

Constitution Committee

Agenda

Date: Thursday, 20th September, 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 28th June 2018.

6. **Community Governance Review** (Pages 7 - 14)

To consider a report on progress with a number of parish and town council governance matters, which recommends that these matters be included in a Borough-wide Community Governance Review.

7. **Public Rights of Way Public Path Orders: Change to Scheme of Delegation** (Pages 15 - 18)

To consider a proposed amendment to the scheme of delegation in order that the determination of non-contentious Public Path Order applications can be undertaken by the Executive Director – Place in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee.

8. **Shared Services Joint Committee Terms of Reference** (Pages 19 - 26)

To consider a report on revised terms of reference for the Shared Services Joint Committee.

9. **Living Document Changes to the Constitution** (Pages 27 - 36)

To consider a report on progress with 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.

10. **Proposed Changes to Grant Application Process** (Pages 37 - 42)

To consider a report on proposed changes to the grant application process.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 28th June, 2018 at Committee Suite 1, 2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor P Groves (Vice-Chairman)

Councillors D Bailey, J Bratherton, M Deakin, L Durham, S Edgar, H Gaddum,
R Menlove, J Nicholas, J Rhodes, B Walmsley, G Williams and G Baxendale
(for Cllr Beanland)

Officers

Brian Reed, Head of Democratic Services and Governance
Suzanne Antrobus, Deputy Monitoring Officer
Alex Thompson, Head of Finance and Performance
Paul Mountford, Executive Democratic Services Officer

Other Members present

Councillors S Corcoran, J P Findlow, S Hogben, A Moran, M Parsons and
A Stott

Apologies

Councillor M Beanland

The Chairman referred to the death of Honorary Alderman Mrs Margaret Melrose. Councillor Melrose had been a County Councillor from 1967 to 2001 and had served as Chairman on two occasions. All stood in silence as a mark of respect.

1 DECLARATIONS OF INTEREST

There were no declarations of interest.

2 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public wishing to speak.

3 MEMBER SPEAKING

Councillor S Corcoran suggested that the Council should draw up detailed proposals on alternative forms of governance, including a committee structure, in time for consideration by the newly-elected Council in May 2019.

Councillor A Stott asked why the timescale for members of the public to comment on planning applications appeared to have been shortened from

six weeks to three. The Head of Democratic Services and Governance undertook to look into the matter and notify all members of the outcome.

4 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 22nd March 2018 be approved as a correct record.

5 CLOSING THE EXECUTIVE MONITORING BOARD AND REVISING THE APPROACH TO THE TECHNICAL ENABLING GROUP

The Committee considered 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. The report set out at Annex 1 the changes required to the constitution.

In accordance with Chapter 2, Part 5, paragraph 98.4 of the constitution, the Monitoring Officer and the S151 Officer were satisfied that the proposed changes were not major and could be agreed by the Committee.

RESOLVED

That the constitution be amended as set out in Annex 1 to the report.

6 LIVING DOCUMENT CHANGES TO THE CONSTITUTION

The Committee considered a report on a number of issues relating to the constitution which had been raised during the review of the constitution or which had since emerged as issues needing to be addressed. The issues to be considered were set out in Appendix 1 to the report.

With regard to the proposed changes to the terms of reference of the Audit and Governance Committee as referred to in the future work programme set out at Appendix 2, Councillor G Baxendale as Chairman of the Audit and Governance Committee reported that the CIPFA guidance had now been received and was under consideration by the Audit Team.

RESOLVED

That

1. no changes be made at this time to the definition of a key decision to exclude operational expenditure, but the Committee consider the matter again in 12 months' time with a report on the number of contracts over that period that would have fallen into the category of a key decision involving operational expenditure;

2. 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 undertaken by the Monitoring Officer in consultation with the Committee Chairman;
3. the register of Gifts and Hospitality be made available online and the Monitoring Officer use his delegated powers under Chapter 2, Part 6, paragraph 67 of the constitution to make consequential amendments to the constitution;
4. the following matters be considered at the next meeting:
 - (a) proposed minor changes to the legal authorisation and enforcement provisions within the constitution; and
 - (b) a review of the provisions relating to member access to Part 2 papers and attendance during the Part 2 proceedings of meetings; and
5. the contents of the future work programme at Appendix 2 be noted.

7 RECORDING AND WEBCASTING OF COUNCIL MEETINGS

The Committee considered a report reviewing the operation of the audio webcasting and recording of Council decision-making meetings over the last twelve months.

A system of audio webcasting had been introduced in the summer of 2017 and the product used, 'Audio Minutes', had proved to be resilient and easy to operate and relatively inexpensive. In addition, a new microphone system had been purchased for use at Westfields for all formal meetings held in the Committee Suite; the system should have a life expectancy in excess of ten years.

RESOLVED

That

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

8 CHAIRMANSHIP AND VICE-CHAIRMANSHIP OF OVERVIEW AND SCRUTINY COMMITTEES

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

The allocation of these offices currently rested with Council, and took place at the Council's Annual General Meeting. Prior to such allocations, there was an opportunity for discussion among the Council's political group leaders; in the past, this had resulted in agreement that one or more of the offices be allocated to opposition groups.

RESOLVED

That the report be noted but no changes be made to the existing arrangements which do allow for discussions to take place between the groups about the allocation of chairmanships and vice-chairmanships of committees.

9 NOTICE OF MOTION - ALTERNATIVE FORMS OF GOVERNANCE

The Committee considered the following motion which had been proposed by Councillor J Nicholas and seconded by Councillor B Walmsley at the Council meeting on 22nd February 2018 and referred to the Committee for consideration:

"To convene a cross-party Working Group, at the start of the next municipal year, to consider the implementation of alternative forms of governance, with the recommendations being presented to this Council."

The report provided an overview of the alternative forms of governance available to the Council and asked the Committee to consider the Notice of Motion.

RESOLVED

That the report be noted but no changes be made to the Council's governance arrangements at this time given that these have only recently been considered on a cross party basis, and in view of the proximity of the May 2019 local government elections.

The meeting commenced at 2.00 pm and concluded at 3.45 pm

Councillor A Martin (Chairman)



Working for a brighter future together

Constitution Committee

Date of Meeting: 20 September 2018

Report Title: Community Governance Review

Senior Officer: Dan Dickinson – Acting Director of Legal Services

1. Report Summary

- 1.1. To inform the Committee of progress in respect of a limited number of parish and town council governance matters, and to seek the authority of the Committee for these matters to be included in a Borough-wide Community Governance Review (Review) which includes the governance arrangements of all town and parish councils across Cheshire East.

2. Recommendation

- 2.1. That the Constitution Committee be recommended to agree that:
 - 2.1.1. a Borough-wide Review, in respect of the governance arrangements of all of the Borough's town and parish councils, be undertaken, commencing as soon as reasonably practicable after the 2019 all-out elections, and concluding well in advance of the May 2023 elections.
 - 2.1.2. That a sub-committee of the Committee be appointed to drive-forward and coordinate the Review, working with an officer working group, and to make appropriate recommendations to the Constitution Committee for decision.
 - 2.1.3. The sub-committee comprise representatives of all of the Council's political groups, on the basis of the following proportionality: 4:1:1:1 (Conservative: Labour: Independent: Liberal Democrat), drawn from the Constitution Committee, provided that the Liberal Democrat Group representative shall be nominated by its Group Leader.

3. Reasons for Recommendations

- 3.1. A Community Governance Review in respect of town and parish councils in the Borough will provide the opportunity for Cheshire East Council to review and make appropriate changes to town and parish council community governance. This Review will require the Council to consult with local people and other bodies, and to take account of representations received in connection with the Review. Although the Review would cover the whole Borough, it is anticipated that changes to governance arrangements would not be requested or required in the majority of cases in our town and parish councils. However the Review would help to address governance issues raised within some parishes, including concerns about the impact of new housing developments on some parish boundaries; some of which arise from allocations within Cheshire East Local Plan.
- 3.2. It is important to note that the requirement for the Council to conduct a Community Governance Review could be triggered, at any time, by local people presenting the Council with a petition to conduct a Community Governance Review for part or the whole of the Council area. The Council would then be under a legal duty to carry out a Community Governance Review for the part, or whole area as requested, within a twelve-month time frame. However this duty does not arise if the Council is already conducting a review of the whole, or a significant part of the area to which the petition relates. Therefore, as a consequence of the Council undertaking its own Borough-wide Review, the risk of any uncoordinated review being instigated by way of a petition is removed.
- 3.3. It is proposed that the Borough-wide Review of town and parish council governance arrangements will be progressed in detail, as soon as practicable, after the May 2019 elections.
- 3.4. The elections will take place on 2 May 2019, and are already in the planning stages. It would not be possible, or reasonable, to commence the main body of work associated with the Review, or the consultation stages of the Review, which would fundamentally affect the basis upon which those elections will be organised and held, until after the May 2019 elections. This report, therefore, proposes that the Review should be commenced as soon as possible and then progressed in detail in the Summer of 2019. It is anticipated that the Review would be concluded in a timescale of around 12 months, but the timescale for the Review will be dependent upon factors which cannot be fully predicted at this stage.
- 3.5. It is appropriate for existing residual parish matters to be included in the proposed Borough-wide Review, along with those requests already made by a small number of town and parish councils relating to Local Plan

issues. Given that development pursuant to the Local Plan is not certain; this being dependent upon a range of factors, such as the need for planning permission, and the pace at which developers implement such permissions, it is felt to be of key importance that Community Governance Reviews are not conducted in a piecemeal fashion. A coordinated approach is required which takes into account all factors which might result in the need for this Council to agree to change governance arrangements, such as boundary changes, and numbers of town and parish councillors. Taking such an approach will ensure that the consequences of any proposed Review changes, including the impact of such changes on other town and parish councils, are properly taken into account and considered.

- 3.6. Undertaking a Review of all town and parish council arrangements across the Borough will be a major exercise, and will necessitate the involvement of a team of officers, led by Democratic Services, involving the Elections Team and officers from other Council areas, including but not limited to the Spatial Planning Team, GIS, Business Intelligence, Finance (in relation to precepts), and the Council's lawyers. A full assessment of resource needs will be required as soon as possible. Plans are underway to progress this.
- 3.7. It is therefore proposed that a Borough-wide Review, in respect of the Borough's town and parish councils, be progressed following the all-out Borough, Town and Parish elections in May 2019, and that a sub-committee of the Constitution Committee be appointed to take-forward this work; the sub-committee, supported by a multi-disciplinary officer working group, will make recommendations to the Constitution Committee for decision.

4. Background

- 4.1. Cheshire East Borough is entirely parished, comprising 186 town and parish council wards. Those wards are contained within 134 town and parish councils in the Borough. Cheshire East Council is responsible for electoral and governance arrangements in respect of town and parish councils within the borough, including; town and parish boundaries; numbers of town and parish councillors; warding/grouping arrangements etc.
- 4.2. The Council may conduct Community Governance Reviews (CGRs) of towns and parishes within the Borough, which could result in changes to town and parish council boundaries and electoral arrangements. Government guidance states that the principal council should continually keep their area under review, and that it is good practice for a principal council to consider conducting a Review every 10-15 years, except in areas with a low population. The last Review for Cheshire East took place in

2011, but this was a Review of Borough electoral arrangements, conducted by the Boundary Commission, resulting in a number of consequential changes to some town and parish council warding arrangements. A full review of town and parish councils across Cheshire East has not been conducted since before the creation of Cheshire East Council in 2009.

- 4.3. The Council is aware of a small number of residual parish council governance-related queries, which have not yet been progressed.
- 4.4. The Council has also recently been approached by a small number of town councils with requests that their areas be subject of a Community Governance Review. Those requests have arisen as a consequence of Local Plan proposals and recent developments, which the town and parish councils believe should be addressed by a Community Governance Review.

5. Implications of the Recommendations

5.1. Legal Implications

- 5.1.1 The general powers of a local authority to conduct a (CGR) are contained in Section 82 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act).
- 5.1.2 Section 83 of the 2007 Act sets out the duty of local authorities to respond to valid CGR petitions, and contains the requirements in terms of validity of such petitions.
- 5.1.3 Section 79 of the 2007 Act sets out the duties of local authorities in respect of conducting CGR petitions, and Section 100 of the Act requires local authorities to have regard to the Secretary of State's guidance, and to that which has been issued by the Local Government Boundary Commission for England.
- 5.1.4 Section 93 of the 2007 Act sets out requirements regarding consultation, and how CGRs should be conducted. Section 93, and Section 102 contain provisions in respect of the timescale for conclusion of CGRs (12 months from commencement) and the principles which underpin the CGR process.
- 5.1.5 Section 93 goes on to set out requirements relating to the duty to consult electors and others during CGR processes.
- 5.1.6 Importantly, Section 85 of the 2007 Act makes provision for local authorities to decide what action, if any, to take in response to a community governance petition in certain circumstances. Sub-section (6) applies this

discretion to local authorities when the local authority is in the course of undertaking a CGR of the whole of the Council's area and when a petition is received which relates to the whole or part of the Council's area.

5.2 Finance Implications

5.2.1 Whilst there will undoubtedly be resource implications associated with a Borough-wide Review, the level of financial implications are, as yet, unclear.

5.2.2 A major part of the Review process is the consultation of local electors and others, including parish councils, in order to establish whether there are any issues which the consultees would want to be the subject of the Review. It is not possible to predict the level of consultation responses and what proportion of these might produce substantive issues which would then result in the need for further detailed work to take place.

5.2.3 The proposals contained in this report seek authority for the establishment of an officer project team and the sub-committee to drive-forward the work on this Review. The work of this team and sub-committee will produce further information and insight into the resource-implications and potential financial implications of the proposed Review, which will be reported back to the Committee in due course.

5.3 Policy Implications

5.3.1 There are no direct policy implications. The way in which the proposed Review is conducted and the basis upon which it is conducted, will be agreed by the Committee.

5.4 Equality Implications

5.4.1 There are no direct equality implications.

5.5 Human Resources Implications

5.5.1 These are outlined in the Finance Implications of this report.

5.6 Risk Management Implications

5.6.1 Cheshire East Borough Council's own borough ward boundaries and electoral arrangements are the responsibility of the Boundary Commission, and are not the subject of this report. It must be noted however that if the Review of town and parish council arrangements resulted, for example, in their wards not being coterminous with the borough ward boundaries, such matters may be considered by the Local Government Boundary Commission for England (LGBCE), who may choose to make

consequential changes to the borough ward boundaries affected. The Boundary Commission might choose to do this in any event.

5.6.2 The LGBCE has confirmed that currently, Cheshire East Council is not currently proposed to be subject to a borough ward review. The trigger for such a review would be if the electorate of one of our Cheshire East borough wards varied from the average number of electors per councillor by +/-30% of the average elector ratio, or if the electorate of 30% of our wards was +/- 10% from the average and this is not currently the case. Our current electorate statistics show that, as at 1 August 2018, our wards vary from -14.58% to 21.88% from the average ratio of electors per councillor. This average has been calculated by dividing our electorate, as at 1 August 2018, by our 82 member seats.

5.6.3 Any decision not to undertake a Review would leave the Council vulnerable to ad-hoc petitions from local areas. These would have to be dealt with within a very limited timeframe of a maximum of 12 months, without any flexibility on the part of this Council to group related reviews together unless, by coincidence, the petitions were presented to the Council at the same time. This would prevent the Council from taking a reasoned holistic view across the whole Borough.

5.6.4 The Council would be forced to pursue reviews on the same ad-hoc basis with which the petitions had been presented, which could result in lack of coordination and conflicting issues arising in each. Undertaking a Review will remove this risk.

5.7 Rural Communities Implications

5.7.1 It will be important to ensure that the views of parish councils are taken into account in any Review, and the citizens from rural areas have the opportunity to comment in response to the Review, if they wish to do so.

5.7.2 Other implications for rural communities will become evident as and when any Review is progressed.

5.8 Implications for Children & Young People

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

5.9 Public Health Implications

5.9.1 There are no direct implications for public health.

6 Ward Members Affected

- 6.1 All Ward members will be affected to some extent and will be included in the consultation process.

7 Consultation & Engagement

- 7.1 Consultation has not yet been undertaken but will include consultation with ward members, parish clerks, town and parish councillors, electors, local community groups etc. Consultation will be undertaken via the website and direct communications via town and parish clerks.

8 Access to Information/Contact Information

- 8.1 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: 20 September 2018

Report Title: Public Rights of Way Public Path Orders: Change to Scheme of Delegation

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. The report puts forward a proposal for a change to the Scheme of Delegation in order that the determination of non-contentious Public Path Order applications can be undertaken by the Executive Director – Place in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee.
- 1.2. The work of the Public Rights of Way (“PROW”) team contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1. That the Constitution Committee recommend to Council that the scheme of delegation be amended to enable the Executive Director – Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-Order consultation stage.

3. Reasons for Recommendations

- 3.1 Currently all Public Path Order cases are presented to the quarterly Public Rights of Way Committee for determination. The Committee cycle creates a concertina effect on cases awaiting determination and thus can have a negative impact on the speed with which cases can be processed, legal orders made, advertised and confirmed, and costs recovered.
- 3.2 It is therefore proposed to enable cases that are non-contentious at the pre-Order consultation stage to be determined by the Executive Director –

Place in consultation with the Public Rights of Way Committee Chairman and Vice-Chairman.

4. Other Options Considered

- 4.1. The delegations could remain unchanged, which will not generate the efficiencies associated with the suggested amendment. Alternatively, the Council could consider moving to a position where the determination of all orders were delegated to Officers (in consultation with the Chairman and Vice-Chairman) but were subject to a system of call-in, like planning applications, where members could choose which orders they wanted to determine themselves. The view is taken that this latter option would require more consideration before forming the basis of a recommendation.

5. Background

- 5.1 The Council has powers under the Highways Act 1980 to make Public Path Orders to create, extinguish or divert Public Rights of Way.
- 5.2 Prior to a Public Path Order being made by the Council, an informal consultation is conducted with statutory and local user groups in order to highlight any potential issues of a contentious nature. That way, the decision whether to make an order or not can be made on an informed basis.
- 5.3 The proposed changes will better equip the Council to deal with growing pressures in this area of work, and other tasks undertaken by Officers, by providing increased flexibility. It will also provide a greater ability to deal with the imposition of strict time limits for determining applications in both the areas of Public Path Order applications when the Deregulation Act 2015 is implemented. When implemented this Act will, amongst many other provisions, change the role of the Council with regards to Public Path Orders from a power to a duty, thereby providing landowners with a right to apply for such an order. Further, the provisions will enable an applicant to appeal to the Secretary of State should the Council have refused their application or not have determined their application within 4 months.
- 5.4 A brief report would be taken to each Public Rights of Way Committee meeting following the determination of any cases under the proposed delegated powers.
- 5.5 Any cases which had proven to be contentious at pre-order consultation stage would still be referred to the Public Rights of Way Committee for determination, as at present.

- 5.6 The proposed definition of ‘uncontested’ would be ‘any case in which correspondence received from consultees is of a neutral, or positive nature’. In contrast, the proposed definition of contested would be ‘any case in which correspondence received from consultees raises negative comments or objections’.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There is no prohibition in law preventing the delegation of powers proposed. A change to the Scheme of Delegation and Committee terms of reference in the Constitution is required to enable the proposal to be implemented. That change would need to be authorised by full Council.

6.2. Finance Implications

- 6.2.1 There are no direct budgetary implications foreseen other than increased efficiencies in the processing of Public Path Order applications.

6.3. Policy Implications

- 6.3.1. There are no policy implications foreseen.

6.4. Equality Implications

- 6.4.1. There are no equality implications foreseen.

6.5. Human Resources Implications

- 6.5.1. There are no human resource implications foreseen.

6.6. Risk Management Implications

- 6.6.1. There are no risk management implications foreseen.

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. All Wards. No Ward Member engagement has been undertaken other than with those Members of the Public Rights of Way Committee.

8. Consultation & Engagement

- 8.1. The Public Rights of Way Committee considered the proposal on 11th June 2018. The Committee resolved that “the Constitution Committee be recommended to amend the scheme of delegation to allow the Executive Director – Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-Order consultation stage.”
- 8.2 Engagement with Public Rights of Way user groups has been undertaken through consultation with the attendees of the Rights of Way Consultative Group. A representative of North Cheshire Riders responded to say that the proposal “sounds a very sensible way forward”. The Open Spaces Society representative verbally reported that the Society had no issue with the proposal. Goostrey Footpaths Group commented that it had no objections to the proposal. Questions as to the definition of ‘uncontested’ were raised by other user groups (though no formal response was submitted); this has been considered as part of the report and is addressed in paragraph 5.5 above.
- 8.3 Under the proposal, statutory public consultation on each legal order made, would continue as required under the Public Path Orders Regulations 1993, regardless of which determination process was employed.

9. Access to Information

- 9.1. Not applicable.

10. Contact Information

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

Name: Genni Butler

Job Title: Acting Public Rights of Way Manager

Email: genni.butler@cheshireeast.gov.uk



Working for a brighter future together

Constitution Committee

Date of Meeting: 20 September 2018

Report Title: Shared Services Joint Committee Terms of Reference

Senior Officer: Daniel Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. The Constitution, in Chapter 2 - Part 5 – Functions of Committees, includes the Terms of Reference for the Shared Services Joint Committee. The Shared Services Joint Committee, at its meeting on 13 July 2018, approved and adopted revised Terms of Reference for the Joint Committee. An amendment to the Constitution is required to include the revised Terms of Reference for the Shared Services Joint Committee.

2. Recommendations

- 2.1. That Council be recommended to approve the amendment of the Constitution to include the revised Terms of Reference for the Shared Services Joint Committee as set out in Appendix A.

3. Reasons for Recommendations

- 3.1. To ensure that the Council's Constitution is kept up to date.

4. Other Options Considered

- 4.1. Not applicable.

5. Background

- 5.1. The Shared Services Joint Committee, at its meeting on 13 July 2018, approved and adopted the revised Terms of Reference for the Joint Committee, as set out at Appendix A. These had been amended to reflect the change in the role of the Joint Committee.
- 5.2. The Shared Services Joint Committee was formed in 2009 as part of the overall governance arrangements between Cheshire East Council and

Cheshire West and Chester Council for services shared between the two Councils following the Local Government Review.

- 5.3. The two Councils now share eight shared services, whereas at its formation there were approximately sixty five services.
- 5.4. The work of the Joint Committee has altered from overseeing the sharing of services to contributing to development and shaping the change agenda where the two Councils could share services.
- 5.5. The Constitution in Chapter 2 - Part 5 – Functions of Committees, included the Terms of Reference for the Shared Services Joint Committee, as set out at Appendix B. As these had now been amended and come into effect, the Constitution requires amending to ensure that it is kept up to date.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.
- 6.1.2. Amendments to the Terms of Reference of Committees require the approval of Full Council (Constitution Chapter 2 Part 3 – Paragraph 1.11).

6.2. Finance Implications

- 6.2.1. There are no specific Finance implications.

6.3. Policy Implications

- 6.3.1. There are no known Policy implications.

6.4. Equality Implications

- 6.4.1. There are no equality implications.

6.5. Human Resources Implications

- 6.5.1. There are no specific HR implications.

6.6. Risk Management Implications

- 6.6.1. There are no direct risk management implications.

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. Access to Information

8.1. Reports which set out the background are available publically:

[Item 35 Shared Services Joint Committee 16 April 2018](#)

[Item 41 Shared Services Joint Committee 18 May 2018](#)

[Item 10 Shared Services Joint Committee 13 July 2018](#)

9. Contact Information

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

Name: Rachel Graves

Job Title: Democratic Services Officer

Email: rachel.graves@cheshireeast.gov.uk

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REVISED**Shared Service Joint Committee****Terms of Reference**

1. The Joint Committee's role is to oversee the management of these services which are provided on a Cheshire wide basis on behalf of Cheshire West and Chester Borough Council and Cheshire East Borough Council, to ensure effective delivery of such services and to provide strategic direction.
2. The Joint Committee is specifically responsible for:
 - 2.1 Ensuring that service strategies and the resources and budgets required to deliver the service strategies are in place and overseeing the implementation of the service strategies.
 - 2.2 Ensuring that adequate risk management and audit processes are in place for each shared service.
 - 2.3 Overseeing changes and projects and changes to shared services.
 - 2.4 Report on the performance of the five service areas (Civil Contingencies and Emergency Planning, Farms Estate, Archaeology Planning Advisory and Cheshire Rural Touring Arts Network)
 - 2.5 Overseeing and developing ICT, TSC and Archives.
 - 2.6 Agreeing the basis for apportioning cost between the two councils and the amount to be apportioned.
 - 2.7 Resolving issues that have been referred to the joint Committee.
 - 2.8 Reviewing the Shared Services Outturn and Performance Report, which will take a back wards look and a forward look, on an annual basis and by exception as appropriate, and initiating additional or remedial action as appropriate.
 - 2.9 Agreeing business cases for proposed changes and overseeing the progress of the subsequent work.
 - 2.10 Ensuring that there are robust plans for any disaggregation of services and that there is a smooth transition into the separate arrangements.
3. The following matters are reserved to the councils:
 - 3.1 Approving the budget for the specified functions.
 - 3.2 The delivery of service business plans via client and service manager

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Shared Services Joint Committee**Terms of Reference**

- 1 The Joint Committee's role is to oversee the management of those services which are provided on a Cheshire wide basis on behalf of Cheshire West and Chester Borough Council and Cheshire East Borough Council, to ensure effective delivery of such services and to provide strategic direction.
- 2 The Joint Committee is specifically responsible for:
 - 2.1 Developing and agreeing the strategy for each of the services
 - 2.2 Agreeing the responsibilities of each Council to support the delivery of the approved Business Plan Service Delivery Statements and agreed strategy, including any specific responsibilities falling to the Discharging Council
 - 2.3 Ensuring that such responsibilities are clearly documented in a Business Plan (or similar)
 - 2.4 Ensuring that the services are provided within the policy and budget set by the Councils
 - 2.5 Ensuring the provision of adequate funds and other resources
 - 2.6 Approving the Business Plan and Service Delivery Statements for the Specified Functions, including targets for service quality, performance and efficiency
 - 2.7 Ensuring that there are robust plans for any disaggregation of services and that there is smooth transition to the separate arrangements
 - 2.8 Ensuring that the arrangements for the management of the Cheshire Shared Services enable each Council's statutory requirements to be met
 - 2.9 Ensuring that clear policies are in place and that these are complied with
 - 2.10 Agreeing the basis for apportioning cost between the two Councils and the amount to be apportioned
 - 2.11 Reviewing the performance of the services and initiating additional/remedial action where appropriate
 - 2.12 Approving business cases for proposed changes and overseeing the progress of the subsequent work
 - 2.13 Ensuring that effective risk management arrangements are in place, that the services are subject to adequate and independent audit and that any audit recommendations are acted upon
 - 2.14 Maintaining an up to date list of the respective Chief Officers and supporting them in the performance of their duties
 - 2.15 Resolving issues that have been referred to the Joint Committee by Chief Officers
 - 2.16 Providing an Annual Report to each of the two Councils.

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Working for a brighter future together

Constitution Committee

Date of Meeting: 20 September 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 reports progress 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.

2. Recommendations

- 2.1. That the Committee note the current progress with the matters set out in the Appendix.

3. Reasons for Recommendations

- 3.1. To enable the Committee to review progress with 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. The Appendix to this report sets out progress with a number of matters.

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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PROGRESS WITH LIVING DOCUMENT CHANGES TO THE CONSTITUTION**1. Definition of a Key Decision**

The Committee at its meeting on 28th June 2018 decided that no changes should be made at this time to the definition of a key decision to exclude operational expenditure, but that the matter be considered again in 12 months' time with a report on the number of contracts over that period that would have fallen into the category of a key decision involving operational expenditure.

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, having consulted the Chairman and Vice-Chairman and the Portfolio Holder for Corporate Policy and Legal Services. In considering the matter, the Committee sought further information on what was proposed, and asked if the members consulted had made any comments. The matter was deferred to this meeting. Whilst a report has been prepared and approved by the Services to whom the powers relate, there has been insufficient time to finalise the report in line with the publication timetable for this meeting. Regrettably, the matter now stands deferred to the next meeting of this Committee.

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 altering the arrangements in the constitution 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. The proposals were made to align to best practice. This Committee, at its meeting on 22nd March 2018, resolved to review the matter 6 months after the new constitution had been in operation.

In the absence of any indication from members of this Committee that the rules in effect prior to 1 January 2018 should be changed, it is not proposed to bring a paper forward on the issue at this time, but instead that a watching brief be kept.

4. Delegation of the Functions of the Former Polling Districts Review Sub-Committee

Under the review of the constitution, the Polling Districts Review Sub-Committee was abolished. It was agreed that the functions of the Sub-Committee would be delegated to the Electoral Registration Officer or (in his/her absence) his/her Deputy. This was included in the report to Council but the constitution document approved by Council did not include the officer delegation. The Monitoring Officer will rectify this anomaly using his delegated powers.

5. Appointment of Overview and Scrutiny Committee Chairmen and Vice-Chairmen

At the July Council meeting, a query was raised regarding an anomaly in the constitution regarding the appointment of overview and scrutiny committee chairmen and vice-chairmen.

The Constitution, at paragraph 7,pg 42 (Functions of Committees) states, under the heading “Chairmen and Vice-Chairmen of Overview and Scrutiny Committees” that:

“....the Committee shall appoint the Chairman and Vice-Chairman.”

However, the Council Procedure Rules, para 1.47, page 107, state that:

“The Chairmanships and Vice-Chairmanships of the Council’s committees and sub-committees shall be allocated to the political groups each year at the Annual Meeting of Council.”

The wording in page 42 is an erroneous provision, which survived for almost the first 10 years of the Council’s life without comment, but which seems to have found its way back into the Rules during the recent review of the Constitution. The Chairmanships and Vice-Chairmanships of the Council’s overview and scrutiny committees have always been allocated by Full Council at its AGM and have never been determined by the committees themselves. This explanation was given to all members of the Council shortly after the Council meeting. Following consultation with the Chairman and Vice-Chairman of the Committee, the Monitoring Officer will now rectify this anomaly using his delegated powers.

6. Petitions Scheme

Under the new constitution approved by Council, the petitions scheme was abolished and replaced with a new Petitions Procedure Rule. However, the constitution document approved by Council erroneously includes reference to the former petitions scheme. The Monitoring Officer will rectify this anomaly using his delegated powers.

7. Single Set of Criteria for Call-ins, Notices of Motion and Public and Member Questions

A report will be submitted to a future meeting.

8. Audit and Governance Committee Terms of Reference

It was reported during the review of the constitution that the terms of reference of the Audit and Governance Committee would need to be reviewed following the publication of revised guidance from CIPFA. The Audit and Governance Committee is due to consider revised terms of reference at its meeting on 29th September 2018 and, subject to the outcome of that, a report seeking approval to make any necessary amendments to the constitution will come to this Committee at its meeting in November 2018.

9. Staffing Committee Terms of Reference

Following the adoption of the Constitution, the Chairman of the Staffing Committee identified certain anomalies in the Constitution relating to the Staffing Committee terms of reference. Corrections have been agreed with the Chairman of the Staffing Committee and the Staffing Committee itself has been briefed on the same. Details are set out in Appendix 2 for approval to amend the constitution accordingly.

10. ASDV Governance Arrangements

During the review of the constitution, it was agreed that the governance arrangements for the Council's ASDVs would be included in the constitution once these had been agreed. The Committee will note that Cabinet has recently appointed an ASDV Shareholder Committee, part of whose remit is to consider revised governance arrangements for the ASDVs. The Shareholder Committee is a cross party advisory body which will make recommendations to the Portfolio Holder responsible for ASDVs. Once the revised governance arrangements have been agreed, a report will be submitted to this Committee to approve the necessary amendments to the constitution.

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Constitution Committee

Date of Meeting: 20 September 2018

Report Title: Living Document Changes to the Constitution
(Appendix 2 – Staffing Committee Terms of Reference)

Senior Officer: Daniel Dickinson, Acting Director of Legal Services

1. This document is the appendix referred to in paragraph 9 (Staffing Committee Terms of Reference) of the appendix to the “Living Document Changes to the Constitution” report before the 20 September 2018 meeting of the Constitution Committee (Agenda Item No.9)
2. The first change referred to in the said paragraph 9 is as follows:-
 - 2.1 Paragraph 47 of the Staffing Committee Terms of Reference (page 54 of the Constitution) reads: *“To make recommendations to Council in relation to decisions affecting the remuneration of any new post whose remuneration is or is proposed to be or would become £100,000 p.a. or more, **unless the remuneration for the post is already included within the Council's annually approved Pay Policy Statement.**”*
 - 2.2 The reference to the Pay Policy Statement in bold is to be removed because the Pay Policy Statement does not provide the remuneration for each post. Therefore, the proviso set out in bold could not, by definition, arise.
 - 2.3 It should be noted that this change will also be made on page 169 of the Constitution where this anomaly is repeated.
3. The second change referred to in the said paragraph 9 is as follows:-
 - 3.1 Paragraph 44.5 of the Staffing Committee Terms of Reference (page 53 of the Constitution) reads: “The purpose of the Staffing Committee is ... to approve “in year” salary or other benefit increases to the Head of Paid Service provided that this is within the agreed annual Pay Policy”.
 - 3.2 The words “excluding national agreements,” are to be added before the words “to approve...” in paragraph 44.5 to recognise that annual cost of living pay rises are determined by collective agreement, rather than at the discretion of the Staffing Committee.
4. Members are asked to note that these changes rank as matters of clarification, as opposed to substantive changes, and as such will be made by the Monitoring Officer under delegated powers.

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Constitution Committee

Date of Meeting: 20 September 2018

Report Title: Proposed Changes to Grant Application Process

Senior Officer: Daniel Dickinson, Acting Director of Legal Services

1. Report Summary

- 1.1. This report reports sets out a practical difficulty in relation to processes that apply, in the Constitution, when the Council wants to apply for external grant funding. The report proposes changes to those processes to remove that difficulty, without altering the appropriate degree of member oversight that currently applies to those processes.

2. Recommendations

2.1 That the Constitution Committee recommends to Full Council alterations to the Constitution so that:-

- a) officers are, in consultation with the relevant portfolio holder, able to apply for external grant funding opportunities; and
- b) the requirement for relevant member approval (in accordance with the financial thresholds currently set out in the constitution) be applied to a decision to accept grant funding offered, not to apply for it (as is currently the case); and
- c) the S151 Officer is empowered (in consultation with the relevant portfolio holder and the Portfolio Holder – Finance and Communications) to approve supplementary capital or revenue estimates, where those estimates are fully funded through the ring-fenced grant funding awarded, in order to enable the Council to accept awarded grant funding and apply it for the purposes for which it has been awarded.

2.2 That drafting to be proposed to Council in order to achieve the amendments set out under paragraph 2.1 above be prepared by the Director of Legal Services in consultation with the Chairman of the Constitution Committee.

3. Reasons for Recommendations

- 3.1. The current processes that relate require officers to seek Member approval (and any associated supplementary capital or revenue estimates) prior to submitting a bid for grant funding. By the very nature of grant funding opportunities, there is often insufficient time available to proceed through the member approval routes (typically Cabinet/Council) and meet the timescales associated with a grant funding offer. The proposed changes would remove those time constraints whilst ensuring appropriate member oversight continues, in accordance with the controls already contained within the constitution.

4. Other Options Considered

- 4.1. There are no alternative options to consider if the identified issue is to be addressed.

5. Background

- 5.1. Grant Funding opportunities often arise with little or no notice, when an external body finds itself in a position to make funding available to address a current perceived need. Where those opportunities align with Council priorities and initiatives, the Council needs to be positioned to move quickly to take advantage of such opportunities.
- 5.2. Currently, the Constitution (paragraph 6.26 of the Financial Procedure Rules on page 234) requires officers to seek “appropriate” Member approval prior to submitting bids for grant funding. The Constitution is silent on what amounts to “appropriate” Member approval, so a prudent approach is to apply the thresholds set out in the financial procedural rules referred to below.
- 5.3. Receiving grant funding will usually put a Service in a position where it is seeking to spend that funding outwith activities or expenditure identified in existing approved budgets. In that scenario, the Financial Procedure Rules require a supplementary revenue or capital estimate (as the case may be) in order to reflect the income and expenditure proposals in the relevant budget.
- 5.4. In respect of Supplementary Revenue Estimates, Rules 2.39 and 2.40 apply (page 189 of the constitution) requiring, in the case of amounts over £500,000, Cabinet approval, and in the case of amounts over £1,000,000 Council approval on the recommendation of Cabinet. Rule 2.45 (page 191 of the constitution) applies the same threshold in respect of Supplementary Capital Estimates.

- 5.5. The requirement to seek “appropriate” Member approval prior to submitting a bid can constrain the Council’s ability to prepare and submit a bid on time, given the tight timescales that usually apply between notification of a bid opportunity, and the deadline for submitting bids. That constraint is most acute where bids are to be submitted for sums in excess of £500,000 and £1,000,000 (amounts likely to generate the most significant benefits for the Council and its service users) because officers currently have to plug into the Cabinet and Council reporting processes and timescales to get approval to make a bid, by which time the opportunity may well have passed.
- 5.6. Furthermore, there are often conditions attached to bid offers, which often are not crystallised until the point in time when a bid has been successful and a funding offer is made. Thus when seeking approval from Members to make a bid, officers are not always in a fully informed position in terms of being able to brief members on the conditions that apply to the funding opportunity in question.
- 5.7. Altering the constitution so that member approval is only required to accepting a bid more readily enables bid process timescales to be met. The requirement to consult with the portfolio holder before submitting a bid does not impact on timescales and offers adequate Member oversight in terms of selecting which bidding opportunities to take.
- 5.8. The commitment to grant funding and associate conditions does not arise at bid stage, but when a successful bid is accepted. Member approval, in accordance with the current thresholds, at that time is more appropriate in terms of the grant funding conditions being known, and in terms of facilitating compliance with bid process timescales, but maintains current levels of Member control over the actual commitment to accept a bid.
- 5.9. The delegation sought in terms of the administrative budgetary requirements that relate to supplementary estimates is also necessary if the Council is to be able to avail itself of this more fleet of foot approach. The absence of that delegation would render redundant a change to the timing of the member approval requirement in the bidding process set out above.
- 5.10. The parameters of the delegation sought in terms of supplementary estimates, in relation to the requirement that they are fully funded, ring fenced and undertaken in consultation with the portfolio holders, is considered to offer ample safeguards in governance terms.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. The legal implications of the recommendations are contained within the main body of this report.

6.2. Finance Implications

6.2.1. There financial implications in terms of the requirements of the Financial Procedure Rules are set out within the main body of 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 equality implications, although grant funding opportunities typically arise to address inequalities. Being better able to respond to those opportunities can only impact positively on equality obligations.

6.5. Human Resources Implications

6.5.1. There are no direct human resources implications.

6.6. Risk Management Implications

6.6.1. There are considered to be ample controls in the proposed new approach to address any risks that might arise.

6.7. Rural Communities Implications

6.7.1. The position is much the same as with equality implications.

6.8. Implications for Children & Young People

6.8.1. The position is much the same as with equality implications.

6.9. Public Health Implications

6.9.1. The position is much the same as with equality implications

7. Ward Members Affected

7.1. The implications of the proposed changes are Borough-wide.

8. Consultation & Engagement

- 8.1. There are no specific requirements; however Cabinet members have been briefed on the proposal in light of the Cabinet's role under the financial procedure rules set out above.

9. Access to Information

- 9.1. There are no particular documents supporting this report. The constitution is available on the Council's website.

10. Contact Information

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

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Job Title: Acting Director of Legal Services

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