

Constitution Committee

Agenda

Date: Thursday, 28th June, 2018
Time: 2.00 pm
Venue: Committee Suite 1, 2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and 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 paragraph 2.32 of the Committee Procedure Rules, 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 Committee. 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. **Member Speaking**

To provide an opportunity for any member to speak in relation to any aspect of the constitution.

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

To approve the minutes of the meeting held on 22nd March 2018.

6. **Closing the Executive Monitoring Board and Revising the Approach to the Technical Enabling Group** (Pages 7 - 16)

To consider a report on changes to the roles of the Technical Enabler Group (TEG) and Executive Monitoring Board (EMB) functions following a significant review of procurement activity, improvements in the budget-setting process and the establishment of the Programme Management Office.

7. **Living Document Changes to the Constitution** (Pages 17 - 26)

To consider a report on a number of issues relating to the constitution which were raised during the review of the constitution or which have since emerged as issues needing to be addressed.

8. **Recording and Webcasting of Council Meetings** (Pages 27 - 30)

To consider a report which reviews the operation of the recording and audio webcasting of Council decision-making meetings over the last twelve months.

9. **Chairmanship and Vice-Chairmanship of Overview and Scrutiny Committees** (Pages 31 - 34)

To consider a report on whether or not chairmanships or vice-chairmanships of the Council's overview and scrutiny committees should be allocated to the Council's opposition groups.

10. **Notice of Motion - Alternative Forms of Governance** (Pages 35 - 42)

To consider a report providing an overview of the alternative governance options available to the Council following a Notice of Motion to Council on 22nd February 2018.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 22nd March, 2018 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)

Councillors G Baxendale, Bratherton (for Cllr Jeuda), B Burkhill, M Deakin,
L Durham, S Edgar, J P Findlow (for Cllr Groves), H Gaddum, D Mahon,
N Mannion, R Menlove, B Roberts (for Cllr Bailey) and G Williams

Officers

Dan Dickinson, Acting Director of Legal Services and Monitoring Officer
Brian Reed, Head of Governance and Democratic Services
Paul Mountford, Executive Democratic Services Officer
Lianne Halliday, Senior Manager - Procurement

Other Members present

Councillors J Nicholas, A Stott and B Walmsley

Apologies

Councillors D Bailey, P Groves and L Jeuda

16 DECLARATIONS OF INTEREST

There were no declarations of interest.

17 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

18 MEMBER SPEAKING

Councillor A Stott suggested that the quorum for the planning committees should be increased to one third or a half.

Councillor J Nicholas asked when the Committee would be considering his Notice of Motion on alternative forms of governance. At the Chairman's invitation, the officers advised that the motion would be submitted to the Committee's next scheduled meeting on 28th June 2018.

19 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 30th November 2017 be approved as a correct record.

20 A MEMBER-LED COUNCIL: DEVELOPING EFFECTIVE MEMBER AND OFFICER RELATIONS

The Committee considered a report on the document: 'A Member-led Council: Developing Effective Member and Officer Relations'.

The purpose of the document was to bring clarity and certainty to the crucially important relationship between Members of the Council and officers. The document had been shared with the Council's political group leaders and had been endorsed by them. The document did not replace the agreed Member/Officer Protocol but provided helpful additional guidance to supplement it.

With regard to the second paragraph of section 10 of the document, members suggested that the phrase 'not to assist the opposition to oppose' be replaced with the phrase 'not to assist any group in a party political manner'. The officers noted the suggestion and undertook to consider some additional wording to clarify the sentiment behind that sentence. It was noted that the document would also be considered by the Corporate Overview and Scrutiny Committee.

RESOLVED

That notwithstanding the suggested change outlined above, and subject to the views of the Corporate Overview and Scrutiny Committee, the approach set out in the document: 'Cheshire East - A Member-led Council: Developing Effective Member and Officer Relations' be supported and its importance as a supplement to the Council's Member/Officer Relations Protocol be endorsed.

21 THE CONSTITUTION: LIVING DOCUMENT CHANGES

The Committee considered a report on a number of proposed "living document" changes which had either arisen from issues raised by Members during the process leading up to the adoption of the new constitution, or had arisen following its adoption.

RESOLVED

That

1. the arrangements set out in paragraphs 1 and 2 of Appendix 1 to the report be noted;
2. the use, or the proposed use, of delegated powers as set out in the recommendations in paragraphs 3-11 of Appendix 1 to the report be noted, except that the proposed change in relation to paragraph 10 - Legal Authorisation and Enforcement be deferred to the next meeting so that further information can be provided, including the outcome of

the Monitoring Officer's consultation of the Chairman and Vice-Chairman;

3. with regard to the recommendations set out in paragraphs 12-17 of Appendix 1 to the report:
 - (a) no changes be made to the Council Procedure Rules in relation to the way in which Notices of Motion are dealt with at Council meetings but the Monitoring Officer be asked to produce a Notice of Motion protocol, for circulation to Committee members for consideration, to provide that:
 - (i) the member giving notice of the motion be encouraged to provide a concise explanatory background note with the Notice which shall be included in the Council agenda papers; and
 - (ii) the proposer of the motion be given the opportunity to comment on the draft report on the motion before its submission to the relevant decision-making body;
 - (b) it be recommended to Council that the quorum for all committees and sub-committees of the Council should be one third of the total membership subject to a minimum of three where the body in question comprises eight or fewer members;
 - (c) it be recommended to Council that as recommended by Bevan Brittan during the review of the constitution, the Civic Sub-Committee and the Outside Organisations Sub-Committee be abolished and their functions be undertaken by the Constitution Committee;
 - (d) that it be recommended to Council that the officer scheme of delegation be amended to clarify that officers may not take key decisions unless:
 - (i) specifically delegated by members; or
 - (ii) specifically provided for within the constitution;
 - (e) the Committee confirms, as accepted by the Council at its meeting on 14th December 2017, that the provisions relating to member access to Part II papers and member attendance during Part II proceedings at meetings as set out in the former constitution remain in force and that the arrangements will be reviewed after the new constitution has been in operation for six months; and
 - (f) the programme of future changes to the constitution to be considered at the Committee's next meeting be noted.

22 CHANGES TO THE CONTRACT PROCEDURE RULES

The Committee considered a report on proposed mainly operational changes to the Contract Procedure Rules.

An additional proposal, as set out in the appendix, sought approval to exclude 'operational expenditure' from the definition of a key decision.

RESOLVED

That

1. with the exception of those changes within the delegated authority of the Monitoring Officer, the proposed changes to the Contract Procedure Rules as appended to the report be recommended to Council for approval except that:
2. the proposal to exclude operational expenditure from the definition of a key decision be deferred and considered further at the next meeting.

23 APPOINTMENT OF LAY MEMBERS TO INDEPENDENT ADMISSIONS AND EXCLUSIONS APPEALS PANEL

The Committee considered a report recommending the appointment of two applicants to sit as members of the Independent School Admission Appeals Panel and the Independent Review Panel for Exclusion Reviews.

Following an advertisement for new members, the Council had received a number of applications. All applicants had been interviewed and evaluated and following this process, and the withdrawal of some applicants, two applicants remained to be recommended for appointment.

RESOLVED

That the Committee approves the appointment of the two individuals deemed suitable to sit as members of the Independent School Admission Appeal Panel and the Independent Exclusion Review Panel.

The meeting commenced at 2.00 pm and concluded at 3.43 pm

Councillor A Martin (Chairman)



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Constitution Committee

Date of Meeting: 28 June 2018

Report Title: Closing the Executive Monitoring Board and Revising the Approach to the Technical Enabling Group

Portfolio Holder: Cllr Paul Findlow - Portfolio Holder, Corporate Policy & Legal

Senior Officer: Jan Willis, Interim Executive Director for Corporate Services

1. Report Summary

- 1.1 The roles of the Technical Enabler Group (TEG) and Executive Monitoring Board (EMB) functions require change following a significant review of procurement activity, improvements in the budget setting process and the establishment of the Programme Management Office.
- 1.2 EMB and TEG were necessary, to ensure change was managed as a process, and met essential criteria:
 - Maintain executive oversight of Council spending on change initiatives
 - Maintain control of spending
 - Provide an opportunity to support change processes
 - Satisfy Council leadership that these controls are adequate and operating effectively and efficiently
- 1.3 Recommendations from the procurement review have been followed to set up a Commissioning and Procurement Board and a supporting Commissioning and Procurement Delivery Group, and the arrangements overlap roles for TEG/EMB. The Portfolio Holder for Finance and Communications is a member of the Commissioning and Procurement Board to ensure there is an ongoing member oversight of this activity. The functions of TEG and EMB are Constitutional, and were established to ensure much tighter control of change and project monitoring. With the procurement review creating an opportunity to focus on the Commissioning Cycle it is clear that the structure of TEG/EMB can end in its current form to avoid any risk of duplication or excess bureaucracy.
- 1.4 The proposals in this report focus on managing the implications of a change to the Constitution, alongside a practical efficient role for the Portfolio Holder and relevant officers within any ongoing requirements of a TEG function.

2. Recommendation

- 2.1. Amendments to the Constitution be made to remove references to the Technical Enabler Group and the Executive Monitoring Board, in line with the tracked changes within Annex 1.

3. Reasons for Recommendation

- 3.1. The TEG/EMB process covers four elements of managing the Council's medium term finances and achievements:

- i. **Business planning for the annual budget**
- ii. **Monitoring ongoing projects**
- iii. **Reviewing in-year proposals to change the budget**
- iv. **Review contract spend**

- 3.2. Each element i-iv is addressed below to identify an updated approach to satisfy the criteria of the TEG/EMB process and give reassurances that projects are controlled and decision makers are supported.

- 3.3. **Business Planning for the annual budget.** The business planning process introduces changes to the financial plans of the Council. The Constitution requires approval of the change proposals to include consideration by EMB. However, the current process provides consistent involvement of the Corporate Leadership Team, Portfolio Holders, Cabinet, Scrutiny Committees and Full Council. Matters may also be reviewed by the Commissioning and Procurement Board which is made up of senior officers and the Portfolio Holder for Finance and Communications. As such the additional steps provided by TEG/EMB have little opportunity to add value in its current format. This has created levels of confusion over the gateway process too.

- 3.4. There is a need for enabling services to provide support to business planning proposals and this is covered by circulating business cases to relevant enabling managers with enough time for feedback to be considered during the approval process. Timely input from enabling managers, including guidance from the Programme Management Office on the quality and effectiveness of documentation, is sufficient to ensure projects are established effectively and can therefore proceed.

Amendment i - Remove any requirement for TEG/EMB from the Business Planning Cycle. Treat Budget Council as Gate 1 for all projects (See Annex 1 for detailed impact on the Constitution).

- 3.5. **Monitoring ongoing projects.** The gateway process requires projects to pass through gates with the endorsement of TEG/EMB. There is a financial minimum of £250,000 for projects to follow this process. This approach has

generated elements of confusion as the importance of some projects is not only financially based. This has led to significant focus on a process to set-up projects to the detriment of ongoing monitoring. The training of project managers, and improvements in processes and ongoing reporting, has mitigated the risk of projects proceeding without funding or authority. And this was frequently recognised in the Council's Value for Money assessment. However, there remains a need to maintain best practice and actively support key members in overseeing the achievement of project benefits.

Proposal ii - *A timeline of project activities will be included within Team Plans and also provided to the Portfolio Holder. Team Plans will be monitored through existing officer structures and the reporting process to members. To support an overview of activity, the Portfolio Holder will receive updates on all project activity as part of their regular update meetings with officers (See Annex 1 for detailed impact on the Constitution).*

- 3.6. **Reviewing in-year proposals to change the budget.** In-year budget changes happen outside of the normal business planning process. The decision making process is not as scripted as the annual process and this could introduce an element of risk. However, there are parameters within the Constitution for 'Supplementary Estimates' and 'Virement from existing budgets' that prevent issues arising from in-year changes.

Proposal iii - *Remove TEG/EMB from the in-year change to budget process. Utilise officer level scrutiny around business cases, as if they were annual business planning proposals. And introduce a process whereby the Portfolio Holder for Finance must be notified in advance of any in-year budget changes that require member recognition in accordance with the Constitution (See Annex 1 for detailed impact on the Constitution).*

- 3.7. **Review contract spend (EMB only).** At present EMB has an additional function to opt to review any contracts issued where the value exceeds £250,000. In the case of ASDV's this review should be in advance of the contract award. This provides reassurance that large contracts are not being signed by officers without an element of member scrutiny. EMB are able to challenge elements of the contract process such as procurement routes and budget allocations.
- 3.8. The role of the Commissioning and Procurement Board includes the review of a pipeline of purchasing activity that enforces the Council's Commissioning Framework. A series of stages must be completed to support value for money and compliance requirements, which will be performance managed and reported to the Board by exception. The Board will have access to all relevant data to ensure transparency.
- 3.9. In addition to management of the pipeline of purchasing activity the Board is also responsible for maintaining best practice in ongoing contract management. The Commissioning and Procurement Group, that supports

the Board is made up of senior officers from Finance, Procurement, Legal and commissioning expertise provided by service representatives.

Proposal iv – Replace the role of TEG/EMB, in relation to contract spend, with the role of the Commissioning and Procurement Board (See Annex 1 for detailed impact on the Constitution).

4. Other Options Considered

- 4.1. Retaining TEG/EMB, effectively the ‘do nothing’ option, was considered as an alternative to Constitutional change. But for the reasons outlined in 3.1 to 3.7 above this report recognises that processes to set the budget are now more robust and that the role of procurement has been enhanced sufficiently to mean the TEG/EMB roles are no longer necessary.

5. Background

- 5.1. In a climate of austerity there is no room for project failure as a result of poor process or ill-informed decision making. The TEG / EMB process was established, and written in to the Council’s Constitution, to support improved processes and offer new levels of protection against project failure. Project management and monitoring has also been improved through better training and awareness.
- 5.2. The current process revolves around a gateway model whereby initiatives valued at £250,000+ must pass through a number of ‘gates’ before completion. The ‘gates’ are passed via TEG/EMB meetings (that are pre-arranged at least monthly). TEG is an officer group chaired by a Corporate Manager, EMB is an officer/Member group chaired by the Portfolio Holder for Policy & Legal. The process can endorse initiatives if satisfied, reject them if dissatisfied or recommend changes in order to become satisfied.
- 5.3. The challenge to this process is the potential for too much bureaucracy and a need to ensure the process added value. This paper looks at the options to update the requirements of the TEG/EMB process based on feedback from officers and members.

- 5.4. The relevant elements of the Constitution are extracted at Annex 1.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. The proposals seek to remove any risk of duplication of processes linked to the current role of TEG/EMB, by replacing the four key elements of the roles to other existing arrangements.

- 6.1.2. Constitutional change is required to remove the roles of EMB/TEG.
This will require suitable reassurance that the functions of EMB/TEG are still being suitably delivered.

6.2. Finance Implications

- 6.2.1. There are no financial implications to the proposals, which are purely process related. The importance of TEG/EMB in the financial control environment is being replaced by the proposals within this report.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Equality Implications

- 6.4.1. There are no direct implications on equality.

6.5. Human Resources Implications

- 6.5.1. There are no direct implications for Human Resources.

6.6. Risk Management Implications

- 6.6.1. The process to develop business cases and monitor projects focuses on specific steps. The Council uses principles within the Better Business Cases model and within PRINCE2, which each have a significant element of Risk Management built in to them.
- 6.6.2. Business Cases consider risks as part of the options appraisal step and ongoing projects maintain risk and issue logs that are monitored by the Project Manager and Senior Responsible Owner.
- 6.6.3. The level of re-assurance that risks are being managed is not diminished by the changes to the Constitution proposed within this report.

6.7. Rural Communities Implications

- 6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

- 6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

- 6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. None.

8. Consultation & Engagement

8.1. None.

9. Access to Information

9.1. None.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Alex Thompson

Job Title: Head of Finance & Performance

Email: alex.thompson@cheshireeast.gov.uk

Annex 1 - Extracts from, and amendments to, the Constitution

Page 34 – Chapter 2 – Part 4 <Paragraph 44>

Responsibilities of Corporate Policy and Legal Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Corporate Policy and Legal Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough. ~~This includes chairmanship of the Executive Monitoring Board (although this function can be delegated as required).~~

Page 34 – Chapter 2 – Part 4 <Paragraph 46>

Responsibilities of Finance and Communication Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Finance and Communication Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough. ~~This includes sitting on the Executive Monitoring Board in the capacity of Vice-Chairman (although this function can be delegated as required).~~

Page 179 – Chapter 3 – Part 4: Section2 <Paragraph 2.4>

The Full Council

The responsibilities of the full Council are set out in Chapter 2 of the Constitution. In respect of financial matters, this includes approving the Policy Framework and Budget within which the Cabinet operates. ~~The Council has established an Executive Monitoring Board which provides oversight and assurance for the Council on all project based activity with a strong focus on areas of major change the most significant risk and/or high financial values (including those of any strategic partners the Council is working with).~~

Page 201 – Chapter 3 – Part 4: Section 3 <Paragraph 3.28>

Capital Approvals

Capital approvals referred to in these Finance Procedure Rules relate to the total cost or "starts value" of each provision or scheme rather than the anticipated expenditure in each year. Individual items estimated to cost £250,000 and above will be treated as separate schemes or provisions. The Council has established a Project Gateway process to provide a strong quality assurance model for major Projects and Programmes which underpins these rules.

A Business Case, in a format agreed by the Chief Operating Officer, must be prepared for all capital proposals, including the replacement of individual vehicles or items of equipment, before being submitted for inclusion in the Capital

Programme or before approval is sought from Members in year. The Business Case format will be proportionate to the value and level of risk. Where there is a greater risk further detail in the Business Case may also be required, in a format agreed by the Chief Operating Officer. Officers must comply with the Project Gateway Process as determined by the Chief Operating Officer. ~~which is subject to review by the Executive Monitoring Board.~~

A Business Case, must also be prepared for all revenue proposals with a significant financial impact, risk profile or policy change, as defined by the Chief Operating Officer. The template, in a form agreed by the Chief Operating Officer, must include an assessment of the Service consequences, risk and impact on users, and include any differential impact on particular groups or localities. The Project Gateway process applies to these proposals in the same way as set out in paragraph 29 above.

Page 202 – Chapter 3 – Part 4: Section 3 <Paragraphs 3.35 and 3.37>

Capital Monitoring and Amendments to the Capital Programme

Any ‘in year’ approval sought for capital schemes, must be supported by a completed, detailed Business Case template, in the format prescribed by the Chief Operating Officer. ~~which has been considered by the Technical Enabler Group prior to submission through the appropriate decision making route.~~

Once the Capital Programme has been approved, Project managers must produce a more detailed Business Case and appropriate Project Initiation Document (PID) as required outlining in more detail how the Project or Programme will be delivered which must be approved by the relevant SRO at a Project Board Where project outcomes or costs alter significantly from those set out in the original Business Case a revised and updated Business Case must be completed and submitted to the relevant Project Board. This process is subject to review by the S.151 Officer in consultation with the Portfolio Holder – Finance and Communications ~~Executive Monitoring Board oversight and assurance.~~ In the event that the S.151 Officer ~~Executive Monitoring Board~~ reviews a particular Project and considers that it is not being managed effectively or has become unviable the Portfolio Holder for Finance and Communications is authorised, in consultation with the Leader of the Council, the Portfolio Holder for Corporate Policy and Legal Services and the relevant Portfolio holder for the Project to recommend remedial action or, in exceptional circumstances, the abandonment of the Project or Programme through the appropriate decision making route.

Page 238 – Chapter 3 – Part 4: Annex

Project Gateway process – A series of control measures put in place to ensure that all projects are instigated, approved, managed and delivered effectively. The Project Gateway process is overseen by the S.151 Officer

~~Executive Monitoring Board~~ and described in detail in the *Project Management Handbook*.

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Constitution Committee

Date of Meeting: 28 June 2018

Report Title: Living Document Changes to the Constitution

Senior Officer: Daniel Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. This report invites the Committee to consider a number of issues relating to the constitution which were raised during the review of the constitution or which have since emerged as issues needing to be addressed.

2. Recommendations

- 2.1. That the Committee
 - 2.1.1. consider the matters raised in Appendix 1 and make an appropriate decision or recommendation in respect of each; and
 - 2.1.2. note the contents of the future work programme at Appendix 2.

3. Reasons for Recommendations

- 3.1. To enable the Committee to review a number of issues that have arisen in relation to the constitution.

4. Other Options Considered

- 4.1. There are no alternative options to consider.

5. Background

- 5.1. As part of the process followed in advance of the adoption of the Constitution at the Council meeting on 14th December 2017, it was made clear that consideration would need to be given to a number of proposed "living document" changes, which had either arisen from issues raised by Members during the process leading up to adoption, or which would arise following adoption.
- 5.2. Appendix 1 to this report lists a number of matters for consideration at this meeting.

- 5.3. A list of further issues to be considered at future meetings of the Committee is attached as Appendix 2.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. The legal implications of the recommendations to this report are contained within the main body of the report as appropriate.
- 6.1.2. The Council must have a constitution as a requirement of the law. Any changes to the constitution are subject to approval by full Council or by the Constitution Committee under delegated powers or by the Acting Director of Legal Services under delegated powers and in consultation with the Chairman and Vice-Chairman of the Committee as appropriate. In the latter case, any such changes must be reported to the Committee for information.

6.2. Finance Implications

- 6.2.1. There are no direct financial implications.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Equality Implications

- 6.4.1. There are no direct equality implications.

6.5. Human Resources Implications

- 6.5.1. There are no direct human resources implications.

6.6. Risk Management Implications

- 6.6.1. By keeping the constitution under review and up to date, any risk is minimised.

6.7. Rural Communities Implications

- 6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

- 6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

- 6.9.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. The implications of any changes to the constitution are Borough-wide.

8. Consultation & Engagement

- 8.1. No specific consultation is envisaged as this is a matter for the Constitution Committee and, potentially, full Council.

9. Access to Information

- 9.1. There are no particular documents supporting this report. The constitution is available on the Council's website, as are any previous reports and minutes relating to the matters referred to in this report.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Paul Mountford

Job Title: Executive Democratic Services Officer

Email: paul.mountford@cheshireeast.gov.uk

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MATTERS FOR CONSIDERATION BY THE CONSTITUTION COMMITTEE

1. Definition of a Key Decision

The Committee at its meeting on 22nd March 2018 considered a proposal to amend the definition of a key decision to exclude operational expenditure. The Committee resolved as follows:

The proposal to exclude operational expenditure from the definition of a key decision be deferred and considered further at the next meeting.

Under the current Constitution all expenditure above £1m is a Key Decision. This means that all expenditure above this threshold requires a Cabinet decision (or specific delegation to an officer) to enter into a contract. This includes day to day operational expenditure such as office cleaning materials, library books, stationery and Microsoft licences. This adds time and additional work to the commissioning and procurement process to gain approval to proceed for business as usual expenditure.

Some authorities have included an exemption within the definition of a Key Decision which excludes operational expenditure, irrespective of contract value. This exemption means business as usual activity does not need to go through Cabinet. This report recommends that Cheshire East Council adopts the same approach, allowing the procurement, renewal or extension of contracts that relate to operational expenditure for which there is budget approval to proceed without needing further Cabinet approval. Approval as to whether it is day to day operational expenditure would sit with the newly formed Commissioning and Procurement Board. The authority to enter into the contract would still require sign-off by the relevant Executive Director.

Cheshire West and Chester Council have an exemption within their constitution for a Key Decision as follows:

“A Key Decision is any Cabinet Decision (regardless of who takes it) which is likely to:

(a) result in expenditure (except internal operational expenditure on things like advertising, locum staff, office cleaning services, library books, vehicles, consumables, utilities etc...) or savings of £1million or more; or,

(b) have a significant effect on communities living or working in an area comprising two or more wards.”

This means that any operational expenditure that is already within approved budgets does not require a Cabinet decision.

An example of this is the Microsoft Desktop Licencing Agreement. This is £3.7m for 3 years. Under CEC constitution this requires Cabinet approval, however some

authorities class this as operational expenditure that has already been approved at Council and is within agreed budgets.

Other examples which fall into this are stationary, translation and interpretation and Energy.

It is proposed that Cheshire East have a similar exemption which allows the council to procure and enter contracts for operational expenditure which is already within council budgets. The authorisation as to whether the expenditure is operational or not should sit with the Commissioning and Procurement Board.

2. Legal Authorisation and Enforcement

It was reported at the meeting on 22nd March that the Monitoring Officer proposed to use his delegated powers to make a minor change to the constitution. In considering the matter, the Committee sought further information on what was proposed. The matter was deferred to this meeting. Regrettably, time has not permitted the preparation of a report in time for this meeting and the matter stands deferred to a future meeting.

3. Review of the Provisions relating to Member Access to Part 2 Papers and Attendance During the Part 2 Proceedings of Meetings

During the review of the constitution, the Council's external advisers, Bevan Brittan, proposed a tightening up of the current arrangements regarding member access to Part 2 papers (papers containing confidential or exempt information), and member attendance during the Part 2 proceedings of meetings when confidential or exempt papers were considered.

Members felt that this should be a matter for separate review in due course. The Committee at its meeting on 22nd March 2018 resolved as follows:

"The Committee confirms, as accepted by the Council at its meeting on 14th December 2017, that the provisions relating to member access to Part 2 papers and member attendance during Part 2 proceedings at meetings as set out in the former constitution remain in force and that the arrangements will be reviewed after the new constitution has been in operation for six months."

It now being 6 months since the adoption of the Constitution, the committee is asked to note that a paper will be prepared reviewing the matter and will be brought to a future meeting of the committee.

4. Recording and Reporting of Public Meetings by Members of the Public

Under the Openness of Local Government Bodies Regulations 2014, members of the public are entitled to report the public proceedings of meetings of local authorities. These Regulations were introduced by the Government as a means of promoting robust scrutiny and local accountability.

Under the Regulations, 'reporting on proceedings at a meeting' means:

- (a) filming, photographing or making an audio recording of the proceedings at the meeting,
- (b) using any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later, or
- (c) reporting or providing commentary on proceedings at the meeting, orally or in writing, so that the report or commentary is available to persons not present, as the meeting takes place or later.”

There are certain limitations to this. For instance, no one present at a meeting may provide an oral commentary on the proceedings, which would disrupt the meeting, and no one may wander around the meeting room filming or photographing those taking part in the meeting. The rights of individual members of the public to privacy must also be observed.

There have been a number of public committee meetings recently where those advising the meeting were unsure of the rights and limitations in relation to the reporting of meetings by members of the public. It is suggested therefore that a provision on the reporting of meetings by members of the public be included in the Access to Information Procedure Rules within the constitution, the drafting to be arrived at by the Monitoring Officer in consultation with the Committee Chairman.

5. Publication of Register of Interests / Gifts and Hospitality

Member Registers of Interests and Gifts and Hospitality are required to be available for public inspection. Currently, the Member Register of Interests is available online, but the register of Gifts and Hospitality is not. Good practice in accordance with the transparency agenda would dictate that both registers are available on-line. It is intended to give effect to that and that the Monitoring Officer use delegated powers to make consequential amendments to the constitution to notify and signpost accordingly.

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**Constitution Committee
Future Work Programme**

Issue	Decision-maker	
	Constitution Committee / Council	Monitoring Officer (for report to Committee)
Publication of register of interests / gifts and hospitality	20 Sept 2018	-
To consider whether there should be one set of criteria for considering call-ins, notices of motion and public and member questions. Also, to bring the deadline for responding to members' questions at Cabinet into line with that for Council (10 working days).	20 Sept 2018	-
Area Highways Groups – to consider whether these bodies need to be referred to in the constitution.	20 Sept 2018	-
Potential change to the terms of reference of the Audit and Governance Committee, arising from (yet to be issued) CIPFA guidance.	TBC	-
ASDV governance arrangements. Further information to be added to the Constitution by way of clarification, once the ASDV review has been concluded.	TBC	-
Para 31.4 (page 158) of the Access to Information Procedure Rules relates to private meetings and does not necessarily relate to key decisions. It should therefore be dealt with in a separate paragraph.	-	MO
The section and hyperlink to dispensations (page 287) requires re-wording.	-	MO
Remove reference to the petitions scheme in the constitution, as the scheme was replaced with a new procedure rule.	-	MO
Delegation of the functions of the former Polling Districts Review Sub-Committee to the Electoral Registration Officer. The new constitution places this under the Chief Operating Officer whereas it should have been delegated to the Chief Executive.	-	MO

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Working for a brighter future together

Constitution Committee

Date of Meeting: 28 June 2018

Report Title: Recording and Webcasting of Council Meetings

Portfolio Holder: Cllr Paul Findlow, Corporate Policy and Legal Services

Senior Officer: Dan Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. This report reviews the operation of the recording and audio webcasting of Council decision making meetings over the last twelve months.

2. Recommendations

- 2.1. That the recording and audio webcasting of Council decision-making meetings is continued, with backup recordings also being made.
- 2.2. That Audio Minutes continue to be used as the technical platform to audio webcast decision making meetings, but that officers monitor the market to review alternative products as they become available.

3. Reasons for Recommendations

- 3.1. At a meeting of the Constitution Committee held on 23 March 2017 it was resolved that all formal decision-making meetings of the Council should continue to be recorded and that, in addition, during the 2017/18 Municipal Year audio webcasting should be introduced, so that meetings could be listened to live via the Council's website and then be available from an archive. A review after twelve months operation was requested by the Committee.

4. Other Options Considered

- 4.1. There is no legal requirement to record or webcast decision-making meetings. However, the desire to be open and transparent and to encourage public participation in local democracy has led many councils, including Cheshire East, to record meetings and make them available from an archive.

- 4.2. Meetings of Cheshire East's Cabinet were video webcast for a period of approximately two years; this practice was discontinued due to cost.

5. Background

- 5.1. A system of audio webcasting was introduced in the summer of 2017. The product used, "Audio Minutes", has proved itself to be resilient and easy to operate. It is also relatively inexpensive (£3,900 a year) and integrates into the Modern.gov system used to manage the production, publication and archiving of papers for meetings.
- 5.2. There have been a number of teething problems, largely related to connectivity to the Internet and the quality of the audio feed into the system. Problems with connectivity to the Internet have meant that on a couple of occasions it has not been possible to live stream the meeting. However, the tablet computer used to operate the system records the meeting and the audio can, at a later date, be published to make it available online to those wishing to listen to the meeting. A backup recording is also taken and if the tablet were to fail this recording could still be published.
- 5.3. The quality of the recording is in no small measure influenced by the microphones used. A simple (and inexpensive) portable system has been purchased from Audio Minutes and has been used when a better PA / microphone system has not been available. The quality of the recording has been adequate, but on occasion it has been difficult to follow meetings. Historically there has been no "committee meeting" microphone system at Westfields.
- 5.4. A procurement exercise has recently been completed and a new microphone system for Westfields will be available in the very near future. This will be used for all formal meetings held in the Committee Suite. The system should have a life expectancy of in excess of ten years.
- 5.5. The number of people listening to live webcasts is low; often no more than 20 people will be accessing the audio of a meeting whilst it is taking place. However, recordings of meetings are listened to by significantly more people.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There are no specific legal implications to this recommendation.

6.2. Finance Implications

- 6.2.1. The cost of recording and audio webcasting of meetings will be met from existing budgets.

6.3. Policy Implications

6.3.1. There are no specific policy implications.

6.4. Equality Implications

6.4.1. There are no specific equality implications, but the ability for people to follow meetings from remote locations contributes to wider public participation in democracy.

6.5. Human Resources Implications

6.5.1. There are no specific HR implications. Staff from Democratic Services operate the equipment needed to record and webcast meetings. Microphones are set up by staff in Facilities management. Appropriate training has been provided.

6.6. Risk Management Implications

6.6.1. There are no specific risk management implications.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities, but the ability for people to follow meetings from remote locations contributes to wider public participation in democracy.

6.8. Implications for Children & Young People

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. All Wards are affected.

8. Consultation & Engagement

8.1. No consultation has been necessary.

9. Access to Information

9.1. There is no background information.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Martin Smith

Job Title: Registration and Civic Services Manager

Email: martin.r.smith@cheshireeast.gov.uk



Working for a brighter future together

Constitution Committee

Date of Meeting: 28 June 2018

Report Title: Chairmanship and Vice-Chairmanship of Overview and Scrutiny Committees

Senior Officer: Dan Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. This report enables the Committee to consider an issue raised by Members during the recent review of the Council's Constitution.

2. Recommendations

- 2.1. That the Committee consider the matter and decide whether or not there should be any change to the existing arrangements.

3. Background

- 3.1. In 2017, the Council undertook a major review of its Constitution. A new Constitution was adopted in December 2017, which took effect on 1st January 2018.
- 3.2. Throughout the lengthy process leading to the adoption of the new Constitution, members raised a number of issues, in respect of which it was agreed that the Committee would be given opportunity to further consider them.
- 3.3. One of these issues was the question as to whether or not chairmanship or vice chairmanship of the Council's overview and scrutiny committees should be allocated to the Council's opposition groups.
- 3.4. Whilst some of these offices currently rest with the opposition groups, this is not a requirement of legislation. The allocation of these offices currently rests with Council, and takes place at the Council's Annual General Meeting.

- 3.5. Unless specifically stated in the Constitution, the allocation of chairmanships and vice chairmanships would always rest with elected members, exercised at the Council or Committee meeting in question.
- 3.6. In practice, prior to chairmanships and vice chairmanships being allocated, there is opportunity for discussion amongst the Council's political group leaders. In the past this has resulted in agreement that one or more of these offices be allocated to opposition group(s).
- 3.7. Whilst there will be alternative perspectives on this issue, one view is that the current arrangements should continue to be followed, and that there should be no constitutional compulsion as to how to allocate chairmanships and vice chairmanships. This allows flexibility for discussion between the Council's political groups, but ultimately relies upon the democratic vote being the final determinant.

4. Implications of the Recommendations

4.1. Legal Implications

- 4.1.1. The Council's current arrangements, which result in the chairmanships and vice chairmanships of overview and scrutiny committees being allocated at the Council's Annual General Meeting, comply with the law. Any other arrangement would need to be the subject of further legal advice.

4.2. Finance Implications

- 4.2.1. Whilst chairmanships of committees qualify for Special Responsibility Allowances, there are no net financial implications, whatever decision might be made by the Committee.

4.3. Policy Implications

- 4.3.1. Any change to the Council's existing arrangements would necessitate a change to the Council's Constitution.

4.4. Equality Implications

- 4.4.1. No equality implications arise from the options contained in this report.

4.5. Human Resources Implications

- 4.5.1. No human resources implications arise from the options contained in this report.

4.6. Risk Management Implications

4.6.1. No risk management implications arise from the options contained in this report.

4.7. Rural Communities Implications

4.7.1. There are no direct implications for rural communities.

4.8. Implications for Children & Young People

4.8.1. There are no direct implications for children and young people.

4.9. Public Health Implications

4.9.1. There are no direct implications for public health.

5. Ward Members Affected

5.1. This report relates to all Council members.

6. Access to Information

6.1. No background documents have been used in the preparation of this report.

7. Contact Information

7.1. Any questions relating to this report should be directed to the following officer:

Name:	Brian Reed
Job Title:	Head of Democratic Services and Governance
Email:	brian.reed@cheshireeast.gov.uk

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Constitution Committee

Date of Meeting: 28 June 2018
Report Title: Notice of Motion – Alternative Forms of Governance
Portfolio Holder: Cllr Paul Findlow – Portfolio Holder for Corporate Policy and Legal Services
Senior Officer: Daniel Dickinson – Acting Director of Legal Services

1. Report Summary

- 1.1. On 22 February 2018 a Notice of Motion was submitted to Full Council in relation to alternative governance arrangements. Councillor J Nicholas proposed the Notice of Motion, which was seconded by Councillor B Walmsley.
- 1.2. The Notice of Motion requested that a cross-party Working Group be convened, at the start of the next municipal year (2018/2019), to consider the implementation of alternative forms of governance, with the recommendations being presented to Council.
- 1.3. The Notice of Motion was referred to the Constitution Committee for consideration.
- 1.4. This report provides an overview of the alternative options available to the Council and asks the Committee to consider whether it wishes to take any action in response to the Notice of Motion.

2. Recommendation

- 2.1 That the Constitution Committee considers whether or not to convene a cross-party Working Group as requested considering the relatively recent reviews undertaken and the considerations around the timing and resource implications of a further review as set out in this report.

3. Reasons for Recommendations

- 3.1 The recommendation addresses the request made by Council.

4. Background

- 4.1 The Local Government Act 2000 changed the way local authorities made decisions by introducing a streamlined cabinet system where executive members make decisions and non executive members scrutinise those decisions. The aim of this was to improve accountability, transparency and efficiency. Prior to that, all decisions were taken through Council Committees, which had powers delegated to them from Council. They were able to establish sub committees and were required to be politically proportionate.
- 4.2 The Localism Act 2011 inserted amendments into the Local Government Act 2000 setting out a clear process for local authorities in England to change their governance arrangements.

The Process for Change

- 4.3 In order for a local authority to change its arrangements it must first pass a resolution of full Council confirming the new governance arrangements and when they will be introduced. Public notice is given by making copies of the documents setting out the new arrangements available for public inspection at its principal office and publishing a notice in at least one local newspaper.
- 4.4 There is no requirement for specific consultation under the Localism Act 2011 or to consider any responses that are received in response to the public notice given. However, a resolution to adopt alternative arrangements could require making the implementing of the same subject to a local referendum, but it need not do so.
- 4.5 As soon as practicable after passing the resolution, the local authority must publish in one or more newspapers circulating in the area a notice which advertises the decision to change its governance arrangements and the date upon which the change will take effect .
- 4.6 Moving to a new system can only take place at an Annual Meeting of Council in any particular year. If it was proposed that the Council's governance arrangements should change in the way suggested in the Notice of Motion, the earliest date that change in governance could take effect would be from 22 May 2019. However, a considerable amount of detailed and careful work would have to be undertaken to achieve that, and the time available would make that challenging.

- 4.7 Following a change in governance, no further change is permitted within 5 years, unless as a result of a referendum. It is important, therefore, that any change is very carefully considered and planned.

Types of Governance Arrangements

- 4.8 Under The Local Government Act 2000, as amended by the Localism Act 2011, the following types of decision making structures are available.

- 4.8.1 Leader and Cabinet – this is the system operated by most local authorities, and this Council. The Leader appoints a Cabinet of at least 2 and up to 9 Councillors. These Councils must have Overview and Scrutiny arrangements.
- 4.8.2 Directly Elected Mayor and Cabinet – this system allows a directly elected executive mayor with wide decision making powers. The mayor appoints a cabinet made up of other councillors, who may have decision making powers. These Councils must have Overview and Scrutiny arrangements.
- 4.8.3 Committee system – in this arrangement, most decisions are made in committees, which are made up of a mix of Councillors from all political parties. Council appoints members to the committees on a politically proportionate basis and sets their Terms of reference. These Councils may have overview and scrutiny arrangements but are not required to. If the local authority determined not to have Overview and Scrutiny Committees, it would still need to make arrangements for the scrutiny of health and flood risk management, either by full Council or one of its Committees.
- 4.8.4 Alternative forms of Governance – The Secretary of State has the power to approve governance arrangements which do not fall within the three categories highlighted above. Any such alternative forms of governance would be proposed for approval by the local authority in question who must demonstrate that the proposed arrangements would be an improvement on the current arrangements; that they would ensure efficient, transparent and accountable decision making; and that they would be appropriate for all local authorities, or a particular type of local authority. Officers are not aware that any Authority has made such a request.

Previous Reviews of Governance Arrangements

- 4.9 Following a Notice of Motion to Council on 15 December 2011, the Constitution Committee and Corporate Overview and Scrutiny Committee set up a working group to review the Council's governance arrangements, to consider whether there should be a return to a committee system.
- 4.10 The working group concluded that neither a directly elected mayor nor a Committee system would meet the needs of the Council and focused on revisions to the existing Leader and Cabinet model, with the introduction of Policy Development Groups.
- 4.11 Subsequent to this, the Constitution Committee appointed a cross-party member working group to conduct a review of the arrangements relating to the Council's Scrutiny Committees and Policy Development Groups. The Working Group had appointed Professor Steve Leach and Professor Colin Copus of DeMontfort University to undertake the work required in respect of the review. Professors Leach and Copus were widely acknowledged for their expertise in scrutiny and other local government matters.
- 4.12 Following recommendations from the Constitution Committee, at its meeting held on 14 May 2014, Council abolished the Policy Development Groups and returned to a more robust Overview and Scrutiny System.

Timing for a Possible Further Review of Governance Arrangements

- 4.13 In December 2017, the Communities and Local Government Select Committee published its report on the Effectiveness of Local Authority Overview and Scrutiny. The Government has responded to those recommendations and indicated that revised guidance will be published later this year. The revised guidance may be something the Council wishes to factor in to any wider review of its governance arrangements.
- 4.14 The Council is aware that Staffordshire County Council's governance arrangements have recently been reviewed to include All Party Member Groups. These groups produce policy options and recommendations to address the long term needs of the communities of Staffordshire within the broad headings of Innovation, Improvement, Community and External Relationships. Their recommendations are considered by Cabinet or the relevant Cabinet Member or presented to partner organisations as appropriate. The groups have been in operation for just under a year and a report on lessons learnt will be published later this year. Again, any

Cheshire East Council review may wish to take the opportunity to review the details of the expected report.

4.15 It may also be prudent to give further consideration to identifying other recent or upcoming governance reviews at other local authorities to better inform any review undertaken in Cheshire East.

4.16 Furthermore, there is a timing issue in relation to the 2019 elections. Given that any review and any changes to the governance structure would be a resource intensive and lengthy project, the Committee may consider that there is insufficient time to undertake such a project or implement any outcomes until after the 2019 elections, when the newly formed administration may wish to take a view on whether there should be a review and what the scope of any review should embrace.

5. Implications of the Recommendations

5.1. Legal Implications

5.1.1 The statutory background which applies to a proposal to change a Local Authority's governance arrangements is set out within the body of the report.

5.1.2 A change in governance arrangements would have significant legal implications. The outline principles for the new system would have to be considered and agreed and, along-side that process, a new constitution would need to be developed. An appropriate timeline would need to be established for developing a new constitution culminating in its adoption at the same annual meeting considering the adoption of the new governance arrangements.

5.1.3 The draft constitution would need to set out the format of the new arrangements and, if moving to a committee system, appropriate delegations and the terms of reference of committees drawn up, together with other necessary changes for recommendation to Council. The new constitution would need to be complete in terms of including overview and scrutiny terms of reference (if any), and a new suite of procedure rules. The actions set out above in terms of statutory process would also need to be undertaken.

5.1.4 The full legal implications will be explored as part of the proposed working group's activities if it is decided that a working group is to be established as requested in the notice of motion.

5.2. Finance Implications

5.2.1 That are no identified financial implications from setting up a cross party working group. The financial implications of any recommendations or requirements of the group will be analysed as necessary and included in any further reporting.

5.3. Equality Implications

5.3.1. The Council's governance arrangements must enable all groups to engage in the decision making process. No equality implications are identified at this stage.

5.4. Human Resources Implications

5.4.1. There are no quantified human resource implications at this stage. The proposed working group would require a higher degree of officer support, given the nature and scale of a project to adopt an alternative form of governance. The impact arising from the implementation of any proposals for change would have to be properly assessed by the working group.

5.5. Risk Management Implications

5.5.1. There are no risk management implications at this stage, beyond ensuring that any working group is properly resourced to ensure any proposals arrived at are comprehensive and sound.

5.6. Rural Communities Implications

5.6.1. There are no direct implications for rural communities.

5.7. Implications for Children & Young People

5.7.1. There are no direct implications for children and young people.

5.8. Public Health Implications

5.8.1. There are no direct implications for public health.

6. Ward Members Affected

- 6.1. No ward Members are directly affected more than any other.

7. Access to Information

- 6.1 CfPS – Rethinking Government

<https://www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf>

CfPS – Musical Chairs

<http://www.cfps.org.uk/wp-content/uploads/Musical-Chairs.pdf>

LGiU – changing to a Committee system in a new era

<https://www.lgiu.org.uk/wp-content/uploads/2014/12/Changing-to-a-committee-system-in-a-new-era.pdf>

Localism Act 2011

http://www.legislation.gov.uk/ukpga/2011/20/pdfs/ukpga_20110020_en.pdf

8. Contact Information

- 8.1. Any questions relating to this report should be directed to the following officer:

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