

## CHESHIRE EAST COUNCIL – LEGAL ADVICE NOTE

The current Community Governance Review is currently considering the possibility of recommending an 'Enhanced Service Delivery Committee' (ESDC) for the unparished areas of Macclesfield. Two questions have been raised in respect of this possible recommendation:

### **Can the ESDC run and/or manage assets?**

Legal understand that the ESDC will be a committee under the arrangements of S101 of the Local Government Act 1972. As such it will be a committee of Cheshire East Council and not a separate legal entity. Clearly therefore, no assets can be transferred to the Committee.

If the ESDC want to be involved in managing assets, that is possible, however, further consideration would need to be given as to how that can be put into practical arrangements. Assets and managing assets are in the main executive functions. Executive functions can only be discharged by the executive or an arrangement made by the executive i.e. the ESDC would need to be a committee of the executive. If the ESDC wish to be involved as a cross party committee as opposed to an executive committee, then the only suggestion without further instructions and research then S102 of the Local Government Act 1972 allows an advisory committee to be set up.

### **Can the Committee be the Council's "principal consultee" on matters and decisions relating to the parish of Macclesfield? There is some mention within the papers of wishing to be a statutory consultee for planning matters.**

In respect of planning:-

Under the Development Management Procedure Order 2010, the Council has a duty to publicise proposed developments. It does not have a general duty to consult. In certain situations, it does have to consult specific bodies. These situations and the relevant organisations are set out in statute. The organisations listed are set and there is no ability to add the ESDC or any other organisation to the list.

However, the Council has a duty to publish a Statement of Community Involvement and within that document it gives a commitment to engage both individuals and the wider community in the decision making process. At Appendix 5 there is a list of organisations that the Council has identified may be consulted in respect of Planning Applications if they are likely to be affected by the proposed application. The current committee is not named, but consideration could be given to adding the new ESDC whenever that Statement is updated.

We also have a Publicity and Neighbour Notification Protocol. There is a possibility that this document could also be review to include this committee being notified.

Please note that any suggestion as to the ESDC being specifically consulted on proposed developments would need to be considered in detail with the Planning Department for them to advise as to the feasibility or otherwise of this being able to be achieved within the timescales that they work to.

General consultation: -

The Council has a duty to consult on a number of matters. In some cases, the duty to consult is set out in statute and there will be statutory guidance as to the organisations/types of organisations that must be consulted with.

Section 138 of the Local Government and Public Involvement in Health Act came into effect on 1 April 2009. It imposes a duty on all local authorities to involve local representatives when carrying out 'any of its functions' by providing information, consulting or 'involving in another way'. Authorities must consult a balanced selection of the individuals, groups, businesses or organisations the authority considers likely to be affected by, or have an interest in, the authority's function.

I do not think that there is any ability to make the ESDC the "principal consultee" as the duty on the authority is to consult with a wide range of local representatives. However, the general duties on the local authority to consult will apply. (The Council will likely have a policy on this though I have been unable to identify it at this stage. Again consideration could be given to a request that the ESDC is specifically included if possible)

Iolanda Puzio  
16<sup>th</sup> January 2014