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## **Council**

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**Date of Meeting:** 19 April 2021

**Report Title:** Constitutional Update to Implement the Committee System

**Senior Officer:** David Brown, Director of Governance and Compliance

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### **1. Report Summary**

- 1.1. This report seeks to make provision for the initial changes to the constitution to facilitate the adoption of the first phase of the revised constitution to enable the committee system to function.
- 1.2. The revised constitutional provisions are set out in appendices 1 to 4.
- 1.3. The revised Constitution is not a 'perfected' document to be crystallised and retained unchanged but a document that will be subject to significant ongoing revision and change over the coming months and years.
- 1.4. The approach to the committee system as set out in the attached draft reflects the design principles confirmed at the 19 November 2020 council meeting and found at in appendix G of the report (the November 2020 report).
- 1.5. The drafting where completed aspires to gender neutral drafting, use of plain language, digital compatibility and improved accessibility for councillors and residents. The task has been constrained by the pandemic which has impacted on virtually all area of council business. The November 2020 Report at paragraphs 1.15 to 1.19 identified a significant number of strategic risks accompanying this change.
- 1.6. The phased approach to implementation ensures the necessary changes are in place for the commencement of the committee system. The committee system will start at the next Annual General Meeting (AGM). The AGM must occur by the end of May 2021.

- 1.7. Since November and allowing for a pandemic, staff changes, Christmas and Easter it was necessary to phase the approach for commencement of the committee system into the 'must haves' (phase 1) and the consequential changes (phase 2). Where possible and appropriate obvious inconsistencies and anomalies which would ordinarily be in phase 2 have been rectified at this stage.

## **2. Recommendations**

- 2.1. That Council is recommended to:

- 2.1.1. Agree the constitutional changes as set out in appendix 1 to 4.

## **3. Background**

- 3.1. At its Annual Council meeting on 22<sup>nd</sup> May 2019, Council stated its commitment to implementing a change in its decision-making governance arrangements to a committee system of governance. On 19<sup>th</sup> November 2020, Council resolved to cease operating the existing Leader and Cabinet model of governance and to implement a committee system of governance from the Annual Council meeting in 2021.
- 3.2. At that meeting, Council agreed the five design principles set out at Appendix G of the November 2020 report. Council also agreed the basic committee structure, terms of reference, roles of leader and deputy, decision review process, urgency provisions, role and powers of committee and sub-committee chairs. The majority of the consequential matters remain to be decided and are, in part, resolved in the draft constitution aligned with the design principles.
- 3.3. Council also resolved to authorise the Director of Governance and Compliance to prepare, in accordance with the principles agreed, the necessary constitutional provisions associated with the new arrangements.
- 3.4. The constitution is broadly structured by reference to the certainty which is found in the old style model constitution, combined with the updated legislative provisions and a modern stylistic approach. For example, the use of masculine words to cover people regardless of gender or sex is generally unnecessary, inaccurate and tends to reinforce historic gender stereotypes. Local Government is obligated to promote fairness and gender-neutral writing is about clarity, inclusion, and equality. This assists the Council in complying with statutory obligations, the design principle of openness, improving accessibility and plain language.

- 3.5. A local authority is a creature of statute. It must, by its very nature be subservient to the statutory regime imposed upon it. This means the Council has no legislative competence to opt out or change how legislation is applied. For example: terms such as openness and transparency may be open to interpretation by Councillors but the Council has a clear legislative framework, both in primary legislation (statute) and regulations on what must be published, when reports and committee meetings are open to the public and what must be disclosed on request. There are additional requirements imposed by legislation impacting upon the Council such as the Freedom of Information Act. All of these requirements must be met and the Council is unable to restrict information. However, the opposite is also true, the Human Rights Act restrictions on interference with private and family life, the Data Protection Act and the General Data Protection Regulations, Local Government Act 1972 Schedule 12 and other legislation sets out limitations and restrictions on information that can be disclosed. These limitations are repeated throughout many parts of the constitution and means there is often only limited discretion available to Councillors on significant parts of the constitution.
- 3.6. The key areas where members have greater freedom to adapt existing conventions to provide the best service to the council and residents relate to process and procedures which apply the statutory framework to the council.
- 3.7. It is essential the council has an operational system in place for to deliver the Corporate Plan as supported by the budget and medium term financial strategy agreed in February 2021. The attached draft constitutional changes set out in the appendices recognises the legislative framework and the need to adapt process and procedures as the Council moves forward with the committee system.
- 3.8. A rigid or prescriptive approach would frustrate the business of the Council and ambiguity or uncertainty would impede progress. The attached report is not a counsel of perfection but a working document which members must continue to work with over the coming months. Council has already provided for the review in November 2021. The associated transitional report highlights some of the additional areas of work that will be required.

## **4. Constitution**

### **PART 1**

- 4.1 The Index remains indicative until the final pagination is undertaken but members should carefully note the contents and structure.

4.2 Chapter 1 This chapter sets out an overview of how the Council operates, what the key parts of the Constitution cover and what rights members of the public have. It explains how decisions are taken within a committee system and how the Mayor is elected. This part is substantially complete.

## **PART 2**

4.3 Chapter 2 sets out the way in which functions have been allocated and which decision-making body/person within the Council has responsibility for making those decisions:

1. Diagrammatic explanation of Councillor decision making bodies. This was approved in appendix H of the November 2020 report. Alternative diagrammatic representation will also be produced for use in the coming months which include colour coding of committee by function such as regulatory, oversight or service and members will be able to consider if they wish to update the diagrammatic representation next November.
2. This part sets out an introduction to who makes decisions in the Council and has been redrafted.
3. Council. This is largely unchanged.
4. Committees. This section has removed Cabinet, Portfolio and references to the executive style of governance and has replaced it with service, regulatory and oversight committees. As part of the transitional provisions where practicable functions at risk of being 'orphaned' have been allocated to service committees.
5. This part sets out the Scheme of Officer Delegation and contains a diagram of the officer structure at the Council. It sets out the areas of responsibility of the Senior Officers and Statutory Officers and the arrangements for the discharge of the Proper Officer functions. This has been amended to reflect the committee system but will require further redrafting and is currently largely reflective of the current scheme of delegation based upon the 3 executive director model. As the Committee system moves forward the alignment of Director and Heads of Service to Committee provision will evolve and it is anticipated substantial review of alignment and delegations will be required in November 2021 and April 2022.

4.4 Significant changes have been made to Chapter 2 which is sufficient to provide for a working Committee system of governance. Members must note this is an evolving area of the constitution and will inevitably require further changes as committee decision making takes over from the previous executive model.

## **PART 3**

4.5 Chapter 3 provides the greatest area for members to engage and create bespoke approaches which best enable the Council to engage with

residents. The procedure rules look significantly different in presentation and now read sequentially with internal appendices reduced to a minimum. The design principle require officer support for each committee and a wider range of members and officers will now be required to access, understand and if appropriate advise on the rules and paragraph number section headings and sequential approach will be invaluable. The majority of the full council procedures although (consideration must be given to the role of questions) are unchanged save where repetition or inconsistency was identified. All the previous cabinet/executive procedure rules etc have been removed and the committee procedure rules updated. There are significant changes to these rules relating to the powers of chairperson, debate, length of speech and guillotine. Committees of 13 members with lengthy agendas will require appropriate authority to be vested in chairpersons to ensure business continues as required by the design principle of quick decision making.

- 4.6 Public engagement is also a design requirement and mentions petitions, public questions and speaking. It is suggested an approach of continuous development is taken to this aspect with the Council adopting elements that work well and redesign parts that work less well. A fundamental basis of engagement by the public is the ability to attend a committee, speak to a topic on the agenda and attempt to persuade the committee to adopt a particular position. This engagement and interaction will allow the committee to be better informed and have a greater understanding of an issue. The ability to ask a question does not always achieve that and can confuse the route for public to engage with services. To allow questions to be answered in a meaningful way they will require early notification otherwise they risk the moment or relevance to the committee lost. The development of the best approach to questions is likely to engage members into the future.

The role, engagement and empowerment of the public, ensuring the public obtain a timely and efficient response to questions, rather than multiple responses from different service areas, aligning service based questions with the customer service strategy will require further policy development through the Corporate Policy Committee.

The public also engage with the council through ward members, who are often asked to intervene or assist members of the public in dealing with the council. A key element of improving public engagement is likely to be through the empowerment and engagement of ward councillors which is again an area for further policy development.

- 4.7 Consideration has also been given to member questions, the role or purpose of questions in a cross group/party committee which is fundamentally different from questions to a controlling executive or cabinet. With a

proportionate committee groups are already engaged in the decision making process so the purpose and management of questions dealing with accountability, challenge, service requests etc and how this relates to the role of and empowerment ward councillor will require further policy development. Members will be required to strike a balance between ward issues and committee issues, to decide if ward councillors are to be the primary conduit or if committees are to engage in very local issues rather than borough wide decisions. This balance is likely to be reached through the evolution of the Cheshire East committee system and variation and additions to these provisions should be expected at each review point following recommendation from the Corporate Policy Committee.

4.8 The access to information rules are largely untouched but require substantial review for legislative compliance and these will be updated for November 2021.

4.9 The Budget and policy framework sets out the rules providing the framework for managing the Council's financial affairs. These remove reference to the framework for executive decisions and replace with the committee approach. The indicative budget process for the first year is set out in the transitional paper.

4.10 In the Finance procedures rules the fundamental elements remain unchanged and there are no significant variations to delegations. They have been substantively rewritten in respect of style and approach.

4.11 The Contract procedure rules are again broadly unchanged save for updating to language to reflect the post EU procurement landscape.

4.12 The removal of the staffing committee and creation of the appointments committee has resulted in a technical rewrite of the employment procedure rules which have consequential updates to reflect changes the local government landscape.

#### **PART 4**

4.13 The whole of this part remains as currently drafted save for consequential changes to use consistent language and cross referencing in codes and protocols. All the codes and protocol are due for revision and this work will continue through the next two updating cycles of the constitution. Some changes will be driven by engagement and with the committee system, for example the member/officer protocol has been updated to reflect changes from officers interaction with portfolio holders to committees other changes to be considered are a consequence of command papers and changes to the draft model codes of conduct.

- 4.14 The member allowance schedule will be drawn directly from the independent remuneration panel report and is simply a link to the web page that has been populated with the relevant data after agreement at council.
- 4.15 Chapter 6 is the glossary. The removal of definitions in the body of the text and the use of a single definition in a glossary is a significant aid to interpretation and helps avoid consistency errors and duplication.
- 4.16 Chapter 7 a schedule of removed items and will be completed at the conclusion of the process.

## **5. Implications**

### **5.1. Legal Implications**

- 5.1.1. It is imperative that a lawful and transparent decision-making process exists which translates the existing forms of decisions into the new style of governance. If Council remains silent on these issues the efflux of time will create issues of urgency and cost which require officers to act. This would be costly and defeating the design principles of openness.

### **5.2. Finance Implications**

- 5.2.1. The clear decision making, and the adoption of a budget setting process is a legal necessity. A failure to agree an approach would result in statutory intervention. A failure to set a lawful budget may result in personal liability for Councillors. This process is designed to facilitate the setting of the budget, assist residents in understanding the process that will be followed and protect councillors.

### **5.3. Equality Implications**

- 5.3.1. No Equality Impact Assessment has been completed but the accessibility and intelligibility the constitution has remained at the forefront of the drafting process.

### **5.4. Human Resources Implications**

- 5.4.1. There are no direct implications for human resources although Council should be aware wider training will be taking place to assist the transition of staff into the new arrangements.

### **5.5. Risk Management Implications**

- 5.5.1. This represents the first phase of legal and financial compliance and risk management. The absence of a functioning constitution would place the

council at risk and severally impede the council ability to make lawful decisions.

#### **5.6. Rural Communities Implications**

5.6.1. There are no direct implications for rural communities.

#### **5.7. Implications for Children & Young People**

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

#### **5.8. Public Health Implications**

5.8.1. There are no direct implications for public health.

### **6. Ward Members Affected**

6.1. Borough wide

### **7. Consultation & Engagement**

7.1. Leader, Deputy leader, have been consulted. The constitution committee working group has meet twice and this has been widely contributed by officers across the council via the project board. All Coucnillors will be offered traiing on the committeee system and an intorduction to the constittuion session.

### **8. Access to Information**

8.1. Additional information is available to members from the council's committee system sharepoint site.

### **9. Appendices**

9.1. Appendix One-Part One of the Constitution

9.2. Appendix Two-Part Two of the Constitution

9.3. Appendix Three-Part Three of the Constitution

9.4. Appendix Four-Part Four of the Constitution

### **10. Contact Information**

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

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