgets as a whole are overspent.	The proposal was supported.
179	Section B – Financial Planning – (para 16)	Clarifies that Council should not amend revenue or capital budgets without first having considered advice of Cabinet and COO on financial implications arising.	The proposal was supported.
180	Section B – Financial Planning – (para 18)	Reinforces responsibility of CLT to alert the COO in a timely manner to any potential overspending.	The proposal was supported.
183	Section B – Financial Planning – (para 27)	Removes reference to lower limit of £10,000 for capital expenditure	The proposal was supported.
185	Section B – Financial Planning – (para 36)	Reference to Portfolio Holder for Corporate Policy and Legal Services needs to be checked for accuracy.	The proposal was supported.
186	Section B – Financial	Amended wording to clarify that Council will decide how capital receipts should be used when setting the annual revenue budget and capital	The proposal was supported.

	Planning —(para 43)	programme and remove reference to repayment of debt.	
189	<u>Section C – Risk Management and Control of Resources – (para 3) and throughout</u>	Reference to Corporate Manager Governance and Audit needs to be updated to reflect current management arrangements	The proposal was supported.
193	<u>Section C – Risk Management and Control of Resources – (para 29)</u>	Clarifies internal audit rights of access apply equally to Council ASDVs and these rights should be documented in management agreements.	The proposal was supported.
193	<u>Section C – Risk Management and Control of Resources – (para 31)</u>	Additional paragraph citing statutory basis of external audit.	The proposal was supported.
193	<u>Section C – Risk Management and Control of Resources – (para 32)</u>	Updated to reference new arrangements for appointment of external auditors under Local Accountability and Audit Act 2014.	The proposal was supported.
196	<u>Section C – Risk Management and Control of Resources –</u>	Additional wording to make clear that cash held on Council premises should not exceed insurance limits.	The proposal was supported.

	<u>(para 51)</u>		
198	<u>Section C – Risk Management and Control of Resources – Para 65)</u>	Additional wording to clarify that relevant Director (or Chief Exec) should approval all requests for early retirement or severance.	The proposal was supported.
N/A	<u>Section D – Financial Systems and Procedures</u>	Requirement for trading accounts where turnover exceeds £1m deleted.	The proposal was supported.
208	<u>Section D – Financial Systems and Procedures – (para 56)</u>	This section on ASDVs will need to be updated in light of the ongoing ASDV review.	The proposal was supported.
209	<u>Section E – Partnerships and Jointly Funded Projects (para 3)</u>	Clarifies that the Cabinet Member for Finance & Communities will periodically set out policy on approach to be taken to the allocation of grants, donations and other contributions to outside bodies, in consultation with the Chief Operating Officer and Head of Legal Services.	The proposal was supported.
Codes and Protocols			
N/A	Throughout	The Member Code (and associated documents) is being changed to address issues that have arisen with its operation since it was introduced, presumably in 2012. Most of these points have arisen dealing with complaints against town and parish councillors, who tend to adopt the council code, but will be of equal assistance to CEC councillors.	The proposal was supported.
260, 263	Appendix to the current Code. New sections as	Our code currently only defines disclosable pecuniary interests as a class of declarable/registerable interests. The standards regime and legislation envisages council's defining other classes of interests and issuing	The proposal was supported.

	per the headings in the proposed new code.	<p>guidance about declaring those interests and what action to take once those interests have been declared, but Cheshire East has never done that. That is problematic, because there are a whole range of interests that should be declared to ensure transparency and openness, but which don't amount to disclosable pecuniary interests. The lack of definition/guidance has caused confusion, led to inadvertent breaches of the code and so needless standards complaints. It has also caused needless friction between councillors and undermined public confidence in the democratic process.</p> <p>The code is proposed to be amended to set out a definition for personal interests (where a declaration should be made for transparency but participation in the debate and vote is still permitted) and a prejudicial interest (where one can speak as a member of the public but not otherwise and not vote). This is in line with the old standards regime which most members will be familiar with and seem to be following in practice in any event.</p>	
258	Currently dealt with in the "notes" section on the top of page 3 of the existing code. Proposed to have its own dedicated section under the "information" heading in the new code	Operational practice has shown that the code needs to be clearer in its provisions on how Members should and should not deal with information. We address that to re-emphasise the gravity of confidentiality obligations, particularly in light of GDPR where personal accountability and significant fines begin to bite.	The proposal was supported.
259	Gifts and Hospitality	Currently the declaration limit for Members is £100 and for officers £5. That is a stark differential for which it is difficult to see any objective reasonable justification. Compared to other authorities, the Member limit is high and the officer limit very low. Members are asked to consider a unified	Agreed that the limit for Member and Officer declarations be equalised at £100.

		limit for officers and Members.	
N/A	Paragraph 2 of the proposed new code	We have inserted a requirement not to deliberately mislead, after feedback that our code contains no express provisions in that regard. Our view is that this would be covered in any event under the integrity and honesty headings, and to be “truthful” is a requirement of the Nolan principles in any event, but there has been a request to include it so it is for Members to decide whether and how it goes in.	It was agreed that this requirement will not be included. <i>The Sub-Committee's recommendation has been noted and the text has been removed.</i>
257	Paragraph 4.6 of the proposed new code	We have included the word “appropriate” before the bit which says Members are subject to scrutiny by local residents. There have been numerous instances where complaints have been brought which have been founded in an unreasonable expectation of what the right to scrutinise Members entails. In some cases, this has bordered upon the harassment of members.	The proposal was supported.
258	Paragraph 8(a)(iv) of the proposed new code (second “(a)”)	We have added a bit in the “respect for others” section designed to make clear that interference or attempted interference with another party in the standards complaints process is itself a breach of the code. Experience has shown that clarification is necessary.	The proposal was supported.
262	Part 4 of the new code	We make reference in the code to a Monitoring Officer Protocol which the Monitoring Officer will produce and update from time to time. The purpose of that protocol is to alert members to the sorts of issues that have been arising and give an indication of how they will be dealt with under the code. That is almost a running “FAQs” intended to guide Member conduct on common or emerging themes. The purpose of the reference to it in the Code is to give the Monitoring Officer Protocol the status of guidance to be considered when determining matters under the Code.	The proposal was supported.

259	Sensitive Interests	This section has been clarified.	The proposal was supported.
261	Pre-determination and bias	This section has been added based on wording in the existing Planning Protocol. This was previously overlooked in the Code and is an issue all Members need to be alert to.	The proposal was supported.
260	Paragraph 16 of the proposed new code	A section has been added where the Audit & Governance Committee can add membership of prescribed bodies as a personal interest. This flows from the debate at A&GC of a Notice of Motion requesting that all members be required to declare membership of the freemasons as an interest. The debate at A&GC queried why just the freemasons and not any other organisation. The resolution at A&GC was to deal with this in the constitution review process. This proposed addition to the Code enables A&GC to add that and any other body as being bodies that membership of which requires a declaration, as the A&GC sees fit.	The proposal was supported.
App A	Arrangements for Dealing with Standards Complaints. This is a separate document that sits outside of the code. The existing document was approved by Council. There	<p>There is a legal requirement to have this document. The code references and links to it. There has been a substantial redraft to clarify issues that have cropped up in practice, and to make the process clearer. The document has been combined with an existing “overview of process” document at Appendix A to this Explanatory Note. The main changes are:-</p> <ul style="list-style-type: none"> • Providing more scope for the M.O. with the statutorily appointed Independent Person (IP) to reject complaints without first putting them to the subject member. We get a considerable amount of complaints which are not appropriate for the process (usually trivial, unfounded or tit for tat with no public interest element) but currently have to put those to a subject member and convene formal 	The proposal was supported.

	is considered a need to update that document as explained in the column to the right. It is opportune to do that as part of this process.	<p>meetings of the IP (both requiring considerable administrative resource and delay) to consider them before invariably dismissing them on very clear grounds. That is an unsustainable drain on resource. The new procedure enables the MO to reject complaints on set criteria consulting the IP as appropriate. Reasons are given and the subject member is given a precis of the complaint when being told it has been received and rejected.</p> <p>Other aspects have been clarified by greater explanation/detail on matters which have caused confusion in practice.</p>	
279	Member/Officer Relations Protocol	A proposed new officer/member protocol is attached. This is substantively the same as the current document, although provides more detail and narrative on areas where difficulties and tensions most often arise. There is a proposal to include further narrative by way of hyper linked appendices on particular areas, if Members would find that useful, such as protocols on involvement in procurement processes and on access to and the use of information.	The proposal was supported.
N/A	Local Ward Member Protocol	<p>The Local Ward Member Protocol currently forms part of the Constitution. It is repetitive in places, complicated to follow, and is not well drafted. The Working Group concluded that the key issues which needed to be addressed in the replacement Protocol were to: simplify the document so as to make it easier to follow; to strike the right balance in respect of keeping local members informed of local issues; and to agree the right approach to hyperlinking.</p> <p>The following substantive matters are identified for agreement by the Sub-Committee:</p> <ol style="list-style-type: none"> 1. The Working Group has therefore agreed to utilise a shorter version of the Protocol, which used plain English, and which focusses the minds of its readers upon what is really important to local members. The Sub-Committee's approval is sought in respect of the newly 	The proposal was supported.

		<p>drafted document at Appendix B.</p> <p>2. The Working Group concluded that there was no need for the Protocol to be contained within the Constitution, so long as it was accessible to those reading the Constitution via a hyperlink (on page 142).</p> <ul style="list-style-type: none"> ▪ It is therefore proposed to hyperlink the document so as to make it available to anyone reading the Constitution. ▪ It is further proposed that the document should have the status of a “Tier Two” hyperlink, with the responsibility for reviewing and updating the document resting with the Constitution Committee. <p>3. Keeping Ward Members informed: the previous Protocol stated that “Quite Simply, members should be the first to know of events and issues affecting their wards”. This obligation upon officers was not well expressed, and introduced an element of uncertainty as to circumstances where there might be grounds to preserve confidentiality. Sections 2 & 3 of the Protocol therefore seek to strike the right balance.</p>	
N/A	Mayoralty Code of Practice	<p>The Constitution currently includes this Code, which is 6 pages long, is repetitious and poorly drafted. Essentially, it is a document which seeks to set out important and helpful guidance and protocols of behaviour in respect of the Mayor. Bevan Brittan advise that it does not need to be part of the Constitution, and could therefore be hyperlinked.</p> <p>The document has been appropriately re-drafted so as to include the important elements of the document. The Sub-Committee’s approval is sought in respect of the newly drafted document at Appendix C, but the Sub-Committee is asked to express a view upon the following issue which was raised by the Working Group.</p>	<p>The proposal was supported subject to it being made explicit that all Groups can put forward nominations.</p>

		<p>Whereas the existing arrangement for the nomination of Deputy Mayor rests with the ruling Group, and that in reaching a decision, it may choose to invite nominations from other Groups, the Working Group asked for consideration to be given to granting all Groups the right to put forward nominations for the Deputy Mayoralty to the Ruling Group. This would replace the existing arrangement.</p> <p>The Sub-Committee is asked to make an appropriate recommendation to the Constitution Committee.</p>	
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APPENDIX A.1 – Tables of Financial Limits as approved by Constitution Sub-Committee on 17 November 2017

Review of financial levels within Cheshire East Council's Constitution

Overall we would recommend that the financial levels be streamlined and made more consistent across the whole Council to make decision-making clearer and more consistent – there are too many different delegations that are not all consistent.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	Part 2, Chapter 12 Decision Making				
1.	Chapter 12, para 4,	Threshold for an executive decision being likely to be a "key decision"	£1m	This compares well. Most Unitary/Met Councils are £250-500k and larger Councils e.g. Birmingham £1m £1m provides consistency with virement level to seek further Council approval and portfolio holder spend	This level is about right, and can remain at £1m.
	Part 3 Executive Functions				
2.	Executive Functions – Scope of, and limitations to, Portfolio holder Decision Making	Individual Portfolio Holders are empowered to make all executive decision in respect of their own portfolio area of responsibility except decisions involving spending over £1m	£1m	This is a reasonable level (although could be higher). £1m provides consistency with virement level to seek further Council approval & key decisions	This level can remain the same.
	Part 3 Staffing Committee TOR's				
3.	Staffing Committee Terms of Reference, para 5.3	Staffing Committee to make recommendations to Council in relation to decisions affecting remuneration of any new post whose remuneration is or is proposed to be or would become more than £100,000	£100,000 pa	There is no legal requirement to do this, but DCLG statutory guidance in February 2013 recommends it for transparency reasons – and only necessary when the remuneration changes from what is stated in the approved Pay Policy Statement	This limit should remain at £100,000 but the restriction should only apply where the remuneration departs from the approved Pay Policy Statement.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
4.	Staffing Committee Terms of Reference, para 5.4	Staffing Committee to make decision in relation to proposed severance packages with a value of £100,000 or more	£100,000 or more	The same guidance suggests that severance payments in excess of this level (including pension strain etc) should be considered and approved by members at full Council, however, where there are good reasons e.g. personal circumstances, confidentiality, speed the Council may consider that a report to Council is not appropriate having considered the guidance.	No change from current arrangements - Staffing Committee to make decision in relation to proposed severance packages with a value of £100,000 or above.
	Part 3, Officer of Delegation	NB Revised delegations may not reflect all of these functions and are likely to be more general in scope			
5.	Scheme of Delegation to senior Officers, paragraph 1.21	The making of grants to voluntary and community to be approved by (a) Portfolio Holders and (b) Cabinet	(a) £0-50,000 (b) £50,000+	This in effect doesn't delegate any powers. A grant of £1 would need Portfolio Holder's approval. There may be political sensitivity around grants. This could be staggered with small grants made by Officers; Portfolio Holders up to a higher level; and Cabinet above. Limits to be discussed but could be up to £50k; up to £100k; £100k+ This would be more consistent with the £50k limit in point 44 below	Suggested approach: Within approved grant policy: (a) Grants of up to £50,000 can be made by officers in consultation with relevant portfolio holders; (b) Grants of between £50,000 and £100,000 require Portfolio Holder(s) Approval; (c) Grants in excess of £100,000 require Cabinet Approval. All grants which do not fall within existing approved grant policy require Cabinet Approval.
6.	Scheme of Delegation, Chief Executive, para 2.14	Chief Executive can 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	£100,000	Appropriate in light of guidance above – will need full Council approval if changes are outside the agreed Pay Policy Statement for the time being.	This level can stay the same.
7.	Scheme of	COO to authorise improvements to roads,	£30,000	How does this sit with other	Take this line out. If the spending is

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	Delegation, Chief Officer, para 3.11	including grass verges, street furniture etc not exceeding £30,000 for which provision has been made in the budget and capital programme.		delegations and limits in the Contract Procedure rules? Suggest an increase (£50 or £100k?)	within budget then it should not require further approval.
8.	Scheme of Delegation, Chief Officer, para 3.17	COO on the advice of the Assets Manager or District Valuer to settle claims for borehole damage up to £1,500.	£1,500	Suggest an increase to at least £5k to be consistent with lowest level of Ombudsman claims	Take this out. It can be dealt with under a delegation to Director of Legal to settle claims.
9.	Scheme of Delegation, Chief Officer, para 3.24	COO To accept land for road improvements by dedication subject to the total consideration not exceeding £30,000	£30,000	This should not be politically controversial and should be higher e.g. £100k	Seems reasonable
10.	Scheme of Delegation, Chief Officer, para 3.71	COO is not authorised to write off debt. Approval must be sought from the Portfolio Holder or Cabinet.	£0	This is very unusual. It also doesn't fit with Financial Planning, C47 below - £5k	Suggest that up to £5,000 should be the CFO, £5,000-£25,000 should be CFO in consultation with Portfolio Holder, £25,000+ should be Portfolio Holder.
11.	Scheme of Delegation, Chief Officer, para 3.84	Level of salary below which COO can apply early retirement/redundancy scheme without agreement of the relevant Portfolio Holder	£48,000	Inconsistent with 2.14 above – should be up to £100k (including pension strain etc) – could be in consultation with the Leader and/or portfolio holder in any event for CO's Deputy CO's but otherwise no requirement for consultation as members should not be seen to influence decisions below DCO? Apply to HPS and Executive Director level (ED)	This level should be £100,000
12.	Scheme of Delegation, Chief Officer, para 4.6	ED Place can accept any tender in consultation with the COO and after having notified the Portfolio Holder up to £200,000	£200,000	How does this sit with Contract Procedure Rules? Above/Below threshold? – Consider limits in CPR	Take this line out.
13.	Scheme of Delegation, Chief Officer, para 4.6	ED Place can accept any tender in consultation with the COO and with the approval of the Portfolio Holder between £200,000 and £500,000	£200,000-£500,000	Ditto	Take this line out.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
14.	Scheme of Delegation, Chief Operating Officer, para 4.7	ED Place to authorise the acquisition of an interest in Land in consultation with the COO and after having notified the Portfolio Holder up to £200,000	£200,000	This is low for an acquisition – suggest £500k above which it goes to Cabinet – will depend on budget provision in any event?	£500,000
15.	Scheme of Delegation, Chief Operating Officer, para 4.7	ED Place to authorise the acquisition of an interest in Land in consultation with the COO and with the approval of the Portfolio Holder between £200,000 and £500,000	£200,000-£500,000	£500k - £1m?	£500k - £1m
16.	Scheme of Delegation, Chief Operating Officer, para 4.18	To manage the Farms estate, serve all statutory notices, to negotiate and approve all matters and grant all consents required in order to do so provided that investment in improvements to farms will not exceed £20,000	£20,000	Not very high these days – increase?	£50,000
17.	Scheme of Delegation – Director of Adult Social Care and Independent Living – Para 6.21(d)	DASCIL can only write-off debt where it is felt that the individual would be at risk in consultation with the portfolio holder.	No cap.	Consultation with Portfolio Holder is required. Inconsistent with other limits for debt write off.	Should be in consultation with Portfolio Holder for ASC and Portfolio Holder for Finance. There should be a limit of £5k.
18.	Scheme of Delegation, MO, para 9.6	Authorise settlement of up to £5,000 in respect of potential uninsured claims or Local Government Ombudsman cases (which after settlement shall be reported to Cabinet)	£5,000	Relatively low – if these develop into legal claims then covered by below	£25,000, and would include boreholes.
19.	Scheme of Delegation, MO, para 9.6	Authorise settlement in respect of potential uninsured claims or Local Government Ombudsman cases above £5000 and below £50,000 in consultation with the Portfolio Holder and the Chief Operating Officer, (which after settlement shall be reported to Cabinet)	£5,000 to £50,000	Reasonable - £100k would be more consistent with other officer delegations – what is uninsured level?	£25,000-£100,000 in consultation with the Portfolio Holder and the Chief Operating Officer
20.	Scheme of Delegation, MO, para 9.6	Claims in respect of potential uninsured claims or Local Government Ombudsman cases in excess of £50,000 require Cabinet approval	£50,000	£100k flows from above	£100,000+

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	Council Procedure Rules				
21.	Procedure Rules, General Provisions – Appendix 4, Urgent Decisions taken outside of meetings	For the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply	No cap on emergency decision making powers for Portfolio Holders.	Correct, unless Council needs to approve more funds because outside of the budget or policy framework	This should set out the circumstances under which it would apply: "...in the case of: civil emergency; natural or man-made disaster; matter of serious public health; matters regarding safeguarding of people; or where the Council is at risk of serious reputational damage; loss or claims; or any other matters where the CE in his/her access the CFO has declared that an urgent decision is required".
22.	Access to Information Procedure Rules	Threshold for an executive decision being likely to be a "key decision"	£1m		
	Finance Procedure Rules				
23.	Financial Management A32	Approval Limits for Virements: Head of Service	Up to £100,000 or 10% of their net Service budget, whichever is the lowest. (Revenue)	For certainty and consistency suggest £100k rather than % of net budget	Up to £100,000 (Revenue)
24.	Financial Management A32	Approval Limits for Virements: Corporate Leadership Team	Greater than 10% of a net Service budget but less than £100,000 (Revenue) Up to £100,000 between net Service budgets (Revenue) within their area of responsibility.	CLT should be higher – if there is to be any distinction – e.g. CLT up to £250k? If not subsume first one into above. Again an amount may be better than a % Capital limits should be higher than revenue - compare how this would fit with capital spend proposed above on land	£100,000 - £500,000 – Relevant Executive Director (Revenue) £100,000-£1,000,000 – Relevant Executive Director (Capital)

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
			Up to £100,000 funded from underspends within the approved Service budget (Capital)	NB Most Councils do not require any further approval to spend capital where any amount has been approved against designated projects as part of the annual budget process <ul style="list-style-type: none"> - Member approval may still be required to acquire a particular piece of land or to commence a procurement process etc. 	
25.	Financial Management A32	Approval Limits for Virements: Corporate Approval Limits for Virements: Leadership Team in consultation with Finance & Assets Portfolio Holder	£100,000 and up to £250,000 (Revenue/Capital)	Again capital expectations would be higher than revenue £250k - £500k CLT	Executive Directors in consultation with Finance and Assets Portfolio Holder and relevant Portfolio Holder: <ul style="list-style-type: none"> • £500,000 - £1m (Revenue) • £1m - £5m (Capital)
26.	Financial Management A32	Approval Limits for Virements: Portfolio Holders and Corporate Leadership Team in consultation with Portfolio Holder for Finance and Assets	£250,000 and up to £500,000 (Revenue/Capital)	Ditto – suggest covered by above - delete	Delete if above agreed
27.	Financial Management A32	Approval Limits for Virements: Cabinet	£500,000 and up to £1,000,000 (Revenue/Capital)	Consistent with above	Cabinet: <ul style="list-style-type: none"> • £1m+ (Revenue) • £5m+ (Capital)
28.	Financial Management A32	Approval Limits for Virements: Council	£1,000,000 or more; and/or significant ongoing financial implications; and/or significant policy change. (Revenue/Capital) “Significant” to be defined by the Chief Operating Officer or their	Suggest definite limit of £1m	As above if outside budget and policy framework

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
			representative.		
29.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Corporate Leadership Team	Up to £100,000	£250k or £500k would be consistent with recommendations above	Executive Director up to £500,000
30.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Management Group Board in consultation with the Portfolio Holder for Finance and Assets	£100,000 and up to £250,000	Delete	Executive Director in consultation with Portfolio Holder for Finance and Assets £500,000 - £1m.
31.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Portfolio Holders and Corporate Leadership Team in consultation Portfolio Holder for Finance and Assets	Between £250,000 and up to £500,000	Delete, subject to above	Delete
32.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Cabinet	Between £500,000 and up to £1,000,000	OK?	Delete
33.	Financial Management A36	Approval limits for supplementary capital and revenue estimates: Council with recommendation from Cabinet	£1,000,000 and over	OK – consistent with above	Keep
34.	Financial Planning B26	Amount below which expenditure is not treated as capital expenditure	£10,000	CFO to advise	Alex to check CIPFA guidance as to whether there is a limit. Suggested delete 30/10/17 – no need for a limit in the constitution
35.	Financial Planning B27	Block provisions will be approved within the Capital Programme for individual schemes costing less than £250,000	£250,000	Could be higher £500k?	Take this line out
36.	Financial Planning B38	In respect of highways improvements, heads of Service may approve capital expenditure in respect of other rechargeable reinstatement work costing £10,000 and above	£10,000	Who approves below £10k No upper level?	Take this line out - Will be covered by general delegations
37.	Financial Planning C47	CLT, Heads of Service and officers specified in a Scheme of Financial Delegation may authorise the write off of losses up to £5,000, or disposals, of obsolete or surplus equipment, materials, vehicles or stores up to a disposal value	£5,000	Increase to be consistent with general write-offs	CFO should authorise all write offs up to £5,000.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
		of £5,000. If this threshold is exceeded, approval must be sought from the Finance Portfolio Holder.			
38.	Financial Planning D24	If a requisition for the purchase of goods or services exceeds £5,000 in value Contract Procedure rules Part 2.1 apply (these relate to competition law and the number of bids which should be sought etc)	£5,000	Review	£10,000, and needs to be in line with the revised Contract Procedure Rules.
39.	Financial Planning D50	Separate Trading Accounts are required when services are provided to either internal or external clients, on a basis other than a straightforward recharge of full cost. These accounts are also required where there is a minimum turnover of £1,000,000	£1,000,000	This is inconsistent with legislation – e.g. a separate account needs to be kept for all Goods and Services Act 1970 trading irrespective of value?	Remove. The law requires all G+S to be recorded separately, so there is no need to deviate from this position.
40.	Financial Planning E18	Approving partnership proposals: Chief Officers	Up to and including £100,000	Why are these decisions different from other decisions above?	Remove
41.	Financial Planning E18	Approving partnership proposals: Chief Officer In consultation with Cabinet Member	Over £100,000 and up to £500,000	Ditto	Remove
42.	Financial Planning E18	Approving partnership proposals: Cabinet	Over £500,000 and up to and including £1,000,000 or if the Authority is undertaking an accountable body role;	Ditto	Remove
43.	Financial Planning E18	Approving partnership proposals: Council	£1,000,000 or more.	This is an example of Council taking the "big" decisions – not appropriate if an Executive function and there is budget provision	Remove
44.	Financial Planning	Approval levels for the paying of grants,	Up to and over	Suggest this level should be	This should be cross referenced to

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
	E25	donations and contributions: Cabinet Member	£50,000	delegated to officers	the grant approval levels in Line 5.
45.	Financial Planning E25	Approval levels for the paying of grants, donations and contributions: Cabinet	Over £50,000	Or could be portfolio holder	Cross reference to line 5.
	Contract Procedure Rule				
46.	Definitions	Request for Quotations	£10,000 to EU Threshold	EU Threshold changes – now defined. There is a link to the Europa Website at 1.1.8 but if this approach is continued, it should be more clearly signposted. If a link is preferred, it should be to: https://www.ojeu.eu/thresholds.aspx as the current link in the Constitution doesn't work. We recommend including the Thresholds in a table. They are updated once every two years, in January. The next update is January 2018.	Agreed
47.	Part 2 – Below EU Threshold 2.1.1	3 quotes are advisable but not mandatory (local firms being preferable)	Up to £5,000	Many local authorities would have a higher threshold of £10k, but require 3 quotes	Advisable to obtain 3 quotes up to £10,000.
48.	Part 2 – Below EU Threshold 2.2.1	Minimum of three quotes shall be obtained, subject to a procurement risk assessment being carried out. All quotations should be sent to Procurement to ensure compliance with the Government Transparency Code.	£5,000 to £25,000	reasonable	£10,000 to £25,000
49.	Part 2 – Below EU Threshold 2.2.1	Minimum of three quotations sought via e-tendering portal. Procurement must carry out a procurement risk assessment and will determine the route to market.		It is not clear if this is £25k to EU threshold.	£25,000 to EU Threshold
50.	Part 4 – Invitations to Quote <£25k	Invitations to Quote below £25,000 will follow any guidance issued from the CPU and will be assessed based on their own	Up to £25,000	Merge with above	

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
		risk.			
51.	Part 4 – Invitations to Quote >£25k 4.1.1	All invitations to Quote/Tender over £25,000 shall include the following: 1. All quotes to be issued and received via the e-tendering portal; 2. Bidders must sign the Form of Tender which includes non-collusion provisions; 3. Responses are restricted to access by the Verifying Officer; 4. Invitations must have sufficient detail for a competitive tender and must contain T&Cs of the contract; 5. Must contain a description of the award criteria. 6. Bidders told that preparation of tenders is at their risk and expense; 7. Bidders told that they must not amend the contract documents.			Amend so that all invitations to Quote/Tender
52.	Part 4 – Invitations to Quote >£25k 4.3.1	Tenders above £1,000,000 will be verified by Legal Services.	£1,000,000		Merge with line below.
53.	Part 4 – Invitations to Quote >£25k 4.3.1	Tenders from the 'EU Threshold' up to £1,000,000 will be verified by the Procurement Manager or a Procurement Category Manager that has not been involved in the tender in question.	EU Threshold to £1,000,000		Tenders above the EU Threshold will be verified by the Procurement Manager or a Procurement Category Manager that has not been involved in the tender in question.
54.	Part 4 – Invitations to Quote <£25k 4.3.1	Tenders/Quotations below the 'EU Threshold' will be verified by a Procurement Officer that has not been involved in the tender in question.	Tenders below EU Threshold	Should the lower limit for this be £25,000 so that it sits with the line below?	Tenders from £25,000 to EU Threshold.
55.	Part 4 – Invitations to Quote >£25k 4.3.1	Quotations from £5,000 to £25,000 will be opened in accordance with any guidance issued by CPU from time to time.	Tenders £5,000 to £25,000.		Tenders £10,000 to £25,000.

No	Reference	Issue	Financial Limit	BB Initial Comment	Feedback from s.151 Officer
56.	Part 5 – Contracts and Competition Requirements 5.1.2 Post	Contracts can be executed by a duly authorised officer in accordance with the local scheme of delegation.	Up to £1,000,000		Take this line out
57.	Part 5 – Contracts and Competition Requirements 5.1.3 Post	Contracts must be executed under seal.	Where the contract exceeds £1,000,000.	MO to advise	
58.	Part 5 – Contracts and Competition Requirements 5.2.1 Post	Waiver of the Contract Procedure Rules. Currently all waivers must be approved by the Chief Operating Officer and Director Legal Services	All waivers	We recommend that below £25,000 a waiver can be signed approved by the Head of Procurement.	Above £25k approval by CFO and DoLS,

Additional points raised on the call:

1. Reference to COO in this table should be to the CFO. The roles can be performed by different people.

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Cheshire East Council

Constitution Committee

Date of Meeting: 30th November 2017

Report of: Head of Governance and Democratic Services

Subject: Review of the Constitution: General Issues

1. Report Summary

- 1.1. This report enables the Committee to give consideration to any issues which may be required, so as to ensure that the draft Constitution, to be presented to Council for adoption, is complete and incorporates all required amendments.

2. Recommendation

- 2.1. That such matters as may be reported to the Committee as being in need of addition to the draft Constitution, or which may necessitate changes to the draft Constitution, be given consideration by the Committee:
- 2.2. That the Overview and Scrutiny Committee Procedures as set out in Appendix A are approved for inclusion in the revised Constitution.
- 2.3. That the Committee notes and endorses the commitment to provide further supporting information with regard to the colour-coded chart (3.4.2) and guidance notes on ODRs (3.4.3) as set out below.

3. Background

- 3.1. On 17th November 2017, the Constitution Sub-Committee considered a report which recommended a process which would ensure that the revised Constitution would be complete, and which would incorporate all required amendments.
- 3.2. The Sub-Committee recommended that the Constitution Committee approve the approach set out in the report as follows:

4.4 *In order to achieve this, and to ensure consistency between the different Work Packages as part of the collation exercise, we propose the following approach to bringing this work to the Constitution Committee on 30th November 2017:*

- *A new draft Constitution is presented in whole as a single document which takes into account those matters agreed as part of the various Work Packages, together with all changes and other recommendations of the Sub-Committee*

- *A combined Explanatory Note (List of Substantive Changes) which lists all of the original substantive issues raised with the Sub-Committee, in accordance with the agreed approach, together with a note against each one which records the recommendations of the Sub-Committee*
- *A general report which highlights any changes arising from the collation process, together with any additional issues that may arise between the meetings of the Sub-Committee and presentation of the final set of recommendations to the Constitution Committee*
- *A combined document of all content previously held within the Constitution that is now proposed to sit outside the Constitution, in accordance with the process agreed at the Sub-Committee on 3rd November 2017, together with that which will be agreed at this meeting.*

3.3. The penultimate bullet point of the summary approach above made provision for a general report to be brought before the Constitution Committee which would highlight any necessary changes to the draft Constitution, arising from the process, together with any additional issues which might arise prior to the meeting of the Committee.

3.4. At the time of publication of this report, the following issues have been identified:

3.4.1 Overview & Scrutiny Procedure Rules

Attached to this report are the Overview and Scrutiny Procedure Rules. These have been the subject of discussion at the relevant working group and all comments have been incorporated. Unfortunately, they were excluded from the papers presented to the Sub-Committee on 17 November 2017.

Rather than add them into the master document (and so affect the page numbering and cross referencing at this stage) the rules are presented for Members' consideration as a self-standing document. Once agreed, they will be inserted into the correct section of the Constitution i.e. in Chapter 3 – Procedure Rules, after the General Provisions and before the Access to Documents and Information Section.

The rules have not been changed in substance in any way from those in the current Constitution. The only changes made have been to strip out any description of scrutiny arrangements which are contained elsewhere in the document, to make language consistent with the new document and to remove statements of the law which do not have to be in the rules.

One point has been clarified – the current Constitution refers to the statutory education co-optees being voting members of the Corporate Overview and Scrutiny Committee. This should read the *Children and Families* Scrutiny Committee and this has been amended.

3.4.2 Chart of decision-making responsibilities

We are committed to providing a colour coded chart mapping out decision making responsibilities, different colours being used to delineate which decisions or parts of decisions fall to Members and Officers. This will be completed on final approval of the revised Constitution and incorporated into the document.

3.4.3 Officer Decision Record (ODR)

We are committed to providing a hyperlink to guidance on the use of the Officer Decision Record (ODR) process. This will be completed in the final drafting of the document.

4. Wards Affected and Local Ward Members

4.1. All wards and local ward members are affected.

5. Implications of Recommendation

5.1. Policy Implications

5.1.1. As per the main report on the revised Constitution.

5.2. Legal Implications

5.2.1. As per the main report on the revised Constitution.

5.3. Financial Implications

5.3.1. As per the main report on the revised Constitution.

5.4. Human Resources Implications

5.4.1. As per the main report on the revised Constitution.

5.5. Equality Implications

5.5.1. As per the main report on the revised Constitution.

5.6. Rural Community Implications

5.6.1. As per the main report on the revised Constitution.

5.7. Public Health Implications

5.7.1. As per the main report on the revised Constitution.

6. Risk Management

6.1. As per the main report on the revised Constitution.

7. Background Papers

7.1. As per the main report on the revised Constitution.

8. Contact Information

8.1. Contact details for this report are as follows:-

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

Overview and Scrutiny Procedure Rules

1 Agenda for overview and scrutiny committees

- 1.1 Any Member of an overview and scrutiny committee shall be entitled to require, in writing, that an item be included on the agenda, provided that the item is within the remit of the Committee in question; the item will then appear on the agenda for the next meeting. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 1.2 Similarly, the Leader of the Council or a Cabinet Member with specific portfolio responsibilities may give notice in writing requiring an item to appear on an agenda of an overview and scrutiny committee, relating to their area of responsibilities. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 1.3 Subject to Council Procedure Rule 34 and Appendix 6 of the Council Procedure Rules, any other Member may give notice in writing to the Monitoring Officer, requesting an item to appear on an agenda of an overview and scrutiny committee. The item shall be included after consulting the Chairman of the Committee.
- 1.4 Any Member raising an item under 1.2, 1.3 and 1.4 above shall be precluded from raising the matter again for a period of six months from the date it is considered by the Committee in question.

2 Policy review and budget development

- 2.1 The overview and scrutiny committees have a key role in budget development.
- 2.2 The [Budget and Policy Planning Framework](#) contains details of the process by which the overview and scrutiny committees may perform that role.
- 2.3 In relation to the development of the Council's approach to other matters not forming part of its Policy and Planning and Budget Framework, the overview and scrutiny committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- 2.4 Overview and Scrutiny Committees may hold enquiries in relation to policy review and may appoint specialists to assist them in this process. They may visit sites, conduct public surveys, hold public meetings, commission research and undertake such other things they consider reasonable and necessary to inform their deliberations. They may call witnesses on any matter under consideration and may pay to any specialists and witnesses a reasonable fee and expenses for doing so within budgetary provision.

3 Reports from the overview and scrutiny committees

- 3.1 The Council or Cabinet (as appropriate) shall consider any report from the Committees at its next programmed meeting.

4 Co-option

- 4.1 There are four statutory co-optees in respect of the Council's Education function as follows:

- A Church of England Diocese representative A Roman Catholic Diocese representative
- Two parent governor representatives

- 4.2 In respect of education matters only, as defined in the relevant guidance, the statutory co-optees will be voting members of the Children and Families Scrutiny Committee. They will be only invited to attend the Corporate Overview and Scrutiny Committee or any other overview and scrutiny committee meetings (excluding Full Council) where Children's Services matters are under consideration, subject to any exclusions in law or statutory guidance.

- 4.3 At those other bodies to which they have not been appointed, they shall be entitled only to speak on matters relating to Children's Services issues. They may speak on other issues only with the consent of the Chairman.

- 4.4 The overview and scrutiny committees shall be entitled to appoint persons to be non-voting co-optees taking into account any advice or guidelines issued from time to time by the Council. Such co-options may relate to a prescribed period of office or to specific issues under consideration. Any person co-opted under these arrangements will be entitled to participate fully in the work of the Committees subject to any conflicts of interests.

5 Rights of scrutiny members to documents

- 5.1 In addition to their rights as Councillors, Members of overview and scrutiny committees have the additional right of access to documents, and to notice of meetings as set out in the *Access to Information Procedure Rules* in Part B of this section of the Constitution.
- 5.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and the overview and scrutiny committees, depending on the particular matter under consideration.

6 Members and officers giving account

6.1 The overview and scrutiny committees may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function. As well as reviewing the documentation, in fulfilling its scrutiny role, it may require any Member of the Cabinet, to attend before it to explain in relation to matters within their remit:

- any particular decision or series of decisions;
- the extent to which the actions taken implement Council policy; and/or
- their performance.

and it is the duty of those persons to attend if so required.

6.2 Where any overview and scrutiny committee requires an officer to attend to answer questions or discuss issues, this will be agreed with the Chief Executive.

6.3 Where it is agreed that an officer should appear to answer questions, their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may explain:-

- what the policies are;
- the justification and objectives of those policies as the Cabinet sees them;
- the extent to which those objectives have been met; and
- how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

6.4 Officers may be asked to explain and justify advice they have given prior to executive decisions being taken. They may also be asked to explain and justify executive decisions they have taken under delegated powers.

6.5 Officers should not be expected and should avoid being drawn into discussions of politically contentious matters and any officer input should be consistent with the requirements for political impartiality.

6.6 The requirements of any [protocols on Member/Officer relationships](#) and the [Officer Code of Conduct](#) must be adhered to where an officer is attending a meeting of an overview and scrutiny committee.

6.7 Where any Member or Officer (with the Chief Executive's agreement) is required to attend an overview and scrutiny committee under this provision, the Chairman of that Committee will inform the Monitoring Officer, who will inform the Member or Officer in writing, giving at least ten clear working days' notice of the meeting. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the Member or

Officer concerned will be given reasonable and sufficient notice to allow for its preparation.

- 6.8 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then the Committee shall, in consultation with the Member or Officer, arrange an alternative date for attendance.

7 Attendance by others

- 7.1 The overview and scrutiny committees may invite individuals other than those referred to in paragraph 6.1 and 6.2 above to address it, discuss issues of local concern and/or answer questions.

8 Call-in

- 8.1 When a decision is made by the Cabinet, or a Committee or Sub-Committee of the Cabinet, by an individual Cabinet Member, or when a key decision is made by an officer with delegated authority from the Cabinet, the decision shall be published, by electronic means, and shall be available at the main offices of the Council normally by no later than 5.00 pm on the second full working day following the day on which the decision was made. All Members of the Council will be sent an electronic record of all such decisions within the same timescale.
- 8.2 Subject to paragraphs 8.3 and 8.4 below a decision taken and to which paragraph 8.1 above refers will not come into force, and may not be implemented, until the expiry of 5 clear working days after the decision was made and recorded.
- 8.3 Where a decision referred to in paragraph 8.1 has been made, any 6 or more Members of the Council may submit a call-in notice, in writing, within the period specified in paragraph 8.2 above, to the Monitoring Officer. Where the notice is valid, the decision cannot be implemented until the procedures in this section have been followed. Where a valid notice is received the decision shall stand referred to the appropriate overview and scrutiny committee for advice.
- 8.4 Requests to call-in decisions should be made on a standard form obtained from the Scrutiny Team and Members must give reasons for the request. The form will include guidance to assist Members to establish and set out the grounds for call-in, as follows:
- i. decision is outside the policy/budgetary framework
 - ii. inadequate consultation relating to the decision
 - iii. relevant information not considered
 - iv. viable alternatives not considered
 - v. justification for the decision open to challenge on the basis of the evidence considered

- 8.5 In the event that reasons for the request for call-in are disputed, the Director of Legal Services shall assess whether the call-in request is justified on any of the grounds above and may accept or reject the call-in.
- 8.6 The lead Member of the “call-in” group should send an email enclosing the call-in form, to all Members of the call-in group, Director of Legal Services, and Scrutiny Team and request that all signatories confirm their consent to the “call-in” by email to the appropriate Scrutiny officer.
- 8.7 Where a corporate electronic system failure, or planned shutdown, prevents the issuing of or access to Cabinet decisions or the submission of a call-in notice by electronic means in accordance with the Council’s call-in provisions, the periods for notification or submission shall be extended by the period of delay, provided that period is in excess of four hours. When, in the opinion of the Monitoring Officer, the period of delay is likely to extend beyond two clear working days, he/she shall agree with the Chairman of the appropriate overview and scrutiny committee, alternative arrangements to avoid any delay in implementing Cabinet decisions not subject to “call-in”.
- 8.8 The decision will be referred to the first available meeting of the appropriate overview and scrutiny committee, subject to the Access to Information Procedure Rules.
- 8.9 The Committee may decide to offer no advice, in which case the decision may be implemented. Alternatively, the Committee may decide to offer advice and to recommend that the original decision-maker, whether full Cabinet, a Cabinet sub-committee acting under delegated powers or a portfolio holder, reconsider the decision in the light of that advice. The decision-maker will then reconsider the decision as set out in paragraph 7.10 below. The Committee may, instead, resolve to recommend full Council to review the decision and decide whether or not to offer advice.
- 8.10 Once the overview and scrutiny committee has decided whether or not to offer advice, no further call-in notices may be served in respect of the subject matter of the decision. This does not prevent the matter being scrutinised further by the appropriate Committee after the decision has been implemented in accordance with these rules.
- 8.11 Where a matter is considered and advice is offered by an overview and scrutiny committee, its advice will be submitted to the decision-maker for a decision to be made on the matter. The decision-maker shall consider the advice but shall not be bound to accept it in whole or in part. The decision-maker shall have sole discretion to decide on any further action to be taken in relation to the decisions in question, including confirming the original decision, with or without amendment, or deferment pending further consideration, or making a different decision. There are no further rights to enable a Member of the Council to submit a call-in notice. The decision may then be implemented.

- 8.12 If, under this procedure, the overview and scrutiny committee, having considered the matter, indicates that it does not wish to offer any advice to the decision-maker, then the decision can be implemented immediately.
- 8.13 A submitted call-in notice can only be withdrawn with the written consent of all of its signatories.
- 8.14 The “call-in” facility does not apply to the determination of a [Motion under Procedure Rules \(Notices of Motion\) – Appendix 2](#).

9 Call-in and urgency

- 9.1 The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any delay, caused by the call-in process, would be likely to seriously prejudice the Councils or the public's interests. The Chairman of the appropriate overview and scrutiny committee or, in his/her absence, the Mayor must agree that the decision should be treated as urgent, and that the call-in procedure should not apply. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the Chief Executive or her nominee's consent shall be required. Where such agreement is reached, all Members of the Council shall be notified by electronic means.

10 The party whip

- 10.1 It is generally accepted that the Party Whip should be suspended in respect of Scrutiny matters. However, when considering any matter in respect of which a Member of an overview and scrutiny committee is subject to a formal party whip, the Member must declare the existence of the Whip, and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the Minutes of the meeting.

11 Procedure at overview and scrutiny committee meetings

- 11.1 Overview and Scrutiny Committees shall consider the following business:
- record of the last meeting;
 - consideration of any matter referred to the Committee by the Council or by the Cabinet;
 - consideration of any matter referred to the Committees for advice in relation to call-in or a decision;
 - responses of the Cabinet on reports of the overview and scrutiny committees; and
 - the business otherwise set out on the agenda for the meeting.

- 11.2 Where an overview and scrutiny committee conducts investigations (e.g. with a view to policy review), it may also ask people to attend to give evidence at its meetings, which are to be conducted in accordance with the following principles:
- the investigation is to be conducted fairly and all Members of the Committees are to be given the opportunity to ask questions of attendees, and to contribute and speak;
 - those assisting the Committees by giving evidence are to be treated with respect and courtesy; and
 - the investigation to be conducted so as to maximise the efficiency of the investigation or analysis.
- 11.3 Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall, unless there are exceptional reasons, make its report and findings public.
- 11.4 There is no facility to allow questions by members of the public at meetings of overview and scrutiny committees. However, a period of 15 minutes will be provided at the beginning of such meetings to allow members of the public to make a statement on any matter that falls within the remit of the committee, subject to individual speakers being restricted to five minutes.
- 12 Matters within the remit of more than one overview and scrutiny committee**
- 12.1 Where a matter before an overview and scrutiny committee also falls within the remit of one or more other overview and scrutiny committees, the decision as to which body will consider it, including any arrangements for joint working or sharing information, will be resolved by the Corporate Overview and Scrutiny Committee.
- 13 Joint scrutiny protocol**
- 13.1 The Council has approved a [joint scrutiny protocol](#) for Cheshire, Merseyside and Wirral to consider consultations by NHS bodies or service providers in connection with substantial developments or variations in service. Nominations to any joint scrutiny committee established under the protocol will be made by the Chairman of the Health and Wellbeing Overview and Scrutiny Committee (or any successor body).

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 30th November 2017
Report of: Head of Governance and Democratic Services
Subject/Title: Calendar of Meetings for 2018-19

1.0 Report Summary

- 1.1 This report includes a draft Calendar of Meetings for Cheshire East Council for 2018-19.
- 1.2 The Committee is invited to recommend the draft calendar to Council for approval.

2.0 Recommendations

- 2.1 That the Committee consider the responses to the consultation on the draft Calendar of Public Meetings, as set out in paragraph 10.5.
- 2.2 That the draft Calendar of Public Meetings for Cheshire East Council 2018 - 2019 be recommended to Council for approval.

3.0 Reasons for Recommendations

- 3.1 The Council is required to give public notice of its meetings in order to fulfil its legal obligations under the Constitution and to meet its obligations under the Local Government Act 1972. The Calendar will assist the Council in meeting these requirements.

4.0 Wards Affected

- 4.1 All Wards

5.0 Local Ward Members

- 5.1 All Ward Members

6.0 Policy Implications

- 6.1 None identified.

7.0 Financial Implications

- 7.1 None identified.

8.0 Legal Implications

- 8.1 There are no specific legal implications other than those identified in the main body of the report.

9.0 Risk Management

- 9.1 A published calendar of meetings enables effective business planning and decision making procedures.

10.0 Background and Options

- 10.1 As set out in its Constitution (Part 4 – Council Procedure Rule 1) the Council is required to decide when its meetings will take place and these will be contained in a calendar of meetings.

It is for full Council to approve the calendar.

- 10.2 Under Part 3 of the Constitution, the Constitution Committee is responsible for:

“overseeing, monitoring, co-ordinating and implementing the Council’s administrative and political business, including....administrative arrangements forthe Council and other meetings.”

10.3 Calendar

Attached at Appendix 1 is a timetable of meetings for 2018-19.

10.4 Scheduling of Meetings

The proposed scheduling of meetings for 2018-19 follows the pattern adopted in previous years. As far as possible only one Committee has been scheduled per day and meetings of each Committee have been scheduled on the same weekday were possible.

Scheduling of meetings has taken into account the business planning/performance reporting cycles.

Certain categories of meetings which do not form part of the formal decision-making process will be omitted from the public calendar but will be added to the Members’ diary for convenience. These include Member development sessions and meetings of the Cheshire Fire Authority and Cheshire Police and Crime Panel.

August has been retained for recess except for Planning Meetings.

No meetings have been scheduled on the dates of Cheshire Show (19-20 June 2018), RHS Tatton Flower Park Show (18-20 July 2018) and Nantwich Show (25 July 2018).

10.5 Consultation

The calendar of meetings has been circulated to the following:

- Corporate Leadership Team
- Cabinet
- Committee Chairmen
- Group Leaders
- Group Whips

Responses have been received from consultees are summarised as follows:

- concern that Council and other meetings are held on a Thursday in Sandbach when there are difficulties with parking due to it being market day

Any further responses received will be reported at the Constitution Committee meeting.

10.6 Council

Meetings of full Council have been scheduled to be held on 23 May 2018 (Annual Council), 26 July 2018, 18 October 2018, 13 December 2018 and 21 February 2019 (Budget Council), with start times of 11 am for Annual Council, December 2018 and February 2019 meetings and 2.00 pm in July and October 2018.

10.7 Overview and Scrutiny Committees

Meetings of Overview and Scrutiny Committees have been scheduled to meet on a bi-monthly basis, with the exception of the Health and Adult Social Care and Communities Overview and Scrutiny Committee, which is scheduled monthly. If there is a specific need for additional meetings, these can be dealt with under existing arrangements.

10.8 Cabinet Meetings:

Cabinet meetings have been scheduled monthly on a Tuesday at 2.00 pm and have been arranged to take place in the Committee Suite at Westfields. No other meetings have been scheduled on the same day.

10.9 Portfolio Holder Meetings

These are proposed to be discontinued as part of the review of the Constitution but, until such time as the current arrangements change, the following applies. Portfolio Holder meetings have not been scheduled into specific dates, but it has been the practice to hold them on Monday mornings, and rooms have been reserved at Westfields to allow them to take place. However, meetings will be arranged at the most appropriate venue, following consultation with Portfolio Holders.

10.10 Planning Committees

Strategic Planning Board, Northern Planning Committee and Southern Planning Committee are scheduled on a four weekly cycle of meetings on Wednesday where possible; with any site visits taking place the Friday before the meeting.

The Strategic Planning Board will commence at 10.30 am, with the Northern Planning Committee and Southern Planning Committee commencing at 10.00 am.

10.11 Committees

The Constitution Committee, Staffing Committee and Public Rights of Way Committee have been scheduled to take place quarterly, with the Audit and Governance Committee and Licensing Committee to meet five times a year. Provision exists for additional meetings to be called if needed.

- 10.12 Subject to additional recommendations which Members may wish to make, the Committee is asked to refer the calendar to Council at its meeting to be held on 14 December 2017.

11.0 Access to Information

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

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Calendar of Meetings 2018-19

** Elections 2 May 2019

COMMITTEE	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY
Council (Wed Annual Council/ Thursday)	23 (11 am)		26 (2 pm)			18 (2 pm)		13 (11 am)		21 (11 am)			22 (11 am)
Cabinet Bodies													
Cabinet (Tuesday 2 pm)		12	10		11	9	6	4	15	5	12	9	
Portfolio Holders (Monday am)	Monday mornings have been identified as an option for Portfolio Holder meetings but notice will be given as and when these meetings are arranged												
Shared Services Joint (Friday, Winsford)	25		27		28		30		25		22		
Corporate Bodies													
Constitution Committee (Thursday 2 pm)		28			20		22				21		
Audit and Governance Committee (Thursday 2 pm)	31		31 (Tue)		27			6			14		
Staffing Committee (Thu 2 pm)			23 (Mon)			4			24			25	
Appeals Sub Committee (Mon/Tue 2 pm)		5	3, 30		4	2, 30	20		8	12	5	2	
Regulatory Bodies													
Licensing Committee (Monday 2 pm)		4			3		5		7		4		
General Licensing Sub Committee		21	17	23	18	23	15	11	22	14	19	12	
Public Rights of Way Committee (Monday 2 pm)		11			10			3			11		
Strategic Planning Board (Wednesday 10.30 am)	16	27		1, 29	26	24	21	19	30	27	27	24	

COMMITTEE	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY
Southern Planning (Wednesday 10 am)	30		4	8	5	3, 31	28		9	6	6	3	
Northern Planning (Wednesday 10 am)		6	11	15	12	10	7	5	16	13	13	10	

Overview and Scrutiny Bodies													
Corporate (Thu 2.00 pm)		7			6		1		10, 31			4	
Health and Adult Social Care and Communities Overview and Scrutiny Committee (Thursday 10 am)		14	5		13	11	8	6	17	7	7	11	
Environment and Regeneration (Mon 2 pm)		18			17		12		21		18		Page 110
Children and Families (Mon 2 pm)		25			24		26		28		25		

Others													
Health and Wellbeing Board (Tuesday 2 pm)	29	(26)	24		25	(23)	27	(18)	29	(26)	26	(16)	
Local Authority School Governor Appointments Panel (Monday 2 pm)			2			15				4			

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