

Cheshire East Council

Constitution Committee

Date of Meeting: 17th September 2015

Report of: Head of Legal Services and Monitoring Officer

Subject: Proposed changes to the Council's Constitution

1. Report Summary

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

2. Recommendations

The Committee recommends to Council that

- 2.1 The Constitution Committee be given the delegated authority to make all changes to the Council's Constitution which are not major, subject to the Head of Legal Services and Monitoring Officer and Chief Operating Officer (s151 Officer) agreeing that the proposed changes are not major and to Council subsequently being informed of such changes, provided that such changes as are considered by the Committee and agreed by the Head of Legal Services and Monitoring Officer and Chief Operating Officer (s151 Officer) to be major shall be referred to Council for approval.
- 2.2 The Head of Legal Services and Monitoring Officer be given delegated authority, in consultation with the Chair and Vice-Chair of the Constitution Committee, to make such changes to the Council's Constitution as he/she deems to be necessary and which are:

- in the Council's interests;
- not major in nature;

including, but not limited to, changes:

- amounting to routine revisions;
- to provide appropriate clarity;
- to correct typographical and other drafting errors;
- to reflect new legislation;
- to correct inconsistencies in drafting;
- to reflect new officer structures and job titles, properly approved through Council processes (including amendments and revisions to the Proper Officer Functions).

- 2.3 In relation to the Planning Committees that:

- (a) From the start of the next Municipal Year the Strategic Planning Board, and the Northern and Southern Planning Committees be reduced in size to 12 with a composition of 8:2:2 (Conservative: Labour: Independent) for each Board/ Committee;
- (b) the political group representation agreed at the Council's Annual Meeting, and the methods, calculations and conventions used in determining this be amended to reflect the reduced memberships;

- (c) that any necessary and consequential adjustments be made to the total number of committee places allocated to each political group in order to meet legislative political proportionality requirements, in consultation with the political group leaders, together with any resultant changes in committee places; and
 - (d) the operational effectiveness be kept under review.
 - (e) That the Constitution be amended as set out in Appendix 1 to reflect that there are to be no substitutes at Planning Committee other than named substitutes
- 2.4 Amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1 and that consequential amendments are made to that Scheme of Delegation of Officers and Terms of Reference of Committees as set out in Appendix 1 such that Certificates of Lawfulness may only be signed off under delegated powers following Consultation with the Head of Legal Services and Monitoring Officer.
- 2.5 The Protocol on Public Speaking at Planning Committees be amended by increasing speaking time for the Local Parish Council from 3 minutes to 5 minutes to ensure that there is a stronger local voice in the process, that lobby groups be included within the time allowed for objectors/supporters to speak and that the current practice of allowing the questioning of public speakers should cease, although the discretion of the Chair to ask questions of fact from anyone will remain.
- 2.6 Amendments are made to the Scheme of Delegation of Officers and Terms of Reference of Committees to delegate decisions with regard to Neighbourhood Planning as set out in Appendix 1.
- 2.7 In relation to Notices of Motion that:
 - (a) Notices of Motion will be moved and seconded at Council meetings, without any comment from the movers and seconders, and referred-on for determination by the relevant decision-making body, provided that the existing rules which allow certain Notices of Motion to be debated and disposed of at Council meetings will continue to have effect.
 - (b) That the Head of Legal Services and Monitoring Officer be instructed to make the changes set out in Appendix 2.
- 2.8 The template agendas set out in Appendix 3 be adopted for use at Annual Council and ordinary Council meetings and incorporated into the Constitution.
- 2.9 In relation to Staffing issues that:
 - (a) the terms of reference of the Staffing Committee and the powers of the Chief Executive and Scheme of Delegation to Officers be recommended to the Council for amendment in the Constitution as set out in Appendix 4;

- (b) the Staff Employment Procedure Rules be amended as set out in Appendix 4; and
 - (c) the powers of the Head of Paid Service in relation to staffing and other matters be recommended to the Council for amendment in the Constitution as set out in Appendix 4.
- 2.10 The Head of Legal Services and Monitoring Officer be authorised, in consultation with the Head of Paid Service, to make such changes to the Constitution as he/she considers are necessary to give effect to the wishes of Council in respect of such staffing matters as were considered at the Council meeting of 23rd July 2015 and to incorporate the changes that were put before the Committee on the 26th March 2015 that have not been superseded by the subsequent changes in the staffing structure.
- 2.11 The proposed changes set out in Appendix 5 (Health and Wellbeing Board Terms of Reference) are accepted.
- 2.12 That paragraph 11 (c) below (Constitution page 191), which permits topical questions, be amended as follows:
- “(c) where time permits, questions which are of a topical nature be accepted **where the Mayor deems it to be appropriate.**”.
- 2.13 That paragraph 11.11 (Constitution page 192), which deals with the frequency with which question can be re-submitted, be amended by replacing 3 months with 6 months as set out below:
- “11.11 No questions will be allowed which repeat, or are substantially the same as, questions submitted to a meeting of Council during the preceding **6** months.
- 2.14 That procedural rule 26.2 (Constitution page 197), which deals with changes to the approved calendar of meetings, be amended as below:
- “26.2 A meeting of a decision-making body scheduled in the Calendar of Meetings may be cancelled or changed by the Chairman following consultation with the whole membership of the body and with the agreement of a simple majority of **those** members of that body **who respond within 2 working days of being notified of the proposed cancellation or change**, provided that such cancellation or change takes place at least five clear working days before the scheduled date of the meeting to enable sufficient public notice to be given.
- 2.15 That the existing list of Category 1 organisations in the Constitution be replaced by Appendix 6.
- 2.16 That the Constitution be amended in accordance with the changes set out in Appendix 9 to effect the removal of the requirement to hold secret ballots from the Council Procedure Rules.

- 2.17 That the suggested definition of an urgent decision is inserted into the Constitution (Part 4 Procedure Rules General Provisions Appendix 4, page 225) as follows:

“A decision will be urgent if any delay likely to be caused by following the usual procedures would seriously prejudice the Council’s or the Public’s interests. If a decision is deemed an urgent decision caused by a failure to plan appropriately or work without due regard to timeliness, the circumstances giving rise to the need for an urgent decision should be reported to the Audit and Governance Committee on a quarterly basis.”

- 2.18 That Paragraph 6 of the Mayoralty Code of Practice (Constitution page 442) be amended as follows:

“The Mayor should not be appointed as Chairman or Vice-Chairman **or member** of any Committee or Sub-Committee of the Council **or Cabinet support member or act or be appointed to act as a Director of any of the Council’s Alternative Service Delivery Vehicles during his term of office.....**”

- 2.19 That the Audit and Governance Committee’s terms of Reference be amended by the inclusion of the following wording as an introductory paragraph in the Constitution at the start of page 109:

Membership (11)

The Audit and Governance Committee, like all of the Council’s Committees, must be politically balanced. However the success of the Audit and Governance Committee depends upon its ability to remain apolitical. It must adopt a non-political approach to its meetings and discussions at all times. Remaining apolitical also places a duty on members not to make inappropriate use of information provided to the Committee for other purposes.

The Committee is composed of 11 Members, comprising 10 members of Council and one independent voting member (a member who is not a Councillor) with the Chair and Vice Chair being appointed at full Council. The co-option of an independent member will help to bring additional knowledge and expertise to the committee and also reinforce its political neutrality and independence. To ensure the Committee remains focussed on its assurance role any designated substitute must be appropriately trained.

- 2.20 That the Constitution be amended to reflect the changes set out below.

(a) That the following wording be inserted as a new paragraph 2.2 at page 51 (Chapter 14 Management of the Constitution):

“2.2 Once the changes to the Constitution have been formally approved by or notified to Council the amended version will be published on the Council’s website within one (1) month.”

(b) That the wording of paragraph 5 (page 52) be amended as follows:

- will **provide an electronic** copy of this Constitution to each Member of the authority upon delivery of that Member's declaration of acceptance of office on the Member first being elected to the Council;
- 2.21 That the Constitution be amended to remove reference to members' pensions from the responsibilities of Council and Constitution Committee as follows:
- (a) Paragraph 12 of page 56 be amended by removing the wording in red as below:
- "12. will approve the Members Allowance Scheme **including any pension provision** for elected Members following advice from the Independent Remuneration Panel;
- (b) Paragraph 7 of page 107 be amended by removing the wording red as below:
- "7. overseeing and monitoring the Members' Allowance budget, **including pensions**, and keeping under review the scheme for the payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise the Council on the adoption of the scheme and on any proposed amendments;"
- 2.22 That paragraph 7 of the responsibilities of Cabinet (Constitution page 62) be amended to reflect that Human Resources Policies are approved by Staffing Committee:
- "7. **developing**, monitoring and reviewing any Council Corporate personnel and human resources policies;"
- 2.23 That paragraph 1 (b) of the Strategic Planning Board terms of reference (Constitution page 88) be amended as follows:
- (b) ~~to vary the number, size and working arrangements of the Planning Committees, to appoint their membership~~ to vary the division of functions and delegations between the Board, the Planning Committees and the Director of Planning & Sustainable Development.
- 2.24 That the paragraph 2 (b) of the Strategic Planning Board terms of reference (Constitution page 89) be amended as follows:
- (b) submitted by a councillor, senior Council officer (**Grade 12** or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these.
- 2.25 That the following consequential amendments be made to the figures quoted within the Finance Procedure Rules as follows:

B27 change £250,000 to £400,000

B28 change £250,000 to £400,000

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

B32 change £250,000 to £400,000

B34 change £250,000 to £400,000

B47 change £250,000 to £400,000

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

- 2.27 That the wording of paragraph 3.2 (Constitution page 30), which relates to Task and Finish Groups, be amended to read as follows:

“Any Committee which sets up a Task and Finish Group will appoint its Chairman (and Vice-Chairman, if appropriate) and agree the membership. This must be cross party.”

- 2.28 That paragraph 4.2 of the (Constitution page 49 Chapter 13 – Finance, Contracts and Legal Matters) be amended by adding the wording in red as follows:

“4.2 Any contract entered into on behalf of the Council shall be made in accordance with the Council's Finance Procedure Rules **and Contract Procedure Rules**. In the absence of any authority given to a specific officer **under the Council's Finance Procedure Rules and Contract Procedure Rules** all such contracts must either be signed by at least the Head of Legal Services or his/her authorised deputy, plus another of his/her authorised deputies or be made under the common seal of the Council.

- 2.29 That the terms of reference of the Macclesfield Local Service Delivery Committee are deleted from the Constitution as following the creation of Macclesfield Town Council, this committee and references to it in the Constitution are now obsolete.

- 2.30 That paragraph 22.1 (Constitution page 196) which relates to the term of office of Members of committees and sub-committees, be amended as per the wording in red below:

“22.1 Committee and Sub-Committee Members will **be appointed by the Council**. The Council may, at any time, dissolve, alter or amend the membership of a Committee or Sub-Committee.”

- 2.31 That paragraph 28.6 of the Constitution (page 198) which related to the minutes of Committees and sub-committees, be amended by replacing 1 hour with 24 hours as shown in red below:

“28.6. Where a Member has a question or comment on an exempt, private or confidential Minute, the question or comment must be given in writing to the Monitoring Officer at least 24 hours before the start of the meeting

- 2.32 That the Constitution is amended in accordance with the changes set out in Appendix 7 (Local Choice Functions).
- 2.33 The Committee recommends to Council that the Constitution is amended in accordance with the changes set out in Appendix 8 (Contract Procedure Rules) subject to the agreement of the Procurement Engagement Form/process by the Constitution Committee prior to its implementation.
- 2.34 Following the deletion of the post of Executive Director Strategic Commissioning, the Head of Legal Services and Monitoring Officer be given the delegated authority to implement the necessary changes to the Constitution to reflect the re-allocation of delegations within the Officer Scheme of Delegation.

3. Background

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

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

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

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

3.4.4 **The Committee is therefore asked to recommend to Council:** that the Head of Legal Services and Monitoring Officer be given delegated authority, in consultation with the Chairman and Vice Chairman of the Constitution Committee, to make such changes to the Council's constitution, as he/she deems to be necessary, and which are:

- in the Council's interests;
- not major in nature;

including, but not limited to, changes:

- amounting to routine revisions;
- to provide appropriate clarity;
- to correct typographical and other drafting errors;
- to reflect new legislation;
- to correct inconsistencies in drafting;
- to reflect new officer structures and job titles, properly approved through Council processes (including amendments and revisions to the Proper Officer Functions).

Constitutional changes: approval by Members

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

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

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

- 3.8 **The Committee is therefore asked to recommend to Council:** that the Constitution Committee be given the delegated authority to make all changes to the Council's Constitution which are not major, subject to the Head of Legal Services and Monitoring Officer and Chief Operating Officer (s151 Officer) agreeing that the proposed changes are not major and to Council subsequently being informed of such changes, provided that such changes as are considered by the Committee and agreed by the Head of Legal Services and Monitoring Officer and Chief Operating Officer (s151 Officer) to be major shall be referred to Full Council for approval.

Size of Planning Committees

- 3.9 The Council has three planning committees: Strategic Planning Board, and the Northern and Southern Planning Committees; all of which comprise 15 members (Constitution page 87, Planning and Development Control Committee Structure and Delegations).
- 3.10 It is the view of officers that the size of the committees should now be reconsidered. The following are considerations:
- 3.10.1 The Royal Town Planning Institute has conducted a study of planning committees nationally, which concludes that smaller planning committees bring benefits in terms of impartiality, and that larger committees are more likely to suffer from poor attendance, and to be more inconsistent in terms of decision-making.
- 3.10.2 An analysis of planning committees in neighbouring authorities and sample unitary authorities shows that the average membership of planning committee is just over 11. This Council's planning committees are around 35% larger than the average.
- 3.10.3 Smaller sized committees are likely to be more efficient and effective than larger sized committees. For example, one recent meeting lasted for 9 hours, and there is a perception that larger sized committees can sometimes lead to unnecessary repetition of points made during the debate.
- 3.11 Following discussions the Constitution Working Group have recommended that there are to be no substitutes at Planning Committee save for named substitutes who have received planning training and are also members of another planning committee.
- 3.12 **The Committee is therefore asked to recommend to Council:** that
- 3.12.1 From the start of the next Municipal Year the Strategic Planning Board, and the Northern and Southern Planning Committees be reduced in size to 12 with a composition of 8:2:2 (Conservative: Labour: Independent) for each Board/ Committee;
- 3.12.2 the political group representation agreed at the Council's Annual Meeting, and the methods, calculations and conventions used in determining this to be amended to reflect the reduced memberships;

- 3.12.3 that any necessary and consequential adjustments be made to the total number of committee places allocated to each political group in order to meet legislative political proportionality requirements, in consultation with the political group leaders, together with any resultant changes in committee places, and
- 3.12.4 the operational effectiveness be kept under review.
- 3.12.5 That the Constitution be amended as set out in Appendix 1 to reflect that there are to be no substitutes at Planning Committee other than named substitutes.

Planning Scheme of Delegation to Committee and Officers

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

Strategic Planning Board:
 - 1. The threshold for commercial development increased from 2ha to 4ha.

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

Northern and Southern Planning Committees:

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

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

The Protocol on Public Speaking to Planning Committees

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

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

- 3.28 Although there are specified time limits, the protocol does give the Chair the discretion to extend public speaking time where it is considered that additional time would be beneficial. Therefore, whilst the applicants, public and Parish Council are limited to 3 minutes, there is an opportunity for discretion. In addition, the committee members are also able to ask questions of the speakers where they want clarification so that issues can be properly explored. The Constitution Working Group consider that the current practice of allowing the questioning of public speakers should cease, providing that the existing arrangements, which allow the chairman of the meeting to ask questions of public speakers of a factual nature should continue.
- 3.29 The proposed changes to the system intend to strike a balance between a Residents First approach to our services that encourages and enables public engagement in the process and the efficiency and effectiveness of Committees.
- 3.30 **The Committee is asked to recommend to Council:** that The Protocol on Public Speaking at Planning Committees be amended by increasing speaking time for the Local Parish Council from 3 minutes to 5 minutes to ensure that there is a stronger local voice in the process, that lobby groups be included within the time allowed for objectors/supporters to speak and that the current practice of allowing the questioning of public speakers should cease, although the discretion of the Chair to ask questions of fact from anyone will remain.

The Neighbourhood Planning Scheme of Delegation to the Cabinet Member

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

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

Motions to Council

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

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

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

Agendas for Council meetings

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

Staffing issues

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

Officer Powers

- 3.54 The Committee is asked to note that the Council meeting, of the 23rd July 2015, considered a report relating to the appointment of a Director of Children's Services. The Committee has also considered changes to the officer delegations at its meeting of the 26th March 2015 relating to officer roles. It is therefore important to ensure that the officer delegated powers, as set out in the Constitution are properly realigned to take account of the Council's decisions.
- 3.55 **The Committee is therefore asked to recommend to Council that:** the Head of Legal Services and Monitoring Officer be authorised, in consultation with the Head of Paid Service, to make such changes to the Constitution as he/she considers are necessary to give effect to the wishes of Council in respect of such staffing matters and to incorporate the changes that were put before the Committee on the 26th March 2015 that have not been superseded by the subsequent changes in the staffing structure.

Health and Wellbeing Board Terms of Reference

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

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

Speaking and Questions at Council meetings.

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

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

Changes to approved calendar of meetings

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

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

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

“26.2 A meeting of a decision-making body scheduled in the Calendar of Meetings may be cancelled or changed by the Chairman following consultation with the whole membership of the body and with the agreement of a simple majority of **those** members of that body **who respond within 2 working days of being notified of the proposed change**, provided that such cancellation or change takes place at least five clear working days before the scheduled date of the meeting to enable sufficient public notice to be given.

Outside organisations

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

The appointment of Members to offices or positions

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

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

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

Urgent Decisions Taken Outside of Meetings

- 3.90 The Council's Procedure Rules contain provisions by which urgent decisions can be taken outside of the usual procedures. Currently the Constitution does not contain a definition of an urgent decision to assist Members and Officers.
- 3.91 It is suggested that the following definition be adopted:
- 3.92 'A decision will be urgent if any delay likely to be caused by following the usual procedures would seriously prejudice the Council's or the public's interests. If a decision is deemed an urgent decision caused by a failure to plan appropriately or work without due regard to timeliness, the circumstances giving rise to the need for an urgent decision should be reported to the Audit and Governance Committee on a quarterly basis'
- 3.93 **The Committee is therefore asked to recommend to Council that:** the suggested definition of an urgent decision is inserted into the Constitution (Part 4 Procedure Rules General Provisions Appendix 4, page 225).

Mayoralty Code of Practice

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

- 3.96 **The Committee is therefore asked to recommend to Council that:** Paragraph 6 of the Mayoralty Code of Practice be amended as follows:

“The Mayor should not be appointed as Chairman or Vice-Chairman **or member** of any Committee or Sub-Committee of the Council **or Cabinet support member or act or be appointed to act as a Director of any of the Council’s Alternative Service Delivery Vehicles during his term of office.....**”

Appointment of Independent Person to Audit Committee

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

Membership (11)

The Audit and Governance Committee, like all of the Council’s Committees, must be politically balanced. However the success of the Audit and Governance Committee depends upon its ability to remain apolitical. It must adopt a non-political approach to its meetings and discussions at all times. Remaining apolitical also places a duty on members not to make inappropriate use of information provided to the Committee for other purposes.

The Committee is composed of 11 Members, comprising 10 members of Council and one independent voting member (a member who is not a Councillor) with the Chair and Vice Chair being appointed at full Council. The co-option of an independent member will help to bring additional knowledge and expertise to the committee and also reinforce its political neutrality and independence. To ensure the Committee remains focussed on its assurance role any designated substitute must be appropriately trained.

Management of the Constitution

- 3.100 It is proposed that the following wording be inserted as a new paragraph 2.2 at page 51 (Chapter 14 Management of the Constitution):
- “2.2 Once the changes to the Constitution have been formally approved by or notified to Council the amended version will be published on the Council’s website within one (1) month.”
- 3.101 It is proposed that the wording of paragraph 5 (page 52) be amended as follows:

- will **provide an electronic** copy of this Constitution to each Member of the authority upon delivery of that Members's declaration of acceptance of office on the Member first being elected to the Council;

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

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

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

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

(c) Paragraph 12 of page 56 be amended by removing the wording in red as below:

“12. will approve the Members Allowance Scheme **including any pension provision** for elected Members following advice from the Independent Remuneration Panel;

(d) Paragraph 7 of page 107 be amended by removing the wording red as below:

“7. overseeing and monitoring the Members' Allowance budget, **including pensions**, and keeping under review the scheme for the payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise the Council on the adoption or the scheme and on any proposed amendments;”

Responsibilities of Cabinet

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

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

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

Strategic Planning Board

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

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

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

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

3.110 **The Committee is therefore asked to recommend to Council that:** the paragraph 2 (b) be amended as follows:

(b) submitted by a councillor, senior Council officer (**Grade 12** or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these.

Executive Monitoring Board

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

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

B27 change £250,000 to £400,000

B28 change £250,000 to £400,000

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

B32 change £250,000 to £400,000

B34 change £250,000 to £400,000

B47 change £250,000 to £400,000

Change of name of Corporate Leadership Board to Management Group Board

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

3.114 **The Committee is therefore asked to recommend to Council:** that the Head of Legal Services and Monitoring officer be given delegated authority to make consequential changes to the Constitution to reflect the change in title from Corporate Leadership Board to Management Group Board.

Task and Finish Groups

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

3.116 **The Committee is therefore asked to recommend to Council:** that the wording of paragraph 3.2 be amended to read as follows:

Any Committee which sets up a Task and Finish Group will appoint its Chairman (and Vice-Chairman, if appropriate) and agree the membership. This must be cross party.

Signing etc. of documents

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

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

3.119 The Committee is therefore asked to recommend to Council: that paragraph 4.2 of page 49 be amended by adding the wording in red as follows:

“4.2 Any contract entered into on behalf of the Council shall be made in accordance with the Council's Finance Procedure Rules **and Contract Procedure Rules**. In the absence of any authority given to a specific officer **under the Council's Finance Procedure Rules and Contract Procedure Rules** all such contracts must either be signed by at least the Head of Legal Services or his/her authorised deputy, plus another of his/her authorised deputies or be made under the common seal of the Council.”

Macclesfield Local Service Delivery Committee

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

- 3.121 **The Committee is therefore asked to recommend to Council:** that the terms of reference of the Macclesfield Local Service Delivery Committee are deleted from the Constitution as following the creation of Macclesfield Town Council, this committee and references to it in the Constitution are now obsolete.

Term of Office of Members of Committees and sub-committees

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

- 3.123 **The Committee is therefore asked to recommend to Council:** that paragraph 22.1 be amended as per the wording in red below:

“22.1 Committee and Sub-Committee Members will **be appointed by the Council**. The Council may, at any time, dissolve, alter or amend the membership of a Committee or Sub-Committee.

Minutes of Committees and sub-committees

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

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

- 3.126 **The Committee is therefore asked to recommend to Council:** that paragraph 28.6 be amended by replacing 1 hour with 24 hours as shown in red below:

“28.6 Where a Member has a question or comment on an exempt, private or confidential Minute, the question or comment must be given in writing to the Monitoring Officer at least **24 hours** before the start of the meeting.”

Local Choice Functions

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

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

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

Contract Procedure Rules

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

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

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

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

[Local Government Transparency Code 2015](#)

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

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

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

Changes to the officer scheme of delegation

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

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

- 3.136 It is recommended that the Head of Legal Services and Monitoring Officer is given the delegated authority to implement the necessary changes to the Constitution to reflect the re-allocation of delegations within the Officer Scheme of Delegation.

4 Wards Affected and Local Ward Members

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

5 Implication of Recommendation

5.1 Policy Implications

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

5.2 Legal Implications

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

5.3 Financial Implications

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

5.4 Equality Implications

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

5.5 Rural Community Implications

5.5.1 This report has no direct implications for rural communities.

5.6 Public Health Implications

This report has no direct implications for public health.

6 Risk Management

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

7 Background Papers

None

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