

Meeting of Council

Monday 17 October 2016

Members of Cherwell District Council,

A meeting of Council will be held at Bodicote House, Bodicote, Banbury, OX15 4AA on Monday 17 October 2016 at 6.30 pm, and you are hereby summoned to attend.



Sue Smith
Chief Executive

Friday 7 October 2016

AGENDA

1 Apologies for Absence

2 Declarations of Interest

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting.

3 Communications

To receive communications from the Chairman and/or the Leader of the Council.

4 Petitions and Requests to Address the Meeting

The Chairman to report on any requests to submit petitions or to address the meeting.

5 Urgent Business

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

6 Minutes of Council (Pages 1 - 14)

To confirm as a correct record the Minutes of Council held on 18 July 2016 and the Minutes of the Special Meeting of Council held on 18 July 2016.

7 Minutes

- a) Minutes of Executive, Lead Member Decisions and Executive Decisions not included in the 28 day notice

The Leader of the Council to formally propose that the minutes of the meetings of the Executive and Lead Member Decisions as set out in the Minute Book (circulated separately) be received and to report that since the last meeting of Council on 18 July 2016, one decision has been taken by the Executive which was not included in the 28 day notice on the following item:

- Local Government Reform in Oxfordshire – Update

- b) Minutes of Committees

The Leader of the Council to formally propose that the minutes of committees as set out in the Minute Book (circulated separately) be received.

8 Thames Valley Police - Address by Chief Constable

The Police and Crime Commissioner for Thames Valley, Anthony Stansfeld, the Chief Constable of Thames Valley Police, Francis Hapgood, and the Cherwell Local Area Commander Superintendent, Kath Lowe, will be invited to address Council, following which Members will be able to ask questions.

9 Questions

- a) Written Questions

To receive any written questions and answers which have been submitted with advance notice in accordance with the constitution. A written response to the question will be circulated at the meeting.

b) Questions to the Leader of the Council

The Chairman to invite questions to the Leader of the Council (including any matters arising from the minutes).

Following a response to their question being provided members will be entitled to a follow up or supplementary question.

c) Questions to Committee Chairmen on the minutes

The Chairman to invite questions to Chairmen of Committees on any matter arising from the minutes of their committee (if any).

10 Motions

To debate any motions which have been submitted with advance notice, in accordance with the constitution.

Council Business Reports

11 Result of Adderbury, Bloxham and Bodicote Ward By-Election (Pages 15 - 18)

Report of Chief Executive

Purpose of report

To advise Council of the result of the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016, to note changes to membership of Committees as requested by the Conservative Group and to appoint a representative to the Oxfordshire Health Overview and Scrutiny Committee.

Recommendations

The meeting is recommended:

- 1.1 To note the results of the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016.
- 1.2 To note the constitution of the Council following the by-election.
- 1.3 To note the amendments to Committee membership as requested by the Conservative Group following the by-election (paragraph 3.5)
- 1.4 To appoint a representative to the Oxfordshire Health Overview and Scrutiny Committee.

12 Community Governance Review 2016 and Parliamentary Boundary Review Consultation (Pages 19 - 26)

Report of Chief Executive

Purpose of report

To provide details of a Community Governance Review (CGR) to be undertaken; to request appointment of Members to a Working Group for the CGR and to respond to the Parliamentary Boundary Review consultation.

Recommendations

The meeting is recommended:

- 1.1 To approve the Terms of Reference for the Community Governance Review (appendix 1).
- 1.2 To delegate authority to the Head of Law and Governance, in consultation with Group Leaders, to appoint two Members per Political Group to a Working Group to consider the Community Governance Review and the Parliamentary Boundary Review.
- 1.3 To delegate authority to the Chief Executive to finalise Cherwell District Council's response to the Parliamentary Boundary Review, in consultation with the Working Group.

13 Remuneration for Councillors Appointed as Non-Executive Directors on Graven Hill Companies

** Please note that this report will follow as the Independent Remuneration Panel are meeting on Wednesday 12 October 2016 (after agenda publication) to consider and agree recommendations to Council **

Report of Head of Law and Governance

Purpose of report

To determine the levels of the allowances to be paid to Councillors who are appointed Non-Executive Directors of Graven Hill Companies for the 2016/2017 financial year following the submission of the report of the Council's Independent Remuneration Panel (IRP) and to approve a mechanism to ensure the legality of any remuneration that might be paid, in future, to councillor directors on council owned companies.

14 Constitution - Proposed Amendments (Pages 27 - 32)

Report of Head of Law and Governance

Purpose of report

To consider and adopt proposed amendments to the constitution. A similar report is being considered by South Northamptonshire Council on 19 October 2016.

Recommendations

The meeting is recommended to approve the following:

- 1.1 That the terms of reference of the Joint Commissioning Committee be amended to include the functions set out in section 3.2 of this report.
- 1.2 That the Monitoring Officer be given the delegated authority to suspend a Statutory Officer in addition to the Head of Paid Service.
- 1.3 That the Head of Paid Service and Monitoring Officer be given delegated authority to agree settlement agreements and financial settlements for Statutory Officers in consultation with the Leader of the employing Council.
- 1.4 That all references to the Joint Appraisal Sub-Committee be deleted from the constitution.
- 1.5 That the existing scheme of delegation to Directors and Heads of Service be amended to enable them to appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to anywhere within the salary band for the post provided this is within approved budgets.
- 1.6 That the Head of Law and Governance be requested to amend and update the constitution in light of the above resolutions and be given delegated authority to make any consequential amendments to the constitution.
- 1.7 That the membership and quorum for the Joint Employee Engagement Committee be amended as set out in section 3.8 of this report.

15 Protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest and Ethical Walls Procedure (Pages 33 - 44)

Report of Head of Law and Governance and Assistant Director – Transformational Governance

Purpose of report

To consider and adopt the updated protocol on roles and conflicts of Interest and Ethical Walls procedure.

Recommendations

The meeting is recommended:

- 1.1 To consider and adopt the updated Protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest and Ethical Walls Procedure, subject to a similar decision being taken by South Northamptonshire Council.

16 Indemnities for Members and Officers (Pages 45 - 58)

Report of Head of Law and Governance and Assistant Director- Transformational Governance

Purpose of report

To consider and adopt a Joint Indemnities Policy for Members and officers.

Recommendations

The meeting is recommended:

- 1.1 To adopt pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004 (“the Order”) an indemnity to Members and to officers of the Council in the terms set out in Appendix 1.
- 1.2 To agree that the Chief Finance Officer secures insurance to cover the liability under the indemnity in the event that such cover is available and subject to him being satisfied that such action would be financially prudent.
- 1.3 To agree that the appointment of a Member to a position with an organisation which comes within the indemnity shall be treated as an appointment to a role which is deemed to part of the role of an elected member for the purposes of the CDC Members’ Code of Conduct.
- 1.4 To agree that it be deemed that appointments of Members and officers to organisations (including those where the Council nominates and the organisation formally appoints) be deemed as “advancing the interest of the Council” for the purposes the Terms of Indemnity.

17 Changes to the Arrangements for Appointment of External Auditors (Pages 59 - 66)

Report of Chief Finance Officer

Purpose of report

This report summarises the changes to the arrangements for appointing External Auditors following the closure of the Audit Commission and the end of the transitional arrangements at the conclusion of the 2017/18 audits.

Recommendations

Council should consider their preferred approach from the following options the recommendation of the Accounts Audit and Risk Committee being to approve 1.3 below:

- 1.1 Establishing a stand-alone Auditor Panel to make the appointment on behalf of the Council.
- 1.2 Commencing work on exploring the establishment of local joint procurement arrangements with neighbouring authorities

- 1.3 Supporting the Local Government Association (LGA) in setting up a national Sector Led Body by indicating intention to “opt-in”

18 Notification of Urgent Action In relation to the Contract Award for the demolition of the Bolton Road Car Park (Pages 67 - 76)

Report of Chief Executive

Purpose of report

To notify Full Council of urgent action taken by the Chief Executive as set out below.

Recommendations

The meeting is recommended:

- 1.1 To note the urgent action taken by the Chief Executive in relation to the budget implications as identified within paragraph 7.1 of the attached Executive report.

19 Exclusion of the Press and Public

The Chairman, will if necessary, move the exclusion of the press and public if members have indicated (under the relevant agenda item) they wish to ask a question on any matter arising from an exempt minute.

In making the decision, members should balance the interests of individuals or the Council itself in having access to the information. In considering their decision members should also be mindful of the advice of Council Officers.

Should members decide not to discuss the issue in public, they are recommended to pass the following recommendation:

“That, in accordance with Section 100A(4) of Local Government Act 1972, the press and public be excluded from the meeting for the following item of business, on the grounds that it could involve the likely disclosure of exempt information as defined in paragraphs of Schedule 12A of that Act, as set out in the Minute Book.”

20 Questions on Exempt Minutes

Members of Council will ask questions on exempt minutes, if any.

Councillors are requested to collect any post from their pigeon hole in the Members Room at the end of the meeting.

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to natasha.clark@cherwellandsouthnorthants.gov.uk or 01295 221589 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Natasha Clark, Democratic and Elections
natasha.clark@cherwellandsouthnorthants.gov.uk, 01295 221589

Agenda Item 6

Cherwell District Council

Council

Minutes of a meeting of the Council held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 18 July 2016 at 6.30 pm

Present: Councillor Chris Heath (Chairman)
Councillor Maurice Billington (Vice-Chairman)

Councillor David Anderson
Councillor Ken Attack
Councillor Hannah Banfield
Councillor Andrew Beere
Councillor Claire Bell
Councillor Hugo Brown
Councillor Mark Cherry
Councillor Colin Clarke
Councillor Ian Corkin
Councillor Surinder Dhesi
Councillor John Donaldson
Councillor Sean Gaul
Councillor Carmen Griffiths
Councillor Timothy Hallchurch MBE
Councillor Simon Holland
Councillor David Hughes
Councillor Shaida Hussain
Councillor Tony Ilott
Councillor Mike Kerford-Byrnes
Councillor Jolanta Lis
Councillor Alan MacKenzie-Wintle
Councillor James Macnamara
Councillor Kieron Mallon
Councillor Nicholas Mawer
Councillor Alastair Milne-Home
Councillor Richard Mould
Councillor D M Pickford
Councillor Lynn Pratt
Councillor Nigel Randall
Councillor G A Reynolds
Councillor Barry Richards
Councillor Dan Sames
Councillor Les Sibley
Councillor Nigel Simpson
Councillor Jason Slaymaker
Councillor Nicholas Turner
Councillor Tom Wallis
Councillor Bryn Williams
Councillor Barry Wood
Councillor Sean Woodcock

Apologies for absence: Councillor Mike Bishop
Councillor Nick Cotter
Councillor Nigel Morris
Councillor Neil Prestidge
Councillor Sandra Rhodes
Councillor Douglas Webb

Officers: Sue Smith, Chief Executive
Scott Barnes, Director of Strategy and Commissioning
Karen Curtin, Commercial Director
Ian Davies, Director of Operational Delivery
Paul Sutton, Chief Finance Officer / Section 151 Officer
Kevin Lane, Head of Law and Governance / Monitoring Officer
Natasha Clark, Interim Democratic and Elections Manager

18 **Declarations of Interest**

There were no declarations of interest.

19 **Unveiling of Portrait of Her Majesty**

The Chairman welcomed the Lord Lieutenant of Oxfordshire, Tim Stevenson OBE to the meeting to unveil the portrait of Her Majesty. The new portrait of the Queen was to celebrate the 90th birthday of Her Majesty.

20 **Communications**

The Chairman made the following announcements:

Change to agenda order

The Chairman advised that she would be changing the order of the agenda. The presentation and report, agenda item 11, Oxfordshire Health and Social Care Transformation Programme and Implications for the Horton District General Hospital would be taken after agenda item 9 and before the motions as the presentation would provide useful information for the debate on the motion submitted by Councillor Ilott.

Chairman's Engagements

A copy of the events attended by the Chairman or the Vice-Chairman had been included in the agenda pack.

Safeguarding Training, Tuesday 26 July, 5.45pm, Council Chamber

The Chairman advised Members that Safeguarding Training would be taking place at 5.45pm on Tuesday 26 July.

The Council had duties and responsibilities for safeguarding children and vulnerable adults under a range of legislation. CDC had an approved joint safeguarding policy with South Northamptonshire Council.

This session would cover the safeguarding responsibilities of district councils and advise how safeguarding issues can and do impact on all communities as well as our responsibilities as elected members with regards to safeguarding.

Code of Conduct Training, Thursday 28 July 2016, 6pm, Council Chamber

The Chairman advised Members that Code of Conduct Training would be taking place at 6pm on Thursday 28 July.

This very important session, particularly for newly elected members, would be delivered by Simon Goacher, Head of Local Government at Weightmans LLP.

The session would be approximately an hour and a half to two hours in length, and would consist of two parts. The first part was a presentation setting out the legislative requirements, the requirements of the council's code and the consequences of any failure to comply, as well as covering bias and predetermination. The second part would involve an interactive session considering scenarios and discussion, applying the knowledge from the first half into practice.

Post

The Chairman reminded Members to collect any post from their pigeon holes.

21 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

22 **Urgent Business**

There were no items of urgent business.

23 **Minutes of Council**

The minutes of the meeting held on 17 July 2016 were agreed as a correct record and signed by the Chairman.

24 **Minutes**

a) **Minutes of the Executive, Lead Member Decisions and Executive Decisions made under Special Urgency**

Resolved

That the minutes of the meeting of the Executive and Lead Member decisions as set out in the Minute Book be received and that it be noted that since the last meeting of Council, and that since the last meeting this was reported at (22 February 2016), 4 decisions had been taken by the Executive which were

not included in the 28 day notice. These decisions related to Public Space Protection Order and Closure Order, Remuneration of Directors on Council Controlled Companies and the Council's Role as Shareholder, A Review of the Self-Build Programme and Approval of Additional Funding for Coach House Mews and Lincoln Close and Future Projects: Approval of Pipeline Projects, Outline of Potential Future Projects and Recommendations for a Review of Self Build Delivery.

b) Minutes of Committees

Resolved

That the minutes of Committees as set out in the Minute Book be received.

25

Questions

a) Written Questions

There were no written questions.

b) Questions to the Leader of the Council

Questions were asked and answers received on the following issues:

Council owned and operated car parks and change from ticket machines:

Councillor Dhesi

Bolton Road Car Park: Councillor Dhesi

Street Wardens: Councillor Cherry

Support to Victoria Prentis MP in campaign to reinstate train services to

London: Councillor Macnamara

Banbury Brighter Futures: Cllr Macnamara

Overpayment to Department for Communities and Local Government:

Councillor Woodcock

Appointment of Nicola Blackwood MP as a Minister in the Department of

Health: Councillor Hallchurch MBE

c) Questions to Committee Chairmen on the minutes

There were no questions to Committee Chairman on the minutes of meetings.

26

Oxfordshire Health and Social Care Transformation Programme and Implications for the Horton District General Hospital

The Director of Operational Delivery submitted a report regarding the Oxfordshire Health and Transformation Programme, the specific work arising from this related to the Horton District General Hospital and emerging options for alternative service models.

In introducing the report, the Lead Member for Public Protection, Councillor Tony Ilott, welcomed Dame Fiona Caldicott, Chairman Oxford University Hospitals NHS Foundation Trust, Andrew Stevens, Director of Planning and

Information, Paul Brennan, Director of Clinical Services, Dr James Price and Miss Veronica Miller, a consultant obstetrician, and invited them to give a presentation on the Oxfordshire Health and Transformation Programme.

Following the presentation a number of Members asked questions and answers were duly provided.

The Chairman thanked Dame Fiona Caldicott, Andrew Stevens, Paul Brennan, Dr James Price and Miss Veronica Miller for their presentation and informative answers to Members' questions.

Resolved

- (1) That the presentation from the Oxford University Hospitals Foundation Trust be noted.

27

Motions

a) Hospital Services in the District

It was moved by Councillor Tony Ilott, and seconded by Councillor Sean Woodcock, that the following motion be adopted:

This Council notes emerging proposals for changes to hospital services in the District and resolves to instruct officers to engage with relevant stakeholders and prepare a case that looks to protect consultant led paediatrics, maternity provision at the Horton and the existing services at the Bicester Community Hospital and that an allocation be made from approved reserves of £50k to enable the Council to support and protect Health Services for the district and that expenditure be authorised by Lead Member decision.

In seconding the motion, Councillor Woodcock proposed by way of a friendly amendment that "and A&E" be inserted after "...maternity...", which was agreed by the proposer of the motion.

The motion was debated and subsequently agreed.

Resolved

That the following motion be adopted:

"This Council notes emerging proposals for changes to hospital services in the District and resolves to instruct officers to engage with relevant stakeholders and prepare a case that looks to protect consultant led paediatrics, maternity and A&E provision at the Horton and the existing services at the Bicester Community Hospital and that an allocation be made from approved reserves of £50k to enable the Council to support and protect Health Services for the district and that expenditure be authorised by Lead Member decision."

b) Open Space, Tree, Grass, Shrub and Verge Maintenance and Safety Matters within the District

It was moved by Councillor Beere, and seconded by Councillor Richards, that the following motion be adopted:

“The Council notes associated land title issues which complicate matters, when attending to open space, tree, grass, shrub and verge maintenance and safety matters within the District.

Further the Council resolves to explore all statutory remedies to ensure, in liaison with Oxfordshire County Council, Town Councils and other Parishes within the District, that maintenance of these areas is up to the standard residents expect.”

The motion was debated and subsequently agreed.

Resolved

That the following motion be adopted:

“The Council notes associated land title issues which complicate matters, when attending to open space, tree, grass, shrub and verge maintenance and safety matters within the District.

Further the Council resolves to explore all statutory remedies to ensure, in liaison with Oxfordshire County Council, Town Councils and other Parishes within the District, that maintenance of these areas is up to the standard residents expect.”

28

Statement of Community Involvement 2016

The Head of Strategic Planning and the Economy submitted a report which presented the results of public consultation on the draft Statement of Community Involvement (SCI) 2016 and to seek adoption of the completed SCI as Council policy.

In introducing the report, the Lead Member for Planning, Councillor Colin Clarke, advised referred Members to the tabled version of the SCI which included tracked changes making it clear where amendments had been made to the proposed policy. The Lead Member for Planning advised Council that he was proposing one additional change to the tabled SCI, P41: Section “Processing the Application”, add “stakeholders” after “Dialogue between applicants...”

Resolved

- (1) That the completed Statement of Community Involvement (SCI) 2016 (annex to the Minutes as set out in the Minute Book) be adopted as Council policy, subject to final presentational requirements and the following amendment:

- P41: Section “Processing the Application”, add “stakeholders” after “Dialogue between applicants...”

- (2) That it be noted that upon adoption the SCI 2016 will replace the current adopted SCI 2006.

29 **2015/16 Treasury Management Annual Report**

The Chief Finance Officer submitted a report which presented information on treasury management performance and compliance with treasury management policy during 2015/16 as required by the Treasury Management Code of Practice.

Resolved

- (1) That, in line with the Treasury Management Strategy, the contents of the report be noted.

30 **Overview and Scrutiny Committee Annual Report 2015/16**

The Head of Law and Governance submitted a report which presented the Overview and Scrutiny Annual Report for 2015/16.

Resolved

- (1) That the Overview and Scrutiny Committee Annual Report 2015/16 be noted.

31 **Exclusion of the Press and Public**

Resolved

That under Section 100A of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business on the ground that, if the public and press were present, it would be likely that exempt information falling under the provisions of Schedule 12A, Part 1, Paragraph 3 would be disclosed to them, and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

32 **SW Bicester Sports Village - Contract Award and Funding Requirements**

The Director of Operational Delivery submitted an exempt report to consider additional capital funding to enable the commitment and contract award to phase 2 of the SW Bicester Sports Village Project, the pavilion and car park.

Resolved

- (1) That, following the endorsement and recommendation of the Special Executive meeting of 18 July 2016, a supplementary capital estimate of £891,861 be approved to enable the completion of the SW Bicester Sports Village project.

33 **A Review of the Self-Build Programme and Approval of Additional Funding for Coach House Mews and Lincoln Close**

The Head of Regeneration and Housing submitted an exempt report which sought approval to the necessary funding subject to the recommendation of the Special Executive relating to the finishing works for the 2 schemes at Lincoln Close and Coach House Mews totalling £2,609,000.

Resolved

- (1) That, following the endorsement and recommendation of the Special Executive meeting of 18 July 2016, an amendment to the approved 2016/2017 Capital Programme to allow the additional sum of £2,609,000 to be spent on the essential pre-development works identified within the report (exempt annex to the Minutes as set out in the Minute Book) be approved.

34 **Build! Phase 2**

The Head of Regeneration and Housing submitted an exempt report which sought approval to the necessary funding subject to the recommendation of the Special Executive meeting of essential pre-development activities on the sites identified within the report including the appointment of appropriate architectural design advice and the achieving of planning consents.

Resolved

- (1) That, following the endorsement and recommendation of the Special Executive meeting of 18 July 2017, an amendment to the approved 2016/2017 Capital Programme to allow the additional sum of £200,000 to be spent on the essential pre-development works identified within the exempt report (exempt annex to the Minutes as set out in the Minute Book) be approved.

35 **Questions on Exempt Minutes**

There were no questions on exempt minutes.

The meeting ended at 9.45 pm

Chairman:

Date:

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Cherwell District Council

Council

Minutes of a meeting of the Council held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 18 July 2016 at 9.45pm

Present: Councillor Chris Heath (Chairman)
Councillor Maurice Billington (Vice-Chairman)

Councillor David Anderson
Councillor Ken Atack
Councillor Hannah Banfield
Councillor Andrew Beere
Councillor Claire Bell
Councillor Hugo Brown
Councillor Mark Cherry
Councillor Colin Clarke
Councillor Ian Corkin
Councillor Surinder Dhesi
Councillor John Donaldson
Councillor Sean Gaul
Councillor Timothy Hallchurch MBE
Councillor David Hughes
Councillor Shaida Hussain
Councillor Tony Ilott
Councillor Mike Kerford-Byrnes
Councillor Jolanta Lis
Councillor James Macnamara
Councillor Kieron Mallon
Councillor Nicholas Mawer
Councillor Alastair Milne-Home
Councillor Richard Mould
Councillor D M Pickford
Councillor Lynn Pratt
Councillor Nigel Randall
Councillor G A Reynolds
Councillor Barry Richards
Councillor Dan Sames
Councillor Les Sibley
Councillor Nigel Simpson
Councillor Jason Slaymaker
Councillor Nicholas Turner
Councillor Tom Wallis
Councillor Bryn Williams
Councillor Barry Wood
Councillor Sean Woodcock

Apologies
for
absence: Councillor Mike Bishop
Councillor Nick Cotter
Councillor Carmen Griffiths

Councillor Simon Holland
Councillor Alan MacKenzie-Wintle
Councillor Nigel Morris
Councillor Neil Prestidge
Councillor Sandra Rhodes
Councillor Douglas Webb

Officers: Sue Smith, Chief Executive
Scott Barnes, Director of Strategy and Commissioning
Karen Curtin, Commercial Director
Ian Davies, Director of Operational Delivery
Paul Sutton, Chief Finance Officer / Section 151 Officer
Kevin Lane, Head of Law and Governance / Monitoring Officer
Natasha Clark, Interim Democratic and Elections Manager

36 **Declarations of Interest**

There were no declarations of interest.

37 **Appointment of Honorary Alderman**

The Chief Executive submitted a report to consider the appointment of former Councillor Fred Blackwell as an Honorary Alderman of Cherwell District Council.

In introducing the report, the Leader, Councillor Barry Wood, paid tribute to former Councillor Fred Blackwell for his service in public office as an elected Member of Cherwell District Council and its predecessor authority, Banbury Borough Council. During his long service, former Cllr Blackwell had held many offices, including that of Chair of Council, Executive Member and Chairman of Committees. The Leader highlighted and paid particular thanks to former Councillor Blackwell for his time on the Planning Committee where his experience and local knowledge was of particular help to members.

A number of members also paid tribute to former Councillor Blackwell.

The Chairman read an email she had received from former Councillor Rose Stratford commending the appointment of former Councillor Blackwell as Honorary Alderman.

Resolved

- (1) That former Councillor Fred Blackwell be appointed as an Honorary Alderman of Cherwell District Council in recognition of his eminent 45 years of service in public office as an elected Member of this Council and its predecessor authority, Banbury Borough Council.
- (2) That former Councillor Blackwell be thanked in particular for his time on the Planning Committee, where his experience and local knowledge was of particular help to all Members.

Following the vote, the Chairman invited former Councillor Blackwell to the rostrum and presented him with a scroll in recognition of his appointment as Honorary Alderman.

The meeting ended at 10.15 pm

Chairman:

Date:

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Cherwell District Council

Council

17 October 2016

<p>Result of Adderbury, Bloxham and Bodicote By-Election</p>

Report of Chief Executive

This report is public

Purpose of report

To advise Council of the result of the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016, to note changes to membership of Committees as requested by the Conservative Group and to appoint a representative to the Oxfordshire Health Overview and Scrutiny Committee.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the results of the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016.
- 1.2 To note the constitution of the Council following the by-election.
- 1.3 To note the amendments to Committee membership as requested by the Conservative Group following the by-election (paragraph 3.5)
- 1.4 To appoint a representative to the Oxfordshire Health Overview and Scrutiny Committee.

2.0 Introduction

- 2.1 Following the resignation of former Councillor Nigel Randall, a by-election for the vacant seat in the Adderbury, Bloxham and Bodicote ward of Cherwell District Council was held on 22 September 2016.
- 2.2 Following a district by-election the result is reported to Council for information. No adjustment to the allocation of seats and substitutes is necessary but the Leader of the Conservative Group has made amendments to the Conservative members on

the Accounts, Audit and Risk Committee, Budget Planning Committee, Overview and Scrutiny Committee and Planning Committee membership.

- 2.3 A new Cherwell District Council representative to the Oxfordshire Health Overview and Scrutiny Committee also needs to be appointed.

3.0 Report Details

- 3.1 The overall turnout for the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016 was 24.8%.

- 3.2 The number of votes cast for the candidates was:

Susan Christie (The Labour Candidate) - 286 votes

Naomi Isobel Kanetsuka (The Green Party Candidate) - 278 votes

Andrew John McHugh (The Conservative Party Candidate) - 1015 votes

Ian Richard Thomas (Liberal Democrat) - 189 votes

- 3.3 Andrew McHugh (Conservative Party) was duly elected.

- 3.4 Following the by-election, the constitution of the Council and political groups remains 38 (79%) Conservatives, 8 (17%) Labour and 2 (4%) Independent councillors.

- 3.5 The Leader of the Conservative Group has given notice of the following changes to Committee membership:

Accounts, Audit and Risk Committee

Add: Councillor Nick Mawer

Budget Planning Committee

Add: Councillor Andrew McHugh

Overview and Scrutiny Committee

Remove: Councillor Nick Mawer

Add: Councillor Andrew McHugh

Planning Committee

Add: Councillor Ian Corkin

Substitutes

Remove: Councillor Ian Corkin

Add: Councillor Andrew McHugh

- 3.6 Former Councillor Nigel Randall had been appointed as the Council's representative to the Oxfordshire Health Overview and Scrutiny Committee at the Annual Council meeting in May. Council is asked to appoint a new representative.

4 Conclusion and Reasons for Recommendations

- 4.1 The result of the Adderbury, Bloxham and Bodcote by-election is submitted to Council for information. Council is required to agree appointments to Committees in accordance with nominations made by political groups.

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To amend the appointments to Committees. However Council is obliged to appoint members to Committees in accordance with the wishes of the relevant political group.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising from this report

Comments checked by:

Paul Sutton, Chief Finance Officer, 0300 0030106,
paul.sutton@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.2 It is a legal requirement for Council to agree proportionality and appoint committees.

Comments checked by:

Kevin Lane, Head of Law and Governance, 0300 0030107,
kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Implications

- 7.3 In ensuring the legal requirements are met, risk to the authority is mitigated.

Comments checked by:

Ed Bailey, Corporate Performance Manager, 01295 221605,
Edward.bailey@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

All

Lead Councillor

None

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Natasha Clark, Interim Democratic & Elections Manager
Contact Information	01295 221589 natasha.clark@cherwellandsouthnorthants.gov.uk

Cherwell District Council

Council

17 October 2016

<p>Community Governance Review 2016 and Parliamentary Boundary Review Consultation</p>

Report of Chief Executive

This report is public

Purpose of report

To provide details of a Community Governance Review (CGR) to be undertaken; to request appointment of Members to a Working Group for the CGR and to respond to the Parliamentary Boundary Review consultation.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the Terms of Reference for the Community Governance Review (appendix 1)
- 1.2 To delegate authority to the Head of Law and Governance, in consultation with Group Leaders, to appoint two Members per Political Group to a Working Group to consider the Community Governance Review and the Parliamentary Boundary Review
- 1.3 To delegate authority to the Chief Executive to finalise Cherwell District Council's response to the Parliamentary Boundary Review, in consultation with the Working Group

2.0 Introduction

- 2.1 The last Community Governance Review for Cherwell was completed in 2013. This resulted in various changes across the district, including changes to parish boundaries and increased numbers of Parish Councillors.
- 2.2 In addition to this, the Boundary Commission for England are currently consulting on initial proposals for Parliamentary Constituency Boundary changes, in time for the next scheduled General Election in 2020.

3.0 Report Details

Community Governance Review - Upper Heyford Parish

- 3.1 As part of the last CGR, a request was received from Upper Heyford to split the parish. The Working Group at that time considered the request, and felt that as the rate of development was very slow at the time, a better decision would be to Ward the parish.
- 3.2 Following further discussions with Upper Heyford Parish Council and the Ward Members, the decision was taken to leave Upper Heyford as it was. It was agreed that Officers would monitor the situation regarding future development, with a commitment to carry out a further CGR within a 5 year period if circumstances changed.
- 3.3 Following a change of Chairman of Upper Heyford Parish Council, as well as changes to the Heyford Park Residents' Association, an initial meeting was held in July 2016 between representatives of Upper Heyford Parish Council, the Residents' Association and officers from Democratic and Elections.
- 3.4 During the meeting officers outlined the CGR process, including timescales and an initial indication of what work would be undertaken by Cherwell District Council.
- 3.5 Any changes agreed as part of the new CGR would come into force during the next ordinary year of election, which for Upper Heyford Parish Council would be 2019. This gives all parties plenty of time to consult all residents of the existing Parish on the proposals, and to implement a 'shadow Parish Council' in the event that everyone agrees to the split of the Parish.
- 3.6 A CGR Working Group needs to be established in order to work through the details of the proposed split, agree the consultation document for distribution to the existing Parish, and to make recommendations to full Council for consideration.

Community Governance Review - Stratton Audley Parish Council

- 3.7 During Sumer 2016, Stratton Audley Parish Council contacted the Democratic and Elections team to ask about the process for increasing numbers of Parish Councillors.
- 3.8 As a CGR is required for Upper Heyford, it seems sensible to incorporate the request from Stratton Audley into the same review.
- 3.9 Officers intend to make all Parish Councils aware of the CGR process being undertaken, in case any others wish to increase or decrease the number of Parish Councillors they have.
- 3.10 Apart from Upper Heyford, no other parish boundary issues will be considered during this review; involvement of other parishes will be purely related to numbers.

Parliamentary Boundary Review

- 3.11 The Boundary Commission for England (BCE) is an independent and impartial non-departmental public body, which is required to review Parliamentary constituency boundaries in England.
- 3.12 This review will result in a reduction of constituencies in England from 533 to 501, with electorate sizes between 71,031 and 78,507. Final recommendations will be made to Parliament in September 2018.
- 3.12 On 13 September 2016, the BCE published initial proposals for consultation, with the consultation period lasting until 5 December 2016. Full details of the proposals are available from the [BCE website](#)
- 3.13 As this consultation period finishes before the next scheduled meeting of full Council, officers propose to combine the Community Governance Review and Parliamentary Boundary Review into one working group, with authority delegated to the Chief Executive to finalise the response of Cherwell District Council to the BCE.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Cherwell District Council committed to undertake a further CGR relating to Upper Heyford at the conclusion of the previous review in 2013.
- 4.2 It is important for Cherwell District Council to respond to the BCE consultation on Parliamentary Boundaries, due to the impact on all residents of the District.

5.0 Consultation

Consultee Name:	Consultee Response:
All Parish Councils in relation to CGR	Responses will be circulated to the Working Group when established

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Not to conduct a CGR or submit a response to the BCE on the Parliamentary Boundary Proposals. This is rejected as CDC has previously committed to a CGR for Upper Heyford, and not responding to the BCE consultation could result in the District having Constituency boundaries imposed which do not offer the best representation for the electorate

7.0 Implications

Financial and Resource Implications

7.1 There are no financial implications arising directly from this report.

Comments checked by: Paul Sutton, Chief Finance Officer, 0300 0030106,
paul.sutton@cherwellandsouthnorthants.gov.uk

Legal Implications

7.2 The Council is empowered to undertake a Community Governance Review by the Local Government and Public Involvement in Health Act 2007. In undertaking the review it must take steps to ensure that the outcome of the review reflects the identities and interests of the area being reviewed and the need to ensure effective and convenient community governance. Statutory guidance on the process can be found at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8312/1527635.pdf

Comments checked by: Kevin Lane, Head of Law and Governance – 0300 0030107
kevin.lane@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

Lead Councillor

None

Document Information

Appendix No	Title
Appendix 1	Proposed Terms of Reference for Community Governance Review
Background Papers	
None	
Report Author	Emma Faulkner – Democratic and Elections Officer
Contact Information	Tel: 01327 322043 Email: emma.faulkner@cherwellandsouthnorthants.gov.uk

Cherwell District Council

**Local Government and Public Involvement in Health Act 2007
Community Governance Review**

Terms of Reference

Introduction

Cherwell District Council has resolved to undertake a Community Governance Review (CGR) pursuant to Part 4, Chapter 3 of the Local Government and Public Involvement in Health Act 2007 to consider the following Parish matters:

Parish/Area	Matters to be considered
Stratton Audley	The number of Parish Councillors for the Parish Council, following a request from the Clerk for an increase in numbers
Upper Heyford	Splitting the existing Parish area into two, creating a new parish for the 'Heyford Park' area; To determine a name for the new Parish; Cherwell District Council agreed to complete a further CGR on this issue at the conclusion of the last CGR in 2013
Other areas as identified during consultation	Review of Parish Councillor numbers only – increasing or decreasing as requested

The Council will undertake the review in accordance with the Guidance on community governance reviews issued by the Department of Communities and Local Government and the Local Government Boundary Commission for England (LGBCE) in April 2010 (“the guidance”)

What is a Community Governance Review?

A CGR is a review of the whole or part of the Council area to consider one or more of the following:

- Creating, merging, altering or abolishing parishes
- The naming of parishes and the style of new parishes
- The electoral arrangements for parishes, such as the ordinary year of election, council size, number of councillors to be elected to the council and parish warding
- Grouping parishes under a common parish council or de-grouping parishes

The Council is required to ensure that community governance within the area under review will be:

- Reflective of the identities and interests of the community in that area; and
- Is effective and convenient

In doing so the Review is required to take into account:

The impact of existing community governance arrangements on community cohesion; and
 The size, population and boundaries of any local community or proposed parish or town Council

Why is the Council undertaking the review?

The guidance states that it is good practice for principal councils (in this context that means this council) to undertake CGRs every 10-15 years. The last review was concluded in December 2013, and during that time the Council committed to undertake a further CGR within 5 years specifically for Upper Heyford.

As the Council has received the request from Stratton Audley regarding number of Parish Councillors, the review will be widened to look at such requests from other Parishes if they so wish. A review of parish boundaries, other than those at Upper Heyford, will not be considered as part of this review.

Consultation

The Council is publishing these terms of reference in draft and seeking comments from interested parties by 21 October 2016. The terms of reference will then be updated and finalised at the first meeting of the CGR Working Group (date to be advised), before being published.

Timetable for the Review

The 2007 Act requires that a principal council must complete a CGR within 12 months of the date of publication of terms of reference. The proposed timetable below complies with the legal requirement.

17 October 2016	Report to Council (including Terms of Reference for the review) appointing Community Governance Review Working Group/delegate authority to Head of Law and Governance to appoint Members
21 October 2016	Deadline for parishes to respond and request consideration of numbers
November 2016	Final Terms of Reference Published
October to December 2016	Work on consultation document for all Upper Heyford residents, and consider requests for numbers review
1 December 2016 to 31 January 2017	Consultation period with residents of all affected areas

Appendix 1

Early February 2017	Meeting with working group to discuss consultation outcomes
20 February 2017	Update report to Full Council
16 May 2017	Report to Council with recommendations
June – July 2017	Consultation of recommendations
16 October 2017	Final report to Council, finalise CGR order

How to respond

Please submit any comments on these draft terms of reference via email to democracy@cherwellandsouthnorthants.gov.uk, or by post to:

CGR
Democratic and Elections Team
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

The Council is particularly interested to know if any other Parish Council's wish to consider reviewing their number of Parish Councillors

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Cherwell District Council

Council

17 October 2016

Constitution – Proposed Amendments

Report of Head of Law and Governance

This report is public

Purpose of report

To consider and adopt proposed amendments to the constitution. A similar report is being considered by South Northamptonshire Council on 19 October 2016.

1.0 Recommendations

The meeting is recommended to approve the following:

- 1.1 That the terms of reference of the Joint Commissioning Committee be amended to include the functions set out in section 3.2 of this report.
- 1.2 That the Monitoring Officer be given the delegated authority to suspend a Statutory Officer in addition to the Head of Paid Service.
- 1.3 That the Head of Paid Service and Monitoring Officer be given delegated authority to agree settlement agreements and financial settlements for Statutory Officers in consultation with the Leader of the employing Council.
- 1.4 That all references to the Joint Appraisal Sub-Committee be deleted from the constitution.
- 1.5 That the existing scheme of delegation to Directors and Heads of Service be amended to enable them to appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to anywhere within the salary band for the post provided this is within approved budgets.
- 1.6 That the Head of Law and Governance be requested to amend and update the constitution in light of the above resolutions and be given delegated authority to make any consequential amendments to the constitution.
- 1.7 That the membership and quorum for the Joint Employee Engagement Committee be amended as set out in section 3.8 of this report.

2.0 Introduction

- 2.1 From time to time, through operating the council's decision making framework and due to legislative change various issues are highlighted that require changes to the constitution or where the operation of the decision making framework could be improved through amendments to the constitution. This report details suggested amendments and requests council to agree to amend the constitution.

3.0 Report Details

Amendments to Joint Commissioning Committee Terms of Reference – Statutory Officer Disciplinary Policy

- 3.1 Special procedures have been in place for many years regarding disciplinary action taken against statutory officers (Head of Paid Service, Monitoring Officer, Section 151 Officer and their deputies when acting in the statutory role), which involved the appointment of a designated independent person. As was reported to the Council meeting on 19 May 2015 (minute 16) this has been replaced via the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 by the duty to consult a panel comprising the independent persons who are part of the standards regime. These changes have already been incorporated within the constitution during 2015 with amendments made to the Officer Employment Procedure Rules and the Head of Transformation was given delegated authority to approve amendments to the statutory officer disciplinary policy. During this process and in the light of external legal advice it was highlighted that constitutional amendments were required to the terms of reference of the Joint Commissioning Committee. The reference to appointing the designated independent person where a complaint of misconduct requires to be investigated against the Head of Paid Service, Monitoring Officer or Section 151 Officer for either council should be deleted and the proposed amendments as set out below included:
- 3.2 The role and responsibilities of the Joint Commissioning Committee with regard to Statutory Officer disciplinary action is to:
- Deal with minor instances of unsatisfactory conduct at an early stage.
 - Ensure that the Statutory Officer clearly understands the standards of conduct expected of him/her.
 - Carry out, or make arrangements for, an investigation when any breach of discipline is alleged.
 - Ensure that the Statutory Officer subject to investigation is kept up-to-date with progress.
 - Decide, in the most serious cases whether or not to suspend or (where the Statutory Officer has already been suspended by the Head of Paid Service or Monitoring Officer under their delegated powers) to continue the suspension of the Statutory Officer, in accordance with the Statutory Officer disciplinary policy.

- Report to Full Council (of the employing authority) in respect of a recommendation to dismiss, having convened a Panel comprising Independent Persons in accordance with the Officer Employment Procedure Rules.

3.3 Additionally, it is recommended as a matter of good practice to ensure resilience and the avoidance of a potential conflict of interest that the Monitoring Officer should be given the delegated authority to suspend a Statutory Officer in addition to the Head of Paid Service and also that the Head of Paid Service and Monitoring Officer be given delegated authority to agree settlement agreements and financial settlements for Statutory Officers in consultation with the employing Council's Leader.

Joint Appraisal Sub-Committee

3.4 At its meeting on the 21 July 2016 the Joint Commissioning Committee agreed a revised process for the appraisal of the Chief Executive in light of recommended best practice. As a result of the revised procedures there is no longer a need for a Joint Appraisal Sub Committee, which is now obsolete and therefore it is recommended that all references to the Joint Appraisal Sub-Committee are deleted from the constitution.

Appointment to existing posts

3.5 Currently Heads of Service have delegated authority to appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to the middle of the band provided this is approved by the Head of Paid Service, or the relevant Director, and the Head of Finance and Procurement. This provision has created some operational difficulties with regard to delays to appointment and in some cases the withdrawal of candidates through having to achieve additional authority to make an offer at any level other than the minimum level within the salary band. The employment market is currently very competitive with some areas such as planning, finance, facilities management and surveyors proving particularly challenging in recruitment terms. The origin of this provision was to ensure value for money and budgetary control for the council but was never intended to hamper effective recruitment. Given this it is proposed that the delegation for Directors and Heads of Service be amended as set out below:

3.6 'To appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to anywhere within the salary band for the post provided this is within approved budgets.'

Joint Employee Engagement Committee – Employee Representation

3.7 The Joint Employee Engagement Committee currently consists of 3 Cherwell councillors, 3 South Northamptonshire councillors, 3 employee representatives from Cherwell and 3 employee representatives from South Northamptonshire. The employee side has traditionally consisted of trade union representatives however for some time now there have been problems with quoracy on the South Northamptonshire trade union side where there is no branch executive and at the most recent meeting on the council side as well. In order to improve employee consultation and engagement the councils have recently set up a Joint Employee Council, that is comprised of representatives of all services and staff groups within the council and the trade unions. It was intended that the Joint Employee Council would appoint representatives to the Joint Employee Engagement Committee to

ensure that all staff (those who are union members and those who are not) are represented and assist with the issues of quoracy.

- 3.8 Consequently it is proposed that the employee representation is amended to 2 representatives from Cherwell's recognised trade union, 1 representative from South Northamptonshire's recognised trade union and 3 members appointed by the Employee Council. It is further recommended that members of the Joint Employee Council, be able to substitute for the trade union representatives if they cannot find a substitute from their trade union. Additionally it is proposed that the quorum for the meeting is amended to 2 representatives from the Council side, (1 from Cherwell and 1 from SNC) and 2 Employee representatives (be they from the recognised unions and/or the Joint Employee Council).

4.0 Conclusion and Reasons for Recommendations

- 4.1 The proposals in this report are designed to ensure that the councils have in place a constitution which is fit for purpose and enables efficient and effective governance.
- 4.2 While there are obsolete officer post references in the constitution this does not cause any legal issues as there is a provision in the scheme of delegation that makes clear that delegated authority moves to the new post with responsibility for the relevant function in the event of a post title change. Once stage 2 of the senior management restructure is complete it is intended to make the necessary changes to post titles throughout the constitution then.

5.0 Consultation

- 5.1 Consultation has taken place with relevant officers on the proposed constitutional amendments and where indicated elected members.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To agree the recommendations as set out in the report

Option 2: To amend the recommendations as set out in the report

Option 3: To reject the recommendations as set out in the report.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising directly from this report

Comments checked by: Paul Sutton, Chief Finance Officer - 0300 003 0106

paul.sutton@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.2 This is a report of the Head of Law and Governance all legal implications are contained in the report.

Comments checked by: Kevin Lane, Head of Law and Governance – 0300 0030107
kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Implications

- 7.3 It is a matter of good governance that the Council should ensure that the constitution is kept up to date. The measures in this report mitigate risk to the council through ensuring this is the case.

Comments checked by: Ed Bailey Corporate Performance Manager - 01295 221605
edward.bailey@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

None directly

Lead Councillor

Councillor Barry Wood, Leader of the Council

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	James Doble, Assistant Director - Transformational Governance
Contact Information	01295 221587 james.doble@cherwellandsouthnorthants.gov.uk

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Cherwell District Council

Council

17 October 2016

<p>Protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest and Ethical Walls Procedure</p>

**Joint report of Head of Law and Governance
and Assistant Director - Transformational Governance**

This report is public

Purpose of report

To consider and adopt the updated protocol on roles and conflicts of Interest and Ethical Walls procedure.

1.0 Recommendations

Council is recommended:

- 1.1 To consider and adopt the updated Protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest and Ethical Walls Procedure, subject to a similar decision being taken by South Northamptonshire Council.

2.0 Introduction and Report Detail

- 2.1 When Cherwell District Council and South Northamptonshire Council first proposed shared working and joint officer posts it was a recommendation from the South Northants auditor that a protocol was adopted on the respective roles of members and officers and dealing with conflicts of interest, to ensure that the position and sovereignty of each council was understood and protected. A protocol was adopted by both councils and has provided a useful reference document for officers. Subsequently it was realised that the councils would also benefit from an ethical walls procedure. A procedure was introduced at the officer level and is activated if there is a conflict or potential conflict between the two councils where it is necessary to ensure that both councils receive independent officer advice and the position of both council is not compromised. The policy has been used on at least one occasion, this was with regard to Banbury Site 15 (Junction 11, M40) of Cherwell's proposed Local Plan, where South Northamptonshire objected to the proposed land usage. The procedure was successfully implemented and the position of neither local authority was compromised at the planning inquiry.

The protocol and procedure were again updated and amended when a further Section 113 agreement was signed with Stratford-on-Avon District Council.

Since the creation of both the protocol and procedure there have been changes to governance arrangements with a number of council owned/influenced companies /organisations either in operation or planned to be brought into operation. Due to officer appointments to the board of directors conflicts and potential conflicts are much more common and so far it has been necessary to implement ethical walls for Graven Hill and Cherwell Community Build.

Therefore both the protocol and procedure need to be amended to reflect these new relationships. Additionally as members are being appointed to the boards of these new entities they could also find themselves in a position of conflict or potential conflict and amendment is needed to ensure that the protocol and procedure also protect elected members.

Given the end of the Section 113 arrangements with Stratford-on-Avon District Council, the new governance arrangements and the need for the protocol and procedure to cover elected members they have been revised and are set out in Appendices 1 and 2 for the committee to consider and adopt.

3.0 Conclusion and Reasons for Recommendations

- 3.1 The proposals in this report are designed to ensure that the councils have in place appropriate safeguards for the councils, members, officers and council owned/influenced companies/organisations.

4.0 Consultation

- 4.1 Both the Protocol on Roles and Conflicts of Interest and Ethical Walls Policy have been in operation at the Councils for some years. As they have been used feedback has been taken and updates made in light of the experience using them.

5.0 Alternative Options and Reasons for Rejection

- 5.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To agree the recommendations as set out in the report

Option 2: To amend the recommendations as set out in the report, this is not recommended as this may require reconsideration by the Joint Commissioning Committee, causing delay and an increased risk as the protocol and policy will not be applicable to current position of the councils and will pose risk to the councils through accommodating the emerging council owned/influenced companies/organisations.

Option 3: To reject the recommendations as set out in the report. This is not recommended.

6.0 Implications

Financial and Resource Implications

- 6.1 There are no financial implications arising from this report.

Comments checked by:

Paul Sutton, Chief Finance Officer - 0300 003 0106

paul.sutton@cherwellandsouthnorthants.gov.uk

Legal Implications

- 6.2 This is a joint report and the Head of Law and Governance has been fully involved in the preparation of the report and all legal implications are contained in the report.

Comments checked by:

Kevin Lane, Head of Law and Governance – 0300 0030107

kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Implications

- 6.3 The proposals set out in this report mitigate risk to the officers, members, councils and council owned/influenced companies/organisations through ensuring that appropriate ethical walls are in place.

Comments checked by:

Ed Bailey Corporate Performance Manager - 01295 221605

edward.bailey@cherwellandsouthnorthants.gov.uk

7.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

None directly

Lead Councillor

Councillor Barry Wood, Leader of the Council

Document Information

Appendix No	Title
Appendix 1	The Respective Roles of Members and Officers and Dealing with Conflicts of Interest
Appendix 2	Ethical Walls Procedure
Background Papers	
None	
Report Author	James Doble, Assistant Director - Transformational Governance
Contact Information	01295 221587 james.doble@cherwellandsouthnorthants.gov.uk

The Respective Roles of Members and Officers and Dealing with Conflicts of Interest

Introduction

Cherwell District Council (CDC) and South Northamptonshire Council (SNC) have created a number of shared posts and teams and intend to create further shared posts and teams in the future. Council owned/influenced companies/organisations (Council Entities) have also been created and it is intended to create more in the future.

Shared officers will divide their time on an equal basis between the authorities or on such other basis as is agreed via the approved business case for the relevant service (although peaks of work in one or more councils may result in short term variations from this) and will at all times act in the best interests of both the authorities. Nominated officers may also spend their time serving Council Entities as set out in their letter of nomination from the councils. Underpinning this is an acknowledgment that where a smaller number of senior officers will be serving multiple organisations, there will be a need to reflect this new set of circumstances in the way in which officers have to operate.

Members of the authorities need to be sensitive to this change with regard to the respective roles of officers and members. In particular all members and officers need to be aware of the action to be taken when there is an actual or potential conflict of interest in acting for more than one organisation.

The role of Members

At each authority full Council is collectively responsible for setting Council policy within the defined policy framework. The intention of the authorities is to remain sovereign bodies under the Section 113 agreement, but in setting their own Council policy they will have regard to the views and policies of the other authority and will endeavour to avoid adopting any policy which explicitly and overtly contradicts the policy of the other authority.

CDC has established an Executive to bring forward the delivery of their agreed policies. Members of the Executive are both collectively and individually accountable for carrying through the Council's policy objectives. SNC has also established a Cabinet to bring forward the delivery of its agreed policies and members of the Cabinet are collectively (but not individually) accountable for carrying through the Council's policy objectives.

At neither of the authorities are members directly involved in the day to day provision of services to the public but members of the Executive/Cabinet will have a close involvement with officers in dealing with the effectiveness of service provision. It is recognised that on occasion this may result in the need for immediate contact with officers but where practicable such contact will be on a managed basis. In order to make best use of officer and member time, there will be mutually managed

contact between Executive/Cabinet members and officers on service provision where members pursue matters on behalf of their constituents.

As only Executive/Cabinet lead members/portfolio holders have executive authority/responsibilities as members all other members will need to pursue matters with the appropriate lead member/portfolio holder or officer through a managed approach. A portfolio holder at CDC may take certain decisions on matters within their own portfolio, and within the scheme of delegation of the relevant constitution, but in doing so must be aware of any possible conflict in policy or budget. At SNC, where portfolio holders are not vested with individual decision taking power, such decisions can only be taken by the Cabinet collectively but the same principles and approach will be followed.

No member (portfolio holder or otherwise) should become involved in the day to day management or operation of a service area, which shall be the responsibility of the head of service.

Members may also be appointed as Non-Executive Directors/ Trustees of Council Entities.

The role of Officers

Officers are equally accountable to the Council and the Executive/Cabinet. All shared officers are equally accountable to both Councils and to the Executive and Cabinet as appropriate.

Officers are professional advisers on policy and carry out the instructions of the Council and the Executive/Cabinet as well as exercising powers that are delegated to them and taking operational decisions within their areas of responsibility.

Officers may also be appointed as Directors/ Trustees of Council Entities.

The possibility of conflict between organisations should be minimised by identifying from the outset where potential conflict might arise, operating the ethical walls policy appended and referring, if necessary, such conflict through the dispute resolution mechanism in the Section 113 agreement/ shareholder agreement/ Memorandum of Understanding.

The role of Directors/Trustees

Both members and officers may be Officers may also be nominated and appointed as Directors/ Trustees of Council Entities. This will involve members and officers serving together as board members equally in terms of voting rights and responsibilities. Councillors who are Non-Executive Directors will by their nature have different and often higher levels of involvement with the organisation to which they are appointed than members would normally would have. However, day to day management of operations and staff shall remain the responsibility of the managing director of the Council Entity and board collectively.

How these roles work in practice

Decisions on matters relating to each Council's policy framework are taken by members at meetings of full Council, usually after having considered the recommendations of the Executive/Cabinet or appropriate Committee which in turn considers the recommendations of the officers.

Decisions on policy matters within the relevant Council's policy framework are taken by the Executive/ at CDC and Cabinet at SNC having considered the recommendations of officers.

Decisions on policy matters by Council Entities are taken by the board.

The Councils have an adopted scheme of delegation .This scheme sets out what is delegated to which body or officer, either conditionally or unconditionally. The Councils can review their scheme of delegation at any time to ensure decisions are being taken at the appropriate level. The process of delegation ensures that members are not overloaded with relatively less important matters and can concentrate on important policy issues and the effectiveness of service provision and continuous improvement in service. Members who are not portfolio holders have an important role in representing the views of their constituents and ensuring through scrutiny that the Council's policies and plans are effectively delivered. Some members (portfolio holders and otherwise) have roles on regulatory committees dealing with matters such as planning and licensing. To minimise the possibility of any conflict of interest, or defect in process, the schemes of delegations of the authorities should be harmonised so far as possible. Where differences need to remain there should be a clear business case for this.

Council Entities have adopted articles or a constitution and these documents set out what is delegated to which body or employee, either conditionally or unconditionally. They can be reviewed at any time to ensure decisions are being taken at the appropriate level.

It is recognised that there may be rare occasions where it is not possible to reconcile the interests of two or more organisations with their respective legal responsibilities. Such conflicts shall be managed by ensuring that relevant officers and members in each organisation are ring fenced from each other through the creation of ethical walls in accordance with the appended procedure to ensure that due regard is taken of each organisation and the need for certain matters to remain confidential to one or other organisation.

Statutory requirements

The Councils derive their powers from statute. Some of these are mandatory (i.e the Councils must do them) and some are discretionary (i.e the Councils may carry them out if they wish). In all cases members and officers of both authorities may only operate within the law.

Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the senior management team and have an obligation to act in the best interests of their appointing authority/authorities.

If any of these statutory posts in a shared role consider that there is a conflict of interest within their area of responsibility which is affecting the ability of either Council to function effectively the most appropriate statutory officer may take a report to the appropriate full Councils setting out the conflict of interest and proposals for resolution.

Summary

Members are responsible for setting Council policy.

Officers are responsible for advising members on the setting of Council policy and for ensuring such policy is implemented.

The scheme of delegation determines which body or person deals with particular matters, and at which level decisions are taken.

The day to day management and operation of services is the responsibility of officers.

Where officers are dividing their time between two or more organisations members need to have regard to less time being available for their authority alone and the need to manage contact with officers to ensure the optimum use of both member and officer time.

If conflicts arise in relation to the respective regulatory duties of any of the organisations steps will be taken to ensure the ring fencing of officers and the confidentiality of information as necessary.

Otherwise, where there is actual or potential conflict there are three routes depending on the nature of the conflict,

1. agree to pay for appropriate external support to advise one or more authorities.
2. refer the issue through the dispute mechanism in the section 113 agreement, shareholder agreement or memorandum of understanding.
3. the most appropriate statutory officer may refer the matter to either or both full Councils for resolution.

Ethical Walls Procedure

This procedure is designed to be read alongside the protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest.

It is recognised that there may be rare occasions most commonly in a regulatory context or where a council owned/ influenced company/organisation context (Council Entity) has been established where it is not possible to reconcile the interests of the two Councils or those between the council(s) and a Council Entity with their respective legal responsibilities.

Such conflicts shall be managed by ensuring that relevant officers working for each side are ring fenced from each other to ensure that due regard is taken of the respective and conflicting duties and interests and the need for certain matters to remain confidential to the individual Council or Council Entity. This procedure sets out how this will operate in practice.

Background

An Ethical wall, cone of silence, screen or firewall is a business term describing an information barrier within an organisation that is erected in order to prevent exchanges or communication that could lead to conflicts of interest and/or the disclosure of information which is confidential to one Council or the other or to a Council Entity. For example an ethical wall may be erected to separate and isolate people who make investments from those who are privy to confidential information that could influence the investment decisions, in newspapers between journalists and advertising executives to protect editorial independence and in law firms where different solicitors are acting for different clients on the same issue.

For the vast majority of members and officers there will be no conflict of interest in working for, being appointed to or advising more than one Council or Council Entity, in fact most officers and members will not experience this during their time in local government. However, a small number of officers and members mainly those holding Executive, senior management, statutory, legal, financial, regulatory and planning posts may face situations where they become aware of conflict or potential conflict between the councils or between one or both of the Councils and a Council Entity. There is a need for officers and members in these posts to maintain vigilance in identifying these situations where conflict could arise. Whilst there is no definitive list of these situations, these might include where one authority is consulting the other with regard to planning policy, planning applications, boundary changes, electoral areas or other situations where there is either an implied or express duty to consult and/or co-operate. Similar situations apply with regard to legal matters where the Councils are on either side of a dispute and the consideration of homelessness applications to one Council where there may be a local connection identified with one of the others. Similar situations apply to the Council(s) and Council Entities where an officer or member may be a Director or trustee or where an officer or member who is a Director may be dealing with other officers or members in their capacity as Directors or trustees of another Council Entity.

In all cases officers and members should always err on the side of caution and seek advice as it is much better to deal with and plan for potential conflicts, as when actual conflicts are identified it may be that too many officers and members are already acting for one side or the other and/or the erection of the Ethical Wall may be too late. The creation of an Ethical Wall does require a level of maturity and respect from those on either side of it. For instance it is not uncommon for a manager to be on one side and a direct report on the other.

If there is a conflict or significant risk of a conflict, between the councils, or between the Council(s) and a Council Entity the officer or member must not act for both, except where the councils or the council(s) and the Council Entity are expressly pursuing the same common objective. In all cases of conflict or potential conflict a decision should be sought immediately from the Monitoring Officer. The Monitoring Officer in deciding whether there is a conflict or whether the officer or member can act for multiple organisations, will ensure that the overriding consideration is the best interests of the individual organisation, and in particular, whether the benefits of the officer or member acting for all them outweighs the risk.

If the Monitoring Officer feel that there is a risk of conflict or that the interest of the organisations are not best served by an officer or member acting for both they will invoke this procedure.

Procedure

When a conflict or potential conflict is identified an officer or member should alert the Monitoring Officer or one of his deputies.

The Monitoring Officer will provide advice to the officer on whether there is a conflict and in all cases alert all JMT members. The Monitoring Officer will maintain an audit trail of his actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified the Monitoring Officer (in consultation with the relevant members/ JMT officers) will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officer will alert those on the list, JMT members, relevant lead members and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the other Council or Council Entity and the officers representing it with full regard to the issue in question as if they were an external organisation. That is information supplied by the other party should be thoroughly and critically examined and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence as opposed to verbal communications as such documents could later be relied upon in legal action.

It should be agreed where files and electronic correspondence should be held and neither party should access information held by the other. Appropriate access restrictions will be established by ICT Services for information held electronically.

Officers should only advise members and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the wall and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question and does not extend to any other areas of work.

When the issue in question has been successfully concluded the Monitoring Officer(s) should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.

In the case of an Ethical Wall between the Councils, the list will contain a minimum of two named officers on either side, one of which will be the Monitoring Officer, a Deputy Monitoring Officer or a legal officer. The Head of Paid Service (or in her absence or case of conflict her deputy) will not normally be assigned to either side of the wall and will not become involved in the issue. This enables the Head of Paid Service to arbitrate on any issue including human resources implications which may arise in the operation of this procedure. For employees in shared teams the identity of their employing Council will not necessarily dictate the side of the Wall to which they are allocated.

Statutory Officers and Section 113 Agreement Dispute Resolution Procedure

All Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the management teams and have a legal obligation to act in the best interests of the authorities which appointed them.

It is imperative that the statutory officer system is robust and resilient therefore statutory officers should ensure that they appoint deputy statutory officers who may act for the other council(s) in case they are conflicted. To account for this and also to ensure there is sufficient statutory officer resilience; the recommendation is that each statutory officer appoints at least one, but preferably two deputies.

If any of these statutory posts consider that there is a conflict of interest within their area of responsibility, which has not been resolved through invoking this procedure and which is affecting the ability of any of the individual Councils to function effectively the most appropriate statutory officer(s) may take a report to the full Councils setting out the conflict of interest and proposals for resolution and invoke the Section 113 Agreement dispute resolution procedure between the Councils or the relevant shareholder agreement/ Memorandum of Understanding Dispute resolution procedure for Council Entities if necessary.

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Cherwell District Council

Council

17 October 2016

Indemnities for Members and Officers

Joint report of Head of Law and Governance and Assistant Director- Transformational Governance

This report is public

Purpose of report

To consider and adopt a Joint Indemnities Policy for Members and officers.

1.0 Recommendations

The meeting is recommended:

- 1.1 To adopt pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004 (“the Order”) an indemnity to Members and to officers of the Council in the terms set out in Appendix 1.
- 1.2 To agree that the Chief Finance Officer secures insurance to cover the liability under the indemnity in the event that such cover is available and subject to him being satisfied that such action would be financially prudent.
- 1.3 To agree that the appointment of a Member to a position with an organisation which comes within the indemnity shall be treated as an appointment to a role which is deemed to part of the role of an elected member for the purposes of the CDC Members’ Code of Conduct.
- 1.4 To agree that it be deemed that appointments of Members and officers to organisations (including those where the Council nominates and the organisation formally appoints) be deemed as “advancing the interest of the Council” for the purposes the Terms of Indemnity.

2.0 Introduction

- 2.1 Members and officers of the Council can incur personal civil and criminal liability as a result of their actions, both within the Council and on behalf of a wide range of outside bodies or council owned/influenced company/organisations. Case law establishes that, in certain contexts such as planning, building control and food safety, where members or officers may be taking decisions and exercising discretions on behalf of the Council as part of its regulatory functions, civil legal

liability to individuals or businesses affected by those decisions does not exist save for deliberate and malicious (as opposed to negligent) acts/omissions due to the lack of a legal “duty of care”. In addition, in non-regulatory contexts, members and officers enjoy statutory immunity from civil liability where they act within the powers of the Council in good faith and without negligence. However this immunity does not apply where they go beyond the powers of the authority or act in bad faith, negligently, or where they are acting on outside bodies or council owned/influenced companies/organisations to which they may have been nominated or appointed by the Council, and it does not protect them from criminal liability.

- 2.2 Local authorities have a broad power to give officers an indemnity against such liability as part of their terms and conditions of employment. This enables the Council to take out insurance to cover this risk. The Order enables the Council to grant indemnities, and/or to take out insurance, to cover the potential liability of Members and officers in a wide range of circumstances.

3.0 Report Details

Indemnities for Members

Within the Council

- 3.1 As set out above, Members enjoy statutory immunity from civil liability where they act within the powers of the Council, in good faith and without negligence. This immunity may also cover the case where a Member acts within the overall powers of the Council, but in a situation where the particular power rests with some other part of the authority (for example if a Cabinet/ Executive Member purports to take a decision which can only be taken by full Council), provided that he/she does so in the honest belief that he/she had the power to take that decision.

The problem areas where a Member could incur personal liability are therefore:

Where a Member purports to take a decision which is actually outside the powers of the Council, or outside the powers of the particular Member

- 3.2 It is recommended that the Council provide an indemnity for any liability which a Member may incur by inadvertently acting outside powers of the Council or outside the powers of the individual Member, and in respect of any legal and other costs in defending a claim that he/she has exceeded the powers of the Council, provided that he/she has acted in good faith, i.e. in the honest belief that the action was within the Council’s powers or the individual Member’s powers and having made due enquiry where he/she was in any doubt.

Where a Member acts in bad faith, fraudulently, out of malice, for an ulterior purpose, or as a deliberate or reckless act of wrongdoing

- 3.3 Whilst there is no public interest in providing an indemnity to a Member who has actually acted in bad faith, fraudulently, out of malice, for an ulterior purpose, or as a deliberate or reckless act of wrongdoing, a third party may question whether a Member has acted in such a manner and this does not necessarily

mean that the Member concerned has actually acted in such a manner. There is a public interest in ensuring that Members are not put off taking necessary decisions by the fear that they may be put to considerable legal expense in justifying the decisions that they have taken in good faith. Accordingly the Council would appear to be justified in providing an indemnity for such costs of representation, provided that the member is ultimately cleared of the allegation (i.e. with a requirement for repayment if the allegation is eventually substantiated).

Where a Member acts in a manner which constitutes a criminal offence

- 3.4 There is no public interest in providing an indemnity to a Member who has acted in a manner which constitutes a criminal offence. But there may well be a public interest in ensuring that the Member's case in respect of any such allegation is properly presented, to ensure that Members are not deterred from acting by the potential legal cost of justifying their actions taken in good faith. Accordingly the Council would appear to be justified in providing an indemnity for such costs of legal representation in defending any prosecution, provided that the Member is ultimately cleared of the allegation of criminal conduct (i.e. with a requirement for repayment if the Member is convicted of a criminal offence and that conviction is not overturned on appeal).
- 3.5 A single action or decision may not only constitute a criminal action but may also give rise to civil liability. Despite the limitation of the indemnity to the costs of legal representation in respect of criminal activity, the indemnity in respect of any civil liability arising from the same action or decision would cover both legal representation and civil liability.

Where a Member is sued for defamation

- 3.6 The law includes a power to grant an indemnity in respect of the legal costs of defending a defamation action (but not in respect of any damages which may be awarded against the Member), where it is alleged that the Member has defamed another person.
- 3.7 Where a Member is acting in his/her capacity as a Member of a local authority and makes a statement that he/she honestly believes to be true, he/she will be able to rely on the defence of "qualified privilege", provided that he/she has not acted out of malice. As a result, successful defamation actions against Members of local authorities are very rare, but it is possible that a third party may allege that a comment was made out of malice and therefore came outside the protection of qualified privilege. There is a public interest in ensuring full and open debate of matters of current interest to the Council, and such open debate could be inhibited if Members were to feel constrained from honest debate by fear of the legal costs of defending a defamation action. Accordingly, the Council would be justified in providing an indemnity against the costs of defending defamation actions.
- 3.8 The Order specifically prohibits an indemnity in respect of the costs incurred by a Member in pursuing a defamation action against a third party (i.e. where the Member believes that he/she has been defamed by another person).

Repayment of Sums Paid Out

- 3.9 Where an indemnity is provided in respect of defending allegations of a crime, the Regulations require that the indemnity must be subject to a requirement for repayment in the event that the Member is subsequently found to have committed a criminal offence. In order to enable the Council to recover such sums, it will be necessary to ensure that no such indemnity is given unless and until the Member concerned has entered an indemnity agreement in which he/she gives the Council a contractual right to recover the sums in such circumstances.

Outside the Council

- 3.10 Members do not just work within the authority, but are frequently appointed to a wide range of other organisations (outside bodies and or council owned/influenced companies/organisations). Both councils only appoint to organisations which support and advance the broad objectives of the Councils. When they do work on such outside bodies, they are not working within the Council and therefore would not enjoy the statutory immunity from personal liability that they enjoy when they are acting as Members of the Council.

Manner of appointment

- 3.11 The manner of appointment of Members to such outside bodies varies:
- the Council itself makes the appointment.
 - the organisation asks the Council to make a nomination, but the actual power to appoint, or not to appoint, rests with the organisation itself.
 - the organisation seeks to appoint someone who has connections with the local community and makes a direct invitation to the local Councillor to join the organisation and the member joins the organisation of his/her own volition.
 - a Member joins an organisation of his/her own volition.
- 3.12 There is no public interest in the Council providing an indemnity in respect of the last two categories. Indemnities should extend only to appointments made by the Council, or in consequence of a nomination by the Council, or where the Council has specifically approved the appointment as advancing the interests of the authority.
- 3.13 This formulation has the advantage that the particular action from which such personal liability arises does not have to be conducted at the request or with the approval of the Council. This means that, once appointed to the outside body, the Member may participate fully in the activities of the outside body and an indemnity will cover them even where the particular action was not connected to the Council's reasons for appointing him/her to that outside body.

Corporate / unincorporated organisations

- 3.14 Where a Member is appointed to an organisation which has a separate legal identity, such as a company or statutory authority, he/she acts on behalf of the organisation, so that where he/she enters a contract on behalf of the organisation, it would be the organisation rather than the Member who actually enters the

contract and incurs the liability. In contrast, where the organisation is unincorporated, such as a members' club, it has no separate legal entity. If the Member enters a contract on behalf of the club, he/she actually enters the contract in a personal capacity and relies upon the membership agreement to secure re-imburement from the resources of the club or from other members.

Solvent / insolvent organisation

- 3.15 When a company director acts on behalf of a company, he/she is only required to apply him/herself diligently to the job with the skills and experience that he/she happens to possess. However, where the company becomes insolvent and is unable to pay its debts, he/she has personal liability to any creditors of the company for any additional loss which they suffer if, once he/she knew or ought to have known that the company was insolvent, he/she failed to take every step to minimise those losses. A director is expected to bring to the job the minimum level of competence and experience that might be expected of a director in such circumstances. Accordingly, any director is expected to take reasonable care to ensure that the company is accurately recording its financial affairs and that he/she is kept fully informed of any impending financial problems.
- 3.16 In an unincorporated organisation such as a members' club, the membership agreement will normally limit the ability of any member to call for re-imburement to any assets held by the club and to the subscription of any individual member. However, if the club is insolvent, it will have no assets from which to reimburse the individual member, so such a reimbursement provision is of little use in an insolvency.

Insurance

- 3.17 In most cases, the organisation can (and it is anticipated in the case of council controlled/influenced companies/organisations will) take out insurance to protect its directors or members from any liability that they might incur in their activities on behalf of the organisation. This is particularly so for school governing bodies and charities (if their constitutions so provide), but as a general rule NHS and central government bodies do not have such a power.
- 3.18 It will be apparent from the above that this is a complex area, where Members should take advice as to their potential personal liability before agreeing to participate, but where the scope for such personal liability can be significantly reduced by taking simple precautions. In particular, Members who are appointed/nominated to or asked to join organisations should check whether the body is properly incorporated and whether it carries insurance for its members.

Scope for local authority indemnity

- 3.19 The Order applies the same restrictions on the power of the Council to provide indemnities for Members acting on organisations as they do for Members acting within the authority, namely that the indemnity –
- cannot cover any criminal liability;
 - cannot cover liability arising from fraud or deliberate wrongdoing

- or recklessness on the part of the Member; and
cannot cover the costs of pursuing a defamation action.

3.20 However, unlike actions which are outside the Council's own powers, the indemnity cannot cover liability for any action which is outside the powers of the organisation, even if the action was taken in the honest belief that it was within the organisation's powers.

Conflicts of interest

3.21 Where a Member is also a member of an organisation, it is important to be alert to the dangers of conflicts of interest.

Indemnities for Officers

Within the Council

3.22 As set out above, case law establishes that, other than for deliberate and malicious acts/omissions, officers are immune from civil legal liability when acting in a regulatory context and they also enjoy statutory immunity from civil liability generally where they act within the powers of the Council, in good faith and without negligence. So a third party who has suffered loss as a result of the actions or inaction of a local authority officer cannot normally sue the officer directly.

3.23 However, where a third party does suffer such loss in a non-regulatory context as a result of the officer's actions or inactions in the course of his/her employment, his/her employer is vicariously liable for that loss, so that a person who has suffered loss as a result of the actions of an officer can sue the Council, rather than the individual. This is normally to the advantage of the claimant because of the authority's greater resources and insurance cover. But a local authority which has incurred such vicarious liability as a result of the actions or inactions of its employees could then sue its employee in order to recover that loss. In practice, local authorities have often provided an undertaking that they will not sue their officers for recovery of such losses. The reason for this is that it is more cost effective for authorities to insure such risk than for it to meet the insurance premiums of each employee taking out his/her own professional indemnity insurance. It is recommended that the Council should give such an undertaking to its officers.

3.24 The immunity referred to above only covers actions which are within the officer's employment, and therefore does not cover actions which prove to be outside the powers of the authority. The Council may grant an indemnity in respect of actions which prove to be outside the powers of the authority, but only where the officer reasonably believed that the action was within the powers of the Council at the time when he/she took it. As for Members, it is therefore recommended that the Council provides an indemnity to cover any liability which an officer may incur by inadvertently acting outside powers of the Council, and in respect of any legal and other costs in defending a claim that he/she has exceeded the powers of the Council, provided that he/she has acted in good faith, i.e. in the honest belief that the action was within the Council's powers and having made due enquiry where he/she was in any doubt.

3.25 The Order applies the same restrictions on the power of the Council to provide indemnities for officers as they do for Members acting within the authority, namely that the indemnity –

- cannot cover any criminal liability;
- cannot cover liability arising from fraud or deliberate wrongdoing; and
- cannot cover the costs of pursuing a defamation action.

3.26 It is also necessary to ensure that when the Chief Executive and other officers are acting in the capacity of Returning Officer, Electoral Registration Officer and other associated capacities for the purposes of the conduct of elections, any indemnity expressly applies to them. This is because, when acting in such a capacity, the officers are not working directly for the Council.

Outside the Council

3.27 Officers also act outside the Council in a wide range of organisations, from professional associations to partnerships and community organisations to council owned/ influenced companies/ organisations. Such participation in organisations can assist in the discharge of the Council's functions and objectives. Officers are required to declare to the Council any conflict of interest, and should seek the approval of the Council before taking up any outside interests that potentially conflict with the performance of their obligations to it. That requirement for the Council's approval can provide a simple mechanism for defining those outside appointments to which an indemnity should apply. Accordingly it is suggested that the Council provides an indemnity which extends to all outside appointments of officers where the Council, normally through the Head of Paid Service or her deputy, has approved the appointment as likely to advance the interests of the Council, either at the time of the original appointment or otherwise.

Insurance

3.28 Where the Council has a power to grant an indemnity, it may also provide insurance, either in place of or in addition to the indemnity. The one exception to this is that the legislation does not permit it to provide insurance in respect of any action which is beyond the powers of the Council, or beyond the powers of the individual member or officer.

3.29 It is suggested that the Chief Finance Officer secures such insurance to cover the Council's liability under this indemnity in so far as he is of the opinion that such insurance would be financially prudent, and that such cover is available. The Council's current insurer does provide cover for the majority of situations intended to be the subject of the indemnity.

4.0 Conclusion and Reasons for Recommendations

4.1 The proposals in this report are designed to ensure that the councils have in place appropriate safeguards for members and officers.

5.0 Consultation

- 5.1 Informal consultation on the principle of an indemnity has taken place with councillors and officers who have been nominated to serve on council owned/influenced companies/organisations and the Chief Finance Officer who represents the council's shareholding interest. Nominees and the Chief Finance Officer have expressed a very clear their desire to see an indemnity in place.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To agree the recommendations as set out in the report

Option 2: To amend the recommendations as set out in the report, this may require reconsideration by Joint Commissioning Committee, causing delay to the adoption of the policy and exposing members and officers to an element of risk through appropriate indemnities not being in place.

Option 3: To reject the recommendations as set out in the report. This is not recommended, as members and officers are currently exposed to an element of risk through appropriate indemnities not being in place.

7.0 Implications

Financial and Resource Implications

- 7.1 There is a cost to the Councils in ensuring insurance is in place to cover the liability under the indemnity in the event that such cover is available and it is financially prudent to obtain it such costs can be met from the councils existing insurance budgets. The council has risk contingency reserves in place to ensure that the councils can meet any excess arising from a claim against a member or officer and/or any liabilities where the councils are unable to procure suitable insurance cover.

Comments checked by:

Paul Sutton, Chief Finance Officer - 0300 003 0106

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Legal Implications

- 7.2 This is a joint report and the Head of Law and Governance has been fully involved in the preparation of the report and all legal implications are contained in the report.

Comments checked by:

Kevin Lane, Head of Law and Governance – 0300 0030107

kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Implications

- 7.3 The proposals set out in this report mitigate risk to the officers, members and the councils through ensuring that appropriate indemnities are in place.

Comments checked by:

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8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

None directly

Lead Councillor

Councillor Barry Wood, Leader of the Council

Document Information

Appendix No	Title
Appendix 1	Indemnity
Background Papers	
None	
Report Author	James Doble, Assistant Director - Transformational Governance
Contact Information	01295 221587 james.doble@cherwellandsouthnorthants.gov.uk

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Terms of Indemnity

- 1 The Council will, subject to the exceptions set out below, indemnify each of its Members and employees against any loss or damage suffered by the Member or officer arising from his/her action or failure to act in his/her capacity as a Member or officer of the Council.

This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- 1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the Member or officer; or
 - 1.2 any act or failure to act by the Member or employee otherwise than in his/her capacity as a Member or officer of the Council.
- 2 The Council will, subject to the exceptions set out below, indemnify each of its Members and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings to which he/she is subject.
 - 2.1 “Criminal proceedings” includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom.
 - 2.2 This indemnity shall not extend to any advice or representation in respect of any claim or threatened claim in defamation by the Member or officer.
 - 2.2.1 Where any Member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings the indemnity is subject to a condition that if, in respect of the matter in relation to which the Member or officer has made use of this indemnity the Member or officer is convicted of a criminal offence in consequence of such proceedings, or and the conviction is not overturned on appeal, the Member or officer shall reimburse the authority for any sums expended by the Council pursuant to the indemnity.
 - 2.3 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 2.2 shall apply as if references to the Council were references to the insurer.
 - 3 For the purpose of this indemnity, a loss or damage shall be deemed to have arisen to the Member or officer “in his/her capacity as a Member or officer of the Council” where:
 - 3.1 The act or failure to act was outside the powers of the Council,

or outside the powers of the Member or officer, but the Member or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the Member or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;

- 3.2 The act or failure to act occurred not in the discharge of the functions of the Member or officer as a Member or officer of the Council but in their capacity as a member (including a director, trustee) or employee of another organisation including, for the avoidance of doubt, a council controlled/influenced company/organisation, where the Member or officer is, at the time of the action or failure to act, a member or employee of that organisation either –
 - 3.2.1 in consequence of his/her appointment as such member or officer of that organisation by the Council; or
 - 3.2.2 in consequence of his/her nomination for appointment as such member or officer of that organisation by the Council; or
 - 3.2.3 where the Council, either by resolution or via an authorised officer, has specifically approved such appointment as such a member or employee of that organisation as advancing the interests of the Council.
- 4 The Council undertakes not to sue (or join in action as co-defendant) an officer of the Council in respect of any negligent act or failure to act by the officer in his/her capacity as an officer of the Council, subject to the following exceptions:
 - 4.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
 - 4.2 Any act or failure to act by the officer otherwise than in his/her capacity as an officer of the Council.
- 5 This indemnity and undertaking will not apply if a Member or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity or undertaking.
- 6 This indemnity and undertaking are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.
- 7 This indemnity and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the Member or officer has ceased to be a Member or officer of the Council as well as during his/her membership of or employment by

the Council.

- 8 This indemnity shall also apply to any officer acting in the capacity of Returning Officer, Acting Returning Officer, Counting Officer, Electoral Registration Officer, Deputy Returning Officer, Deputy Acting Returning Officer, Deputy Counting Officer or Deputy Electoral Registration Officer in relation to the conduct of elections and electoral registration. Where any such officer is acting in the reasonable belief that any act or failure to act is within the powers of the Returning Officer, Electoral Registration Officer or Counting Officer he or she shall be deemed to be acting in his/her capacity as an officer of the Council for the purposes of this indemnity.

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Cherwell District Council

Council

17 October 2016

Changes to the Arrangements for Appointment of External Auditors

Report of the Chief Finance Officer

This report is public

Purpose of report

This report summarises the changes to the arrangements for appointing External Auditors following the closure of the Audit Commission and the end of the transitional arrangements at the conclusion of the 2017/18 audits.

1.0 Recommendations

Council should consider their preferred approach from the following options the recommendation of the Accounts Audit and Risk Committee being to approve 1.3 below:

- 1.1 Establishing a stand-alone Auditor Panel to make the appointment on behalf of the Council.
- 1.2 Commencing work on exploring the establishment of local joint procurement arrangements with neighbouring authorities
- 1.3 Supporting the Local Government Association (LGA) in setting up a national Sector Led Body by indicating intention to “opt-in”

2.0 Introduction

- 2.1 The Accounts, Audit and Risk Committee at its meeting on 21 September 2016, considered the arrangements for the appointment of external auditors. The Committee recommended that Council support the Local Government Association in setting up a national Sector Led Body by indicating the Council’s intention to “opt-in”.
- 2.2 The Local Audit and Accountability Act 2014 brought to a close the Audit Commission and established transitional arrangements for the appointment of external auditors and the setting of audit fees for all local authorities and NHS bodies in England. On 5 October 2015 the Secretary of State Communities and Local Government (CLG) determined that the transitional arrangements for local government bodies would be extended by one year to also include the audit of the accounts for 2017/18.

- 2.3 The Council's current external auditor is Ernst & Young, this appointment having been made under a contract let by the Audit Commission. Following closure of the Audit Commission the contract is currently managed by Public Sector Audit Appointments Limited (PSAA), the transitional body set up by the LGA with delegated authority from the Secretary of State CLG. Over recent years we have benefited from reduction in fees in the order of 50% compared with historic levels. This has been the result of a combination of factors including new contracts negotiated nationally with the firms of accountants and savings from closure of the Audit Commission. The Council's current external audit fees are approximately £85,000 per annum.
- 2.4 When the current transitional arrangements come to an end on 31 March 2018 the Council will be able to move to local appointment of the auditor. There are a number of routes by which this can be achieved, each with varying risks and opportunities. Current fees are based on discounted rates offered by the firms in return for substantial market share. When the contracts were last negotiated nationally by the Audit Commission they covered NHS and local authorities and offered maximum economies of scale.
- 2.5 The scope of the audit will still be specified nationally, the National Audit Office (NAO) is responsible for writing the Code of Audit Practice which all firms appointed to carry out the Council's audit must follow. Not all accounting firms will be eligible to compete for the work, they will need to demonstrate that they have the required skills and experience and be registered with a Registered Supervising Body approved by the Financial Reporting Council. The registration process has not yet commenced and so the number of firms is not known but it is reasonable to expect that the list of eligible firms may include the top 10 or 12 firms in the country, including our current auditor. It is unlikely that small local independent firms will meet the eligibility criteria.

3.0 Report Details

Options for local appointment of External Auditors

- 3.1 There are three broad options open to the Council under the Local Audit and Accountability Act 2014 (the Act):

Option 1: To make a stand-alone appointment

- 3.2 In order to make a stand-alone appointment the Council will need to set up an Auditor Panel. The members of the panel must be wholly independent or have a majority of independent members as defined by the Act. Independent members for this purpose are independent appointees, this excludes current and former elected members (or officers) and their close families and friends. This means that elected members will not have a majority input to assessing bids and choosing which firm of accountants to award a contract for the Council's external audit. A new independent auditor panel established by the Council will be responsible for selecting the auditor.

Advantages/benefit

- 3.3 Setting up an auditor panel allows the Council to take maximum advantage of the new local appointment regime and have local input to the decision.

Disadvantages/risks

- 3.4 Recruitment and servicing of the Auditor Panel, running the bidding exercise and negotiating the contract is estimated by the LGA to cost in the order of £15,000 plus on going expenses and allowances.
- 3.5 The Council will not be able to take advantage of reduced fees that may be available through joint or national procurement contracts.
- 3.6 The assessment of bids and decision on awarding contracts will be taken by independent appointees and not solely by elected members.

Option 2: Set up a Joint Auditor Panel and local joint procurement arrangements

- 3.7 The Act enables the Council to join with other authorities to establish a joint auditor panel. Again this will need to be constituted of wholly or mainly independent appointees. Further legal advice will be required on the exact constitution of such a panel having regard to the obligations of each Council under the Act and the Council will need to liaise with other local authorities to assess the appetite for such an arrangement.

Advantages/benefits

- 3.8 The costs of setting up the panel, running the bidding exercise and negotiating the contract will be shared across a number of authorities.
- 3.9 There is greater opportunity for negotiating some economies of scale by being able to offer a larger combined contract value to the potential auditors.

Disadvantages/risks

- 3.10 The decision making body will be further removed from local input, with potentially no input from elected members where a wholly independent auditor panel is used or possibly only one elected member representing each Council, depending on the constitution agreed with the other bodies involved.
- 3.11 The choice of auditor could be complicated where individual Councils have independence issues. An independence issue occurs where the auditor has recently or is currently carrying out consultancy or advisory work for the Council. In these circumstances some auditors may be prevented from being appointed by the terms of their professional standards. There is a risk that if the joint auditor panel choose a firm that is conflicted for this Council then the Council may still need to make a separate appointment with all the attendant costs and loss of economies possible through joint procurement.

Option 3: Opt-in to a sector led body

- 3.12 In response to the consultation on the new arrangement the LGA successfully lobbied for Councils to be able to 'opt-in' to a Sector Led Body (SLB) appointed by the Secretary of State under the Act. An SLB would have the ability to negotiate contracts with the firms nationally, maximising the opportunities for the most economic and efficient approach to procurement of external audit on behalf of the whole sector.

Advantages/benefits

- 3.13 The costs of setting up the appointment arrangements and negotiating fees would be shared across all opt-in authorities
- 3.14 By offering large contract values the firms would be able to offer better rates and lower fees than are likely to result from local negotiation.
- 3.15 Any conflicts at individual authorities would be managed by the SLB who would have a number of contracted firms to call upon.
- 3.16 The appointment decision would not be made by a locally appointed independent panel. Instead a separate body set up to act in the collective interests of the 'opt-in' authorities would decide. The LGA are considering setting up such a body utilising the knowledge and experience acquired through the setting up of the transitional arrangements.

Disadvantages/risks

- 3.17 Individual elected members will have less opportunity for direct involvement in the appointment process other than through the LGA and/or stakeholder representative groups.
- 3.18 In order for the SLB to be viable and to be placed in the strongest possible negotiating position the SLB will need Councils to indicate their intention to opt-in before final contract prices are known.

The way forward

- 3.19 The council has until December 2017 to make an appointment. In practical terms this means one of the options outlined in this report will need to be in place by spring 2017 in order that the contract negotiation process can be carried out during 2017.
- 3.20 The LGA are working on developing a Sector Led Body. In a recent survey, 58% of respondents expressed an interest in this option. Economies of scale will increase number of councils acting collectively and opting-in to a SLB increases. In order to the strengthen the LGA's negotiating position and enable it to more accurately evaluate the offering the Council is asked to consider whether it is interested in the option of opting in to a SLB. A formal decision to opt-in will be required at a later stage

4.0 Conclusion and Reasons for Recommendations

- 4.1 The Council will need to take action to implement new arrangements for the appointment of external auditors from April 2018. In order that more detailed proposals can be developed the Council/Committee is asked to give early consideration to the preferred approach.

- 4.2 The Council has been asked by the LGA for an indication of the preferred approach in order that it can invest resources in providing appropriate support to Councils. The LGA is strongly supportive of the SLB approach as it believes this offers best value to Councils by reducing set-up costs and having the potential to negotiate lowest fees.

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

- 6.1 The Local Audit and Accountability Act 2014 requires the Council to adopt one of the options contained in the report.

7.0 Implications

Financial and Resource Implications

- 7.1 Current external fee levels are likely to increase when the current contracts end in 2018.
- 7.2 The cost of establishing a local or joint Auditor Panel outlined in options 1 and 2 above will need to be estimated and included in the Council's budget for 2017/18. This will include the cost of recruiting independent appointees, servicing the Panel, running a bidding and tender evaluation process, letting a contract and paying members fees and allowances.
- 7.3 Opting-in to a national SLB provides maximum opportunity to limit the extent of any increases by entering in to a large scale collective procurement arrangement and would reduce the costs of establishing an auditor panel

Comments checked by:

George Hill, Corporate Finance Manager, 01295 221731

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Legal Implications

- 7.4 Section 7 of the Local Audit and Accountability Act 2014 (the Act) requires a relevant authority to appoint a local auditor to audit its accounts for a financial year not later than 31 December in the preceding year. Section 8 governs the procedure for appointment including that the authority must consult and take account of the advice of its auditor panel on the selection and appointment of a local auditor. Section 8 and Schedule 3 provide that where a relevant authority is a local authority operating executive arrangements, the function of appointing a local auditor to audit its accounts is not the responsibility of an executive of the authority under those arrangements and that the appointment decision is a matter for full council.

- 7.5 Section 12 makes provision for the failure to appoint a local auditor: the authority must immediately inform the Secretary of State, who may direct the authority to appoint the auditor named in the direction or appoint a local auditor on behalf of the authority.
- 7.6 Section 17 gives the Secretary of State the power to make regulations in relation to an 'appointing person' specified by the Secretary of State. This power has been exercised in the Local Audit (Appointing Person) Regulations 2015 (SI 192) and this gives the Secretary of State the ability to enable a Sector Led Body to become the appointing person.

Comments checked by:

Kevin Lane, Head of Law & Governance, 0300 0030107

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Risk Management Implications

- 7.7 There is no immediate risk to the Council, however, early consideration by the Council of its preferred approach will enable detailed planning to take place so as to achieve successful transition to the new arrangement in a timely and efficient manner.

Comments checked by:

Ed Bailey, Corporate Performance Manager, 01295 221605

edward.bailey@cherwellandsouthnorthants.gov.uk

Equality and Diversity

- 7.8 There are no equality and diversity issues arising directly from this report

Comments checked by:

Caroline French, Corporate Policy Officer, 01295 221586

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8.0 Decision Information

Wards Affected

All wards are affected

Links to Corporate Plan and Policy Framework

All corporate plan themes.

Lead Councillor

Councillor Ken Atack, Lead Member for Financial Management

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Paul Sutton, Chief Finance Officer
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Cherwell District Council

Council

17 October 2016

<p>Notification of Urgent Action In relation to the Contract Award for the demolition of the Bolton Road Car Park</p>
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Report of Chief Executive

This report is public

Purpose of report

To notify Full Council of urgent action taken by the Chief Executive as set out below.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the urgent action taken by the Chief Executive in relation to the budget implications as identified within paragraph 7.1 of the attached Executive report.

2.0 Introduction

- 2.1 The Bolton Road car park which is owned by CDC has been managed through Indigo Car Park Services under a long lease arrangement. The Council has been in negotiations with Indigo regarding the release of the lease and had reached agreement as to the financial settlement that would apply subject to the obligations relating to a communications mast tower attached to the car park.

3.0 Report Details

- 3.1 The Chief Executive approved the necessary budget implications associated with the urgent action decision required to progress the demolition of the Bolton Road Car Park. These are outlined in the attached report.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Chief Executive took urgent action to approve the necessary budget allocation required to secure the immediate demolition of the Bolton Road Car Park. The attached report outlines these financial implications in detail.
- 4.2 Full Council are asked to note the urgent action undertaken by the Chief Executive.

5.0 Consultation

- 5.1 The Leader of the Council, the Chairman of the Council, the Lead Member for Financial Management and Lead Member for Estates and the Economy were consulted as required.

6.0 Alternative Options and Reasons for Rejection

- 6.1 This report is for information only.

7.0 Implications

Financial and Resource Implications

- 7.1 See Appendix 1, report to 5 September 2016 Executive.

Legal Implications

- 7.2 See Appendix 1, report to 5 September 2016 Executive.

8.0 Decision Information

Wards Affected

Banbury Town

Links to Corporate Plan and Policy Framework

A District of Opportunity

Lead Members

Councillor Barry Wood, Leader of the Council
Councillor Ken Atack, Lead Member for Financial Management
Councillor Lynn Pratt, Lead Member for Estates and the Economy

Document Information

Appendix No	Title
1	Report to 5 September 2016 Executive
Background Papers	
None	
Report Author	Karen Curtin, Commercial Director
Contact Information	0300 003 0202 Karen.Curtin@cherwellandsouthnorthants.gov.uk

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Cherwell District Council

Executive

5 September 2016

**Notification of Urgent Action(s) –
In relation to the Contract Award for the
demolition of the Bolton Rd Car Park**

Report of Chief Executive and Commercial Director

This report is public

Purpose of report

To notify Members of urgent action taken by the Chief Executive and Commercial Director as set out below.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the urgent action taken by the Chief Executive in relation to the budget and to refer this to full council for noting.
- 1.2 To note the urgent action taken by the Commercial Director in relation to the award of the contract.

2.0 Introduction

- 2.1 The Bolton Road car park which is owned by CDC has been managed through Indigo Car Park Services under a long lease arrangement. The Council has been in negotiations with Indigo regarding the release of the lease and had reached agreement as to the financial settlement that would apply subject to the obligations relating to a communications mast tower attached to the car park.
- 2.2 In June 2016, the Council commissioned a review of the condition of the car park to inform its approach around potential demolition or using the car park over the medium to longer term. Specialist concrete consultants were appointed to complete the necessary investigations. A report from the consultants was received by the Council on 16 June 2016. This report concluded that the structural integrity of the car park was such that immediate action to close the facility should be taken.

- 2.3 Working in partnership with Indigo, the car park was closed and handed back to the Council on 21 June 2016 and the Council immediately commenced a tender process for the early demolition of the structure. Three tenders for this demolition were received and through the procurement evaluation process a preferred bidder was identified.

3.0 Report Details

Tender proposal

- 3.1 The final contract sum including all disbursements and fees of £700,000 was agreed with the preferred bidder to complete a 2 phase demolition and the provision of a new surface car park consisting of some 145 spaces. The contractor has indicated that to complete the demolition process and provide an operational surface car park they will need to gain access to the site and commence work during week commencing 22 August. This will enable contract completion by the 25 November 2016. To achieve this date, which is critical for the necessity to have the surface car park operational from the beginning of December, mobilisation must take place ASAP.
- 3.2 Other significant factors impacting on the demolition process are:-
- structural integrity of the building remains of significant concern;
 - health and safety issues are of significant importance;
 - weather conditions over the summer period should ensure minimum delay;
 - reduced security issues arising and cost savings of some £400 per week for existing security patrols on the site.

Additional Budget Allocation

- 3.3 The following funds were currently identified for the demolition process:-

£300,000	payment from current contractor Indigo on surrender of lease
£ 50,000	Economic Development Reserve
£ 25,000	Additional payment from Indigo if demolition > £350,000 (contract award support this)

£375,000 TOTAL AVAILABLE

The total cost of the revised scheme is £700,000, which results in a shortfall of £325,000. This funding shortfall has been met from the use of capital receipts, through an urgent decision taken by the Chief Executive in consultation with the Chairman of Council and the lead member for finance.

Contract Award Options

3.4 The following options were considered:

- Award contract in August 2016 by taking urgent decision in consultation with the Leader of the Council
- Award contract in September 2016 after consideration at the Executive meeting scheduled 5th September 2016

3.5 This urgent decision was taken on 17 August 2016 as delaying the award of the contract until 5 September 2016 would have an impact on the timetable which is already extremely tight. By awarding the contract in August and mobilising resources w/c 22nd August 2016, we hope to have it finished and a temporary car park operational in time for Christmas shopping when the traders and town are at their busiest.

3.6 The decision taken was that Armac Group be awarded the tender for the demolition of the Bolton Rd car park and the construction of a temporary car park facility with 145 spaces in line with their tender sum dated 1st August 2016.

3.7 As a result of the award of the contract the Council has positively engaged with all stakeholders as appropriate including dialogue with nearby businesses. A number of drop in sessions for businesses and local residents have been arranged so stakeholders can hear more about the planned demolition and temporary car park provision.

3.8 The work has commenced and progress will be monitored through the Banbury Developments Board.

4.0 Conclusion and Reasons for Recommendations

4.1 The Chief Executive took urgent action(s) in consultation with the Chairman of the Council and the Lead Member for Financial Management to approve the allocation of £325,000 to this scheme.

4.2 The Commercial Director took urgent action in consultation with the Leader of the Council to approve the award of the contract to the preferred bidder.

5.0 Consultation

5.1 The Leader of the Council, the Chairman of the Council, the Lead Member for Financial Management and Lead Member for Estates and the Economy only due to the urgency.

6.0 Alternative Options and Reasons for Rejection

- 6.1 As this report is for the information of Members there are no alternative options to consider.

7.0 Implications

Financial and Resource Implications

- 7.1 The cost of the contract award can be met from the contribution of £325,000 from the current operator in recognition for the surrender of the lease, the £50,000 economic development reserve allocated in 2015 and the balance can be met from the urgent decision taken by the Chief Executive to allocate capital receipts of £325,000 for this capital scheme.

Comments checked by:

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Legal Implications

- 7.2 The demolition works contract has been completed and has been subject to the input of the shared legal team. It is a constitutional requirement to report the taking of urgent executive action by an authorised officer to the Executive. It is also necessary for the urgent action taken in respect of the budget to be reported to full council for noting.

Comments checked by:

Kevin Lane, Head of Law and Governance, 0300 0030107,
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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

Banbury Town

Links to Corporate Plan and Policy Framework

A District of Opportunity

Lead Members

Councillor Barry Wood, Leader of the Council

Councillor Ken Atack, Lead Member for Financial Management

Councillor Lynn Pratt, Lead Member for Estates and the Economy

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Karen Curtin, Commercial Director
Contact Information	0300 003 0202 Karen.Curtin@cherwellandsouthnorthants.gov.uk

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