



# CHEL TENHAM

## BOROUGH COUNCIL

### Notice of a meeting of Council

**Monday, 12 December 2011**

**2.30 pm**

**Council Chamber, Municipal Offices**

| <b>Membership</b>   |   |
|---------------------|---|
| <b>Councillors:</b> | Anne Regan, Barbara Driver (Chair), Garth Barnes, Ian Bickerton, Nigel Britter, Chris Coleman, Tim Cooper, Bernard Fisher, Jacky Fletcher, Wendy Flynn, Rob Garnham, Les Godwin, Penny Hall, Colin Hay (Vice-Chair), Rowena Hay, Diane Hibbert, Sandra Holliday, Peter Jeffries, Steve Jordan, Robin MacDonald, Paul Massey, Helena McCloskey, Andrew McKinlay, Heather McLain, Paul McLain, John Rawson, Diggory Seacome, Duncan Smith, Malcolm Stennett, Charles Stewart, Klara Sudbury, Lloyd Surgenor, Jo Teakle, Pat Thornton, Jon Walklett, Andrew Wall, John Webster, Paul Wheeldon, Simon Wheeler and Roger Whyborn |

The Council has a substitution process and any substitutions will be announced at the meeting

### Agenda

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| <b>1.</b> | <b>APOLOGIES</b>  |                 |
| <b>2.</b> | <b>PRAYERS</b>  |                 |
| <b>3.</b> | <b>DECLARATIONS OF INTEREST</b>   |                 |
| <b>4.</b> | <b>TO APPROVE AND CONFIRM THE MINUTES OF THE MEETING HELD ON 10 NOVEMBER 2011</b>   | (Pages 1 - 18)  |
| <b>5.</b> | <b>PUBLIC QUESTIONS</b><br>These must be received no later than 10am on the fifth working day before the date of the meeting. |                 |
| <b>6.</b> | <b>COMMUNICATIONS BY THE MAYOR</b>  |                 |
| <b>7.</b> | <b>COMMUNICATIONS BY THE LEADER OF THE COUNCIL</b>  |                 |
| <b>8.</b> | <b>MEMBER QUESTIONS</b>   |                 |
| <b>9.</b> | <b>TREASURY MID TERM REPORT 2011/12</b><br>Report of the Chief Finance Officer  | (Pages 19 - 26) |

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| 10. |  | <b>COMMUNITY GOVERNANCE REVIEW</b><br>Report of the Cabinet Member Corporate Services  | (Pages<br>27 - 32) |
| 11. |  | <b>ADOPTION OF HACKNEY CARRIAGE BYELAWS</b><br>Report of the Cabinet Member Housing and Safety   | (Pages<br>33 - 48) |
| 12. |  | <b>NEW ARRANGEMENTS FOR OVERVIEW AND SCRUTINY</b><br>Report of the Cabinet Member Corporate Services   | (Pages<br>49 - 76) |
| 13. |  | <b>NOTICES OF MOTION</b>   |                    |
| 14. |  | <b>TO RECEIVE PETITIONS</b>  |                    |
| 15. |  | <b>ANY OTHER ITEM THE MAYOR DETERMINES AS URGENT AND WHICH REQUIRES A DECISION</b><br>- Representation on certain Charitable Trusts, report of the Cabinet Member Corporate Services   | (Pages<br>77 - 84) |
| 16. |  | <b>LOCAL GOVERNMENT ACT 1972 -EXEMPT INFORMATION</b><br><b>The Council is recommended to approve the following resolution:-</b><br><br>“That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraphs 1,3 and 5, Part (1) Schedule (12A) Local Government Act 1972, namely:<br><br><b>Paragraph 1;</b> Information relating to any individual.<br><br><b>Paragraph 3;</b> Information relating to the financial or business affairs of any particular person (including the authority holding that information)<br><br><b>Paragraph 5;</b> Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings |                    |
| 17. |  | <b>EXEMPT MINUTES</b><br>To approve and confirm the exempt minutes of the meeting held on the 10 November 2011   | (Pages<br>85 - 94) |

**Contact Officer:** Saira Malin, Democracy Officer, 01242 775153  
**Email:** [democratic.services@cheltenham.gov.uk](mailto:democratic.services@cheltenham.gov.uk)

## Council

**Thursday, 10th November, 2011  
2.30 - 7.35 pm**

| <b>Attendees</b>    |  |
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| <b>Councillors:</b> | Barbara Driver (Chair), Anne Regan, Garth Barnes, Ian Bickerton, Nigel Britter, Chris Coleman, Tim Cooper, Bernard Fisher, Jacky Fletcher, Wendy Flynn, Rob Garnham, Penny Hall, Colin Hay (Vice-Chair), Rowena Hay, Sandra Holliday, Peter Jeffries, Steve Jordan, Paul Massey, Helena McCloskey, Andrew McKinlay, Heather McLain, Paul McLain, John Rawson, Diggory Seacome, Duncan Smith, Malcolm Stennett, Charles Stewart, Klara Sudbury, Lloyd Surgenor, Jo Teakle, Pat Thornton, Jon Walklett, John Webster, Paul Wheeldon, Simon Wheeler and Roger Whyborn |

## Minutes

### 1. PRAYERS

The reverend Tim Mayfield opened the meeting with a prayer.

### 2. APOLOGIES

Apologies were received from Councillors Godwin, Hibbert, Wall and MacDonald.

Councillor R Hay apologised for having to leave at 4.46pm during agenda item 9 (Joint Core Strategy: developing the Preferred Option) to meet a commitment she had made prior to the Extraordinary Council having been organised, to judge the 'Young Designer Competition' at the Fashion Show.

### 3. DECLARATIONS OF INTEREST

A number of members made declarations in respect of item 9 (Joint Core Strategy: developing the Preferred Option) as follows;

Councillor Garnham declared a personal and prejudicial interest in respect of his business, Mediation in Planning Ltd.

Councillor Regan declared a personal interest as a member of LEGLAG and Warden Hill Parish Council.

Councillor Webster declared a personal interest as a member of 'Save the Countryside'.

Councillor Sudbury declared a personal interest as a member of LEGLAG.

Councillor Teakle declared a personal interest as a member of LEGLAG.

Councillor Bickerton declared a personal interest as a member of LEGLAG.

Councillor Stennett declared a personal interest as a member of Prestbury Parish Council.

Members had received advice from the Monitoring Officer in respect of item 15 and any consequent declarations would be recorded at item 15 and within the declaration forms which had been submitted.

**4. TO APPROVE AND CONFIRM THE MINUTES OF THE MEETING HELD ON THE 10 OCTOBER 2011**

The minutes of the last meeting had been circulated with the agenda.

Councillor Stennett asked that the minutes note that he and Councillor Godwin had left the meeting prior to the vote on item 16 (North Place and Portland Street). This would be amended.

Upon a vote it was unanimously

**RESOLVED that the amended minutes of the meeting held on the 10 October 2011 be agreed and signed as an accurate record.**

**5. PUBLIC QUESTIONS**

The following responses were given to the public questions received.

| 1. | <b>Question from LEGLAG to the Leader, Councillor Jordan</b>  |
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|    | <p>Is the Council aware that the draft JCS documents "Developing the Preferred Option Consultation Document" and the draft sustainability assessment that comes with it contain (so far as we can see) no reference whatever to the Petition submitted to Cheltenham Borough Council (and to Tewkesbury Borough Council) earlier this year by LEGLAG, and passed unanimously by CBC for consideration by the JCS Officers (and also passed by TBC in the same way)?</p> <p>(for information only) The Petition wording was as follows:-</p> <p><b>PETITION: "Leckhampton Country Park" To Cheltenham Borough Council and Tewkesbury Borough Council:</b></p> <p>We the undersigned urge the above Councils to allocate (in their Joint Core Strategy or another relevant appropriate planning policy or document) a designated area to the South of Cheltenham at Leckhampton and Shurdington (including the land formerly known as the Leckhampton White Land) that shall be protected from inappropriate large scale development.</p> <p>This area of land is of high local community interest due to its attractiveness, views in and out of the AONB and the contribution it makes to the setting of Cheltenham. We also highly value its easy accessibility for informal recreation, local food production, wildlife, environmental and ecological interest. Although some of the land is now in Shurdington, we suggest that this designated area may for convenience (at the Councils' discretion) now be known as:</p> <p><b>LECKHAMPTON COUNTRY PARK</b></p> |

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|           | <b>Response from the Leader</b>   |
|           | <p>The issues raised in the petition have been considered by the JCS team in putting together the scenarios outlined in the “Developing the Preferred Option Consultation Document”. However, this needed to be considered against the wider evidence base of the JCS; conclusions drawn which have led to the 4 scenarios set out in the consultation document.</p> <p>Cheltenham Borough Council takes the issues raised in the petition very seriously and the resolution I am proposing to Council this afternoon restates the intention to protect Green Belt and open countryside around Cheltenham. Assuming the 3 Councils confirm agreement to start the consultation, the issues raised in the petition will no doubt feature in the feedback from LEGLAG and others.</p> |
| <b>2.</b> | <b>Question from LEGLAG to the Leader, Councillor Jordan</b>  |
|           | <p>Is the Council further aware that in three of the four scenarios proposed in the draft JCS document (including their recommended scenario B) the land referred to in our petition has been allocated no fewer that 1650 houses as part of what are called in the document “Strategic Allocations”, 350 <b>more</b> than were allocated in this area under the defunct South West Regional Spatial Strategy?</p> <p>This is not apparent in the maps supplied in the document, where it appears that 1300 houses are allocated here (the same as in the SWRSS), but the extra 350 come from houses allocated by Tewkesbury Borough Council in their Local Plan of 2006 on land South of Farm Lane, Leckhampton.</p>   |
|           | <b>Response from the Leader</b>   |
|           | <p>The 350 houses south of Farm Lane, Leckhampton, as well as 250 homes on the old M&amp;G sports ground, are included in the figures in Scenario A as they are already in the Tewkesbury Local Plan. The 1300 houses mentioned are the extra houses that form part of the other Scenarios. The capacity of 1300 together with 350 at Farm Lane will all be subject to scrutiny via the consultation process.</p> <p>It is important that this is made clear in the consultation documentation as it is no doubt something that people will wish to comment on.</p>   |
|           | <b>Supplementary question by Kit Braunholtz on behalf of LEGLAG</b>   |
|           | The maps were misleading, would the public consultation document clearly identify housing in each area?   |
|           | <b>Response from the Leader</b>   |
|           | The consultation documentation would make this clear.   |
| <b>3.</b> | <b>Question from LEGLAG to the Leader, Councillor Jordan</b>  |
|           | Is the Council also aware that LEGLAG considers that not only should the maps be amended to show the true extent of the strategic allocations in this area, but also that the entire area should in any case be removed from the list of “Strategic Allocations” because such an allocation is totally inconsistent with the petition CBC approved unanimously?   |

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|           | <b>Response from the Leader</b>   |
|           | <p>I am keen to make sure that when the document is prepared for the planned consultation all the issues are clearly presented as I hope as many members of the public as possible will take part. At this stage of the plan however it is not appropriate to place detailed boundaries as this is still subject to debate through the consultation. It is at the Preferred Option stage of the JCS that detailed boundaries will be identified.</p> <p>I would encourage LEGLAG to express their views about "Strategic Allocations" during the consultation.</p>  |
| <b>4.</b> | <b>Question from Helen Wells, Chair, Save the Countryside to the Leader, Councillor Jordan</b>  |
|           | <p>Does the Council agree that, given the prediction of 45,200 extra people in the JCS area in 20 years' time, the housing total of 36,850 arrived at by the end of Phase 2 of Scenario B is suspect?</p> <p>Subtracting one from the other it suggests that <u>only</u> 8,350 (18.5%), of the additional population will be in shared accommodation, the other houses presumably being occupied by 28,500 immigrant singleton divorcees and old people if the trend is to be believed. Would, say, the conventional 2.5 sharing not be more likely, meaning that the population increase number divided by 2.5 would indicate how many houses would be needed, namely 18,080 dwellings by 2031 and thus just over the much maligned Scenario A totals?</p> <p>Looking at Phase 1 for Scenario B and assuming a steady increase in the population, there would be a predicted 22,600 extra people by 2021 (half the 45,200 increase). Scenario B plans for <u>29,500</u> houses by this time – in other words, <u>1.3 houses for each person!</u></p> <p>Does the Council agree that the JCS statistics need to be revisited?</p>   |
|           | <b>Response from the Leader</b>   |
|           | <p>All the population and household projections will form part of the planned consultation and will be open to challenge along with all the rest of the evidence base.</p> <p>The calculation of extra housing numbers is not based purely on the projected rise in population. The analysis from which the household projections are drawn is the Housing Trend Analysis and Population and Household Projections – Gloucestershire County Council (May 2011). This report shows that overall provision of new houses in the JCS area have been in pace with the number of household formations since 1991.</p> <p>The calculation between additional people within the population and number of new households forming is not as simple as a direct mathematical calculation. Household formation takes account of differing household size, levels of vacancies, second homes and concealed households together with migration. In past assessments calculations have been made based upon average number of persons per households; however this is no longer the used convention giving the differing sizes in households in recent years and projected levels of single</p> |

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|                  | <p>person households arising from the ageing population together with separated families etc. The increases in household formation have therefore led to falling average household size, in part attributable to the change that over the period of the JCS – up to 2031 more than 1 in 5 of all households in the JCS area will consist of an elderly single person.</p> <p>As appropriately highlighted within the question, migration plays a part in new household formation, in Cheltenham the Housing Trend Analysis and Population and Household Projections report sets out that in Cheltenham 75% of new households are formed from the indigenous population, with 25% attributable to net migration; this is similar for Gloucester, but less so for Tewkesbury with a higher percentage of 58% of new households attributable to net migration. It should be noted that migrants are not necessarily from outside the County, but are movers between districts from within Gloucestershire.</p> <p>The housing review evidence base upon which the JCS has been informed will not provide a 100% accurate answer. Projections only trend forward what has happened in the past and many factors that can't be accounted for in a statistical model can affect the way our populations change. Population and household projections are therefore only one set of indicators of population change, and should be used together with other information and policy considerations where appropriate. This is why the evidence base for the JCS is extensive and includes tools such as the Gloucestershire Affordability Model.</p> |
|                  | <p><b>Supplementary question from Helen Wells</b></p>  |
|                  | <p>It still appears that, at the end of Scenario B, 4 out of every 5 homes will be occupied by single people which seems very unlikely to us and should be checked.</p> <p>As should the JCS GAM (Gloucestershire Affordability Model) which states that Scenario A will result in housing market failure, a mass exodus of the working population and over-crowding. Does the Council agree with this computer prediction of doom, or do you instead believe that Scenario A could, with a little adjustment, meet our future housing requirements for an increased population with least possible damage to the countryside?</p>   |
|                  | <p><b>Response from the Leader</b></p>   |
|                  | <p>The figures on which these assumptions were based were important and would be subject to scrutiny. Alternative options would also be considered.</p>  |
| <p><b>5.</b></p> | <p><b>Question from Alice Ross, Secretary, Save the Countryside to the Leader, Councillor Jordan</b></p>   |
|                  | <p>The JCS Team has had prepared an 'evidence base' comprising a large number of documents. Does the council agree that at least one very important document is missing – namely, an assessment of <u>existing</u> housing potential.</p> <p>Before saying that we need thousands of new build properties in the Green Belt or on green field sites, should the Team not have established how many empty homes there are,</p>  |

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|           | <p>how many empty flats above retail properties,<br/>         how many second homes,<br/>         how many commercial rental properties,<br/>         how many properties for sale are in vacant possession</p> <p>Should this evidence not be available before decisions to build new housing?</p>  |
|           | <p><b>Response from the Leader</b></p>   |
|           | <p>Maximising the use of existing housing stock along with use of brown field sites will be vital in assessing future housing needs. Figures for numbers of empty homes and second homes are included in these calculations. A housing background paper is currently being prepared by the JCS team, this will set out and explain the methodology used in determining dwelling numbers.</p>   |
|           | <p><b>Supplementary question from Alice Ross</b></p>   |
|           | <p>Should the housing background paper you mentioned not have formed part of the evidence base before the 'Preferred Options' consultation paper was issued, do you think there are flaws in the evidence base and should this be open to challenge throughout the consultation?</p>   |
|           | <p><b>Response from the Leader</b></p>   |
|           | <p>The consultation documentation was evolving and would be added to accordingly. There was a vital need for scrutiny throughout the process.</p>  |
| <b>6.</b> | <p><b>Question from Barry Simon, Swindon Village Society to the Leader, Councillor Jordan</b></p>  |
|           | <p>Despite the public's objections in the preliminary consultation to the SWRSS-imposed 'sustainable urban extensions', does not the JCS Team appear to have ignored the community's wishes and to be proposing large scale development of almost exactly the same numbers and in the same former RSS 'Areas of Search', much of it in the Green Belt.</p> <p>Can the Council confirm whether this is the JCS Team's free choice of action or whether they are responding to pressure from developers and/or landowners who have had plans on hold for the land in question since RSS days?</p>  |
|           | <p><b>Response from the Leader</b></p>   |
|           | <p>I understand the concerns about possible urban extensions. The Council will take decisions based on what is best for Cheltenham rather than what suits developers. The resolution I am proposing to Council this afternoon restates the intention to protect Green Belt and open countryside around Cheltenham</p> <p>With the SWRSS being abolished the JCS for Cheltenham, Gloucester and Tewkesbury starts from scratch in trying among other things to balance local housing need against protecting the Green Belt and countryside. Hence the "Developing the Preferred Option Consultation Document" presents a range of options. Feedback on these and indeed any alternative suggestions will be welcome during the planned</p> |



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|  | consultation.<br><br>The JCS team have identified a vision and strategic objectives together with 4 possible Scenarios for accommodating the JCS areas development needs together with a suite of strategic development management policies. These have been developed by drawing upon the wide JCS evidence base together with the engagement to date with stakeholders and members of the public. Developers are part of the stakeholder community and appropriate liaison has taken place, this however has not resulted in pressure being applied by the development industry. Such pressure would be wholly inappropriate. |
|  | <b>Supplementary question from Barry Simon</b>  |
|  | There is still concern that Scenarios B, C and D show such similarities to the South West Regional Spatial Strategy. Can we assume that the same inflated GDP growth figure of 3.2% was used?   |
|  | <b>Response from the Leader</b>   |
|  | No, the same GDP growth figure was not used, this had been started from scratch.  |

**6. COMMUNICATIONS BY THE MAYOR**

The Mayor appealed to members to join her at Remembrance Sunday if possible, in remembering and honouring the service men and women who have lost their lives in wars, not just World War 1 and 2 but still today.

She had attended the Voluntary Sector Awards, where she presented an award to teenagers who were being commended for their volunteer work with local Scout groups and without whom these groups couldn't function.

Councillor Barnes was thanked for his money raising efforts in aid of the Mayor's Charity and congratulated on his recent dramatic weight loss. Members were reminded about the Fashion Show that was scheduled for later in the evening at the Town Hall.

**7. COMMUNICATIONS BY THE LEADER OF THE COUNCIL**

The Leader made no communications.

**8. MEMBER QUESTIONS**

No member questions were received.

**9. JOINT CORE STRATEGY: DEVELOPING THE PREFERRED OPTION**

The Leader welcomed the vast number of members of public who filled the public gallery and apologised for the volume of paperwork that had been circulated to Members, which he appreciated was a difficult undertaking. He took this opportunity to thank Officers for their hard work.

Given that a number of seminars had been organised for the benefit of Members over the preceding months, it was proposed that the item would follow the normal format of debate. Officers were in attendance to assist with answering any questions of a technical nature and would note any issues raised.

The Regional Spatial Strategy (RSS) was being abolished and Cheltenham Borough Council would be the decision maker in determining long term development needs of the Borough, and it would need to get this right, which would be no easy task.

Cheltenham, Tewkesbury and Gloucester had agreed to work together and prepare a single core strategy covering the entirety of each of the three areas. Colleagues would be aware that Tewkesbury Borough Council was the first to consider the document on the 26 October and it had been approved for consultation purposes. Gloucester City would be considering the document on the 24 November and it was hoped that all three authorities would then be in a position to move forward.

The National Planning Policy Framework (NPPF) had undergone a consultation process and Cheltenham had duly submitted a number of responses. Consultation on the 'Preferred Option' would conclude in early summer 2013 and all feedback from the consultation and clarity on the NPPF would enable conclusions to be formed.

He talked through the recommendations, providing some context and explanation for each.

Councillor Whyborn proposed an amendment (for insertion after recommendation 4 and subsequent recommendations be renumbered accordingly), copies of which were circulated to members;

**5. This Council does not necessarily endorse development on any of the specific sites named in the document "Developing a preferred option";**

He felt that, whilst it could be considered to be a statement of the obvious, it was important given that a number of sites had been named in the document by Officers and the Council had previously taken a view on some and not on others.

Councillor Thornton reserved her right to speak as the seconder of the amendment.

Councillor Jordan accepted the amendment and invited questions on the substantive motion before it was debated.

The Leader, in response to questions from members emphasised the fact that there had been a genuine attempt by Gloucestershire County Council (GCC) to calculate the population in 20 years, using the ages of the current population, the proportion of inward migration from within the UK and outside and projecting forward to a potential population. Admittedly, there was a risk of generating more demand with no specific solution to affordability - Cheltenham was a highly popular place to live and none of the scenarios would solve this issue. To deal with the high demand for housing in the Lake District it was now necessary to have lived in the area for a period of time before being eligible for affordable housing and this was a radical approach that could be considered for Cheltenham.

The following responses were given by the Strategic Land Use Manager;

- The projections contained within the document were principally based on the population projections and the Gloucestershire Affordability Model, with two approaches, looking back and looking forward to the future.
- The document did not answer all questions and there was still work to be done to align some of the detail. There were still gaps in the evidence base and this would be addressed between now and Summer 2012.
- At the start of the process there had been 3 themes to sustainability; climate change, economy and stronger communities and following initial public and stakeholder consultation it was apparent that the balance needed to favour economic sustainability. The document used a body of evidence to inform future levels of economic growth including; projections commissioned from Cambridge Econometrics, together with the Local Economic Assessment prepared by Gloucestershire County Council and forecasting by the Gloucestershire Affordability Model which used a percentage of 2.3%. This was one variable that could be changed in the Gloucestershire Affordability model and further testing will be undertaken.
- Growth for Cheltenham was split - 75% from our indigenous population (people already living in Cheltenham housing stock) and 25% migration. The numbers were similar for Gloucester, with a 60% / 40% split the other way in Tewkesbury.
- To say that the greenbelt was sacrosanct was difficult given the tightly drawn greenbelt in Cheltenham but as much urban capacity had been identified wherever possible. The strategic allocations identified in the consultation document were all informed by the extensive evidence base.
- The weight of the JCS was limited at this early stage; however, this would change as time went on, though ultimately, any decision would remain in the hands of the appropriate decision maker at any given time.
- Even at an early stage, a range of alternative options were looked at and a key part of the evidence base was an assessment of broad locations and sustainability appraisal. Early assessment included options such as a new settlement.
- Flooding is a key part of the JCS evidence base, information used included assessment undertaken through Strategic Flood Risk Assessment 1 and 2.
- Building would increase demand, but it was important to remember that Cheltenham had a significant backlog of need.
- Statistics relating to births and deaths were matched in terms of residency through GP records.
- The University is an important stakeholder and they were engaged in early stages of consultation. They remain an important stakeholder for housing given that multiple-occupation was an issue for Cheltenham. The next stage of the consultation process would aim to address this.
- Specific statistical information was possible as a result of the Gloucestershire Affordability Model but these were only predictions and would need to be tested.

- Villages had been consulted on a number of levels. Parish Councils, specifically, had been asked directly in 2010 if they wanted development and would be asked again. Specific consultation is being arranged to target rural parishes. One option being developed within the JCS is the linking of settlements supported by development which can act as 'hubs' to deliver improved levels of infrastructure and employment, this will be tested through consultation.
- Some greenfield sites had been named in the document but not at the exclusion of brownfield sites, which had also been named. All sites identified as urban capacity are included within the strategic land availability assessment reports; these reports will be available alongside the consultation document. In addition a housing background paper is being prepared, this will set out details on sites and the methodology adopted in reaching the housing requirements.

The Leader noted that the population growth documents were large documents and therefore it was not always possible to provide members with hard copies, however, they were available on the JCS website. He stressed that all resulting figures were dependent on the variables put in.

Councillor Smith acknowledged the hard work of the Joint Core Strategy Team, which he had no doubt, would be an example of best practice in the future, however, he proposed 2 amendments on behalf of his Group, seconded by Councillor Regan;

Recommendation 1 be amended to read, ' that Council defers the decision to approve the JCS documentation for consultation to the next Council meeting by which time the consultation documents will be ready for scrutiny and approval by members.'

Recommendation 2 be amended to read, 'the Council supports scenario A as the only option contained in the consultation papers that will protect the town of Cheltenham, it's fields and green spaces from over development and the only option that offers hope that the town may retain its unique character.'

His main reason for proposing that the consultation be deferred was that no actual public consultation document had been put before members for consideration and therefore members had no indication as to what questions the public would be asked to answer. In his opinion there was no intellectual narrative held from start to finish, housing figures were based on economic figures and vice versa and as such all relied upon each other and therefore offered the same answer. Some evidence base and documentation was missing and he queried how members could endorse an incomplete document. The second amendment was intended to demonstrate leadership; scenario A delivered what the residents wanted, protection of the greenbelt and if members couldn't support this then they were failing the people of Cheltenham.

Officers had presented scenario A as unsound and the suggestion was that it had been included to placate the public rather than as a practical option. He considered that recommendation 4 was nonsense as it provided no steer in terms of the preferred option in relation to the Council's greenbelt aspirations.

He was also concerned that the document had overtones of ageism, with the suggestion that under 30 was good and over 60 was bad. An ageing population was a reality for Cheltenham and this needed to be embraced rather than being masked.

The document lacked infrastructure content and a complete exclusion of other issues. The more 'radical views' referenced by the Leader offered no particular logic, if people couldn't afford to live in Cheltenham in the first instance, how would they ever be in a position to be eligible for affordable housing.

In response to the amendments, the Leader was unwilling to agree to defer consultation but was happy to agree a mechanism by which the document be signed off and suggested that the meeting be adjourned so that the matter could be discussed.

The meeting was adjourned at 3:50pm.

Members returned at 4:12pm.

Councillor Smith confirmed that changes to his amendment had been discussed, but they resulted in a watered down version which he had been unable to agree to.

In response the Leader advised that he had resisted the first amendment, though he accepted the importance of members seeing the public documentation. The second amendment, specifying scenario A, implied predetermination of the outcome prior to the public consultation. He proposed that he could support the amendment with the addition of "the Council currently supports a variation of scenario A" and invited legal advice.

The Borough Solicitor and Monitoring Officer accepted that scenario A might be considered by Members to be an attractive proposition given the many unanswered questions. There was however, clear advice in the report suggesting that scenario A was not sound and to go ahead with such a plan could result in additional pressures from developers for sites to come forward to address any housing supply shortfall. This was not to say that developers couldn't apply such pressures at present, but clear advice had been provided by the Planning Officers as to the difficulties with scenario A.

Members invited further advice from the Borough Solicitor and Monitoring Officer, as to the resulting legal position of the Council in terms of planning decisions and the future of the JCS, were it to agree the amendment and opt for scenario A.

She informed members that whilst the advice from Officers was that scenario A was not a sound basis on which to go out to consultation based on the evidence that had been accumulated, this was a member decision. The Local Plan was the development plan and if it were not capable of delivering sufficient land it would be subject to additional pressures. She assured members that they were not bound to pass exactly the same resolution at this stage of the process as their partner authorities. As the development of the JCS progresses there would come a stage when the decisions of the partner authorities will need to come together.

The Strategic Land Use Manager made clear that scenario A offered a capped level of development based on urban availability and was not evidence based. In planning terms this was an unsound basis for the JCS.

Members speaking in support of the amendments proposed by Councillor Smith expressed their hope that all members would support them. They welcomed the protection afforded to the greenbelt by scenario A and echoed the concerns that members had not yet had sight of the questions that would be put to the public as part of the consultation on the JCS.

Those members that voiced their inability to support the amendments did so in defence of open consultation, which was non-prescriptive, invited comments on the scenarios that had been set out in the document and enabled the public to suggest other scenarios. The results of the consultation would inform the current figures and ultimately, give weight to the JCS, but this was not to say that these Members were any less committed to protecting Cheltenham and the greenbelt surrounding it.

Far from suggesting that there was no opportunity to consult, Councillor Smith, in summing up, stated that this was the last opportunity for Members to comment on all scenarios, given that the next stage would be consultation on one option, notwithstanding this, it was the last opportunity for Cheltenham to demonstrate leadership.

He considered that his amendment had been carefully worded and proposed that it would be a sad day if Council members couldn't support it.

The Leader stressed that this was not members only chance to respond but simply a process by which to reach a sensible conclusion. The document would be amended in readiness for the public consultation.

The amendments proposed by Councillor Smith were put to the vote.

**The amendment to recommendation 1 was LOST.**

Voting: 8 For, 23 Against, 1 Abstention

**The amendment to recommendation 2 was LOST.**

Voting: 8 For, 22 Against, 2 Abstentions

The Leader reiterated his earlier comments, that rather than accept the second amendment he would propose the following amendments;

Recommendation 5 be amended to read 'This Council does not necessarily endorse development of any of the specific sites named in the document "Developing the preferred option". This Council is currently minded to support a variation of Scenario A as the only option contained in the consultation papers that will protect the town of Cheltenham, its fields and green spaces from over development and the only option that offers hope that the town may retain its unique character'

Recommendation 10 be amended to include Group Leaders rather than just the Leader.

A Councillor thanked the Leader for the amendment to recommendation 10 and the inclusion of Group Leaders but felt that with the exception of the “weasel” wording ‘currently’ and ‘variation’ from recommendation 5 would ultimately result in the amendment tabled by Councillor Smith.

In response, another Councillor refuted that this was “weasel” wording. The character of Cheltenham relied upon the rural fringe of the town, of which a large proportion was not within its boundaries. It was in Members interest to keep the JCS on track, as were it to fail they would have no say on what happened to these surrounding areas. Indeed it could be very difficult to reach agreement across the three authorities but Cheltenham would run the risk of becoming a fortress.

The Leader confirmed his ability to agree the amendment as the proposer of the original motion, stressing that at this stage, this was merely an expression of an opinion before the consultation and demonstrated a willingness to listen to the outcome of the consultation.

A number of Members voiced concerns about the document in its current form. These largely centred on the refuted assumptions for growth set out in the document, the risk posed to the greenbelt surrounding and green spaces within Cheltenham and any resulting urban sprawl which participants in the debate were staunchly against. Members were nervous that the public would perceive that the outcome was predetermined before the consultation.

Other comments included;

- Scenarios B & D lacked intrinsic logic; they were simply alternatives to scenario C, 10% lower and higher.
- The development maps from the previous JCS public consultation, showed peoples preference for regeneration of brownfield sites rather than building on the Greenbelt.
- The Council’s achievements through Cheltenham Borough Homes demonstrated that the policy of urban regeneration was working and defensible.
- The focus should be quality of life not quantity in Cheltenham, in order that it retained its prosperity and character. Rather than housing led economic growth the focus should be providing homes for the indigenous population and their children and an integral part of this would be the correct combination of housing.
- People understood the need for housing but were unwilling to sacrifice the Greenbelt and green spaces. There are 14 Greenbelts in England, of which, Cheltenham had 1 and the document placed far too much significance on this and the green spaces in Cheltenham and failed to identify other areas within the boundaries.
- The development of 1650 homes in Leckhampton would destroy all natural soak-away in an area that was devastated by floods in 2007. It was also hard to comprehend how the excess traffic from the proposed development would impact the narrow A46, which was already congested.

- There was risk of a coalition of urban sprawl with Gloucester and Tewkesbury and we needed the JCS to tie these surrounding authorities into agreement to avoid this.
- The assumptions within the document intimated that each home would accommodate 1.23 people. Based on these figures developers were not likely to build what people wanted and therefore the document would compound problems rather than solving them. 3-4 bedroom homes would accommodate more people and even attract more people to the town.
- Some of the brownfield sites in Cheltenham were small parcels of land spread across the town and this should be made clear to residents when offered as an alternative to greenfield sites.

Councillor Smith, on behalf of the Conservative Group, confirmed that they would not be supporting the document for the purpose of public consultation as their concerns that the document was not sufficiently robust or sustainable had not been allayed. The document resembled too closely the RSS which Councillors had been fighting against for almost three years. He hoped that the points raised by members would be taken on board.

The Leader thanked members for their contribution. Members had made some valuable points, though he did not agree that it was at all sensible to defer the consultation. The documentation would be amended for public consultation and he made particular reference to the suggestion by Councillor Bickerton that a simplified questionnaire be developed, though there would be other members of the public that would prefer more detail and he hoped that all requirements could be satisfied.

As it stood, the recommendations would see the continuation of the JCS whilst reaffirming the Council priorities and he hoped that all members could support the substantive recommendations.

Upon a vote it was

**RESOLVED that;**

- 1. Council approve publication of the draft “Developing the Preferred Options Consultation Document”, set out in Appendix 1, for the purpose of consultation;**  
Voting: 23 For, 8 Against
- 2. Council notes that the officer recommendation is that of the 4 illustrative scenarios presented Scenario B would best meet the assumed development needs of the Joint Core Strategy area for the first 10 years of the plan period to 2021;**  
Voting: 23 For, 8 Against
- 3. Council notes that Scenario A is the only one that would protect the current green belt;**  
Voting: Unanimous
- 4. Council confirms its intention to protect green belt and open countryside around Cheltenham;**



Voting: Unanimous

5. **This Council does not necessarily endorse development of any of the specific sites named in the document “Developing the preferred option”. This Council is currently minded to support a variation of Scenario A as the only option contained in the consultation papers that will protect the town of Cheltenham, its fields and green spaces from over development and the only option that offers hope that the town may retain its unique character;**

Voting: 23 For, 8 Abstentions

6. **During the consultation stage (December 2011 – February 2012) further assessment of scenarios is undertaken for Cheltenham and reported back to Council alongside responses received to the 4 scenarios set out in the consultation document by the communities of Cheltenham and wider stakeholders;**

Voting: Unanimous

7. **Council requests that the further work includes testing more radical approaches to defining affordability which help meet local housing need;**

Voting: 30 For, 1 Abstention

8. **Appendix 2: Response Report on consultation carried out to date (October 2011) is published as part of the consultation exercise;**

Voting: 23 For, 7 Against, 1 Abstention

9. **Appendix 3: The Sustainability Appraisal is published as part of the consultation exercise;**

Voting: 23 For, 8 Abstentions

10. **Authority be delegated to the Director of commissioning in consultation with the Group Leaders to make any necessary minor revisions to the draft document prior to publication taking account of any issues arising from consideration of the document by Tewkesbury Borough Council and Gloucester City Council.**

Voting: 30 For, 1 Abstentions

#### 10. NOTICES OF MOTION

Councillor Rawson, seconded by Councillor Massey, proposed the following motion;

This Council, bearing in mind the impact on the local community of the proposed replacement of the overbridge at junction 10 of the M5 (Piffs Elm), including:

- a) potential traffic disruption and congestion resulting in longer journey times;
- b) extra costs to Cheltenham residents, such as higher fuel costs and potentially higher bus fares; and

- c) extra operating costs for local businesses at a time when the economy is already weak;

resolves as follows:

- 1. To urge the Highways Agency to look at every possible way of keeping the duration of the work to a minimum, and certainly to a significantly shorter timeframe than the period of up of a year that has been quoted;**
- 2. To urge the Highways Agency and the Department of Transport to work with Gloucestershire Highways, the County Council, Tewkesbury Borough Council and Cheltenham Borough Council to resolve the traffic problems arising from the lengthy closure of the motorway bridge and part of Tewkesbury Road, bearing in mind this may require measures such as weight restrictions, road resurfacing and junction improvements to cope with displaced traffic on minor routes; and to urge the Department of Transport to provide additional funding to Gloucestershire Highways to carry out these works;**
- 3. To urge the Highways Agency and the Department of Transport to reconsider offering financial compensation to businesses worst affected by the bridge and road closure, bearing in mind the relatively long duration of the works and the impact they will have;**
- 4. To urge the Highways Agency and the Department of Transport to reconsider combining the bridge replace with works to create a full motorway interchange at Piffs Elm; or, failing this, to ensure that the specification of the new bridge is such that it could be part of a full interchange at a later date; and**
- 5. To seek the support of Cheltenham's local MPs for these measures.**

In proposing the motion, Councillor Rawson had no doubt that the work on the proposed replacement of the overbridge was needed. The Highways Agency had indicated that the work would start in March 2012 and last for up to a year and he considered it was absurd that it should take so long. Whilst the work was in progress it would be impossible to get on the motorway at J10, large sections of the Tewkesbury Road would be closed and there would be significant displacement of traffic on to Gloucester Road, Lansdown Road and Princess Elizabeth Way. There would be additional travel costs for residents and commuters and considerable impact on local businesses. In his view the Highways Agency should be considering 24-hour working and it was a wasted opportunity if they did not make J10 a four way junction at the same time. This would have enormous benefits to Cheltenham.

As seconder, Councillor Massey spoke in support of the motion. He had a particular interest as the Ward Councillor for Swindon Village and whilst there were a number of diversion options available, these routes would unavoidably include minor roads and/or lengthy divers. The impact on congestion and residents in Cheltenham would be massive, he felt that 12 months was

excessive and the work would need to properly managed in order to minimise the impact.

All members who spoke supported the motion. They raised concerns that inevitably traffic would be diverted on to roads which were not suitable for heavy traffic and the negative impact on businesses and residents. They supported the view that 24-hour working should be an option as in view of the location, local residents should not be affected by night-time work. A number of members spoke in support of making J10 a four way junction. It was understood that the Highways Agency had been concerned that the motorway could become a link road for cross-town traffic in view of the proximity of the junctions. However this argument had not prevented similar work being done at the junction for Gloucester. Members thought the one-year timescale was excessive and it was suggested that the Highways Agency should speak to their colleagues in Scotland who appeared to have carried out a similar project with significantly less cost and elapsed time.

Councillor Rawson thanked members for their support and said he would pick up the points raised when he contacted the Highways Agency.

**Upon a vote on the motion it was CARRIED unanimously.**

**11. TO RECEIVE PETITIONS**

At this point the Deputy Mayor took the chair as the Mayor had a prior engagement.

No petitions were received.

**12. ANY OTHER ITEM THE MAYOR DETERMINES AS URGENT AND WHICH REQUIRES A DECISION**

There were no urgent items for discussion.

**13. LOCAL GOVERNMENT ACT 1972 -EXEMPT INFORMATION**

Upon a vote it was unanimously

**RESOLVED that in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 3 and 5, Part (1) Schedule (12A) Local Government Act 1972, namely:**

**Paragraph 1;** Information relating to any individual.

**Paragraph 3;** Information relating to the financial or business affairs of any particular person (including the authority holding that information)

**Paragraph 5;** Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

Members of the public were ushered from the public gallery.

**14. EXEMPT MINUTES**

The exempt minutes of the last meeting had been circulated with the agenda.

Councillor Stennett asked that the minutes note that he and Councillor Godwin had left the meeting prior to the vote on item 16 (North Place and Portland Street).

Councillor Holliday noted that she had also left at this point.

The minutes would be amended accordingly.

Upon a vote it was unanimously

**RESOLVED that the amended exempt minutes of the meeting held on the 10 October 2011 be agreed and signed as an accurate record.**

**15. REQUEST FOR DISCRETIONARY ALLOWANCE UNDER THE LOCAL GOVERNMENT (DISCRETIONARY PAYMENTS) REGULATIONS 1996**

Following advice received from the Monitoring Officer, a number of Members left the meeting having declared their intention not to participate in this item.

The following members were in attendance for this item:

Councillors Garth Barnes, Ian Bickerton, Nigel Britter, Tim Cooper, Bernard Fisher, Jacky Fletcher, Wendy Flynn, Penny Hall, Sandra Holliday, Paul Massey, Helena McCloskey, John Rawson, Anne Regan, Malcolm Stennett, Charles Stewart, Klara Sudbury, Jon Walklett and Simon Wheeler.

In the absence of the Mayor and Deputy Mayor, the Strategic Director took the chair and invited nominations for a member to preside as set out in rule eight of the Council Procedure Rules. Councillor Barnes took the chair.

Council formally approved the minutes of the Staff & Support Services Committee meeting of the 14<sup>th</sup> February 2011 as a consequence of the Committee no longer being in existence.

The Council received a report from the Director of People, Organisational Development and Change seeking a decision on a request for a discretionary allowance under the Local Government (Discretionary Payments) Regulations 1996. The Council, having considered the request and the report and appendices of the Director of People, Organisational Development and Change, determined the request.

Barbara Driver  
Chair

**Cheltenham Borough Council  
Council - 12 December 2011  
Treasury Mid-Term Report 2011/12**

|                                       |  |
|---------------------------------------|--|
| <b>Accountable member</b>             | <b>Finance &amp; Community Development , John Webster</b>  |
| <b>Accountable officer</b>            | <b>Director Resources , Mark Sheldon</b>   |
| <b>Accountable scrutiny committee</b> | <b>Economy &amp; Business Improvement</b>  |
| <b>Ward(s) affected</b>               | <b>None</b>  |
| <b>Key Decision</b>                   | <b>Yes</b>   |
| <b>Executive summary</b>              | <p>The Treasury Management Strategy for 2011/12 has been determined by the adoption of the Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management 2009, which includes the requirement for determining a treasury strategy on the likely financing and investment activity for the forthcoming financial year. The Code also recommends that members are informed of Treasury Management activities at least twice a year. This report therefore ensures this authority has adopted the code and complies with its requirements. The report has highlighted a need to change some of the Council's current Prudential Indicators and it is a requirement for Council to approve these changes. These are in respect of the additional HRA debt which the Council will be required to take on under the HRA Self Financing proposals. The proposed additional debt as set out in the Self-Financing consultation is for Cheltenham Borough Council to take on additional £27.881m.</p> |
| <b>Consultation</b>                   | <p>The Treasury Management Panel met to consider this report on 21<sup>st</sup> November 2011, and Cabinet on the 6<sup>th</sup> December 2011 and have made the following recommendations as indicated below.</p>   |
| <b>Recommendations</b>                | <p><b>Members are requested to approve the following Cabinet recommendations to Council following consultation with the Treasury Management Panel :</b></p> <ol style="list-style-type: none"> <li><b>1. note the contents of the summary report of the treasury management activity during the first six months of 2011/12.</b></li> <li><b>2. approve the new limits set for the Authorised Borrowing Limit to £109m and the Operational Boundary for Borrowing for 2011/12 to £99m which takes into account the additional HRA debt allocation as detailed in section 5.</b></li> </ol>   |

|  |   |
|--|---|
| <b>Financial implications</b>  | All financial implications are detailed throughout the report<br><br><b>Contact officer: Andrew Sherbourne,</b><br><b>andrew.sherbourne@cheltenham.gov.uk, 01242 264337</b> |
| <b>Legal implications</b>  | None specific arising from the report recommendations.<br><br><b>Contact officer: Peter Lewis,</b><br><b>peter.lewis@tewkesbury.gov.uk, 01242 264216</b>                    |
| <b>HR implications (including learning and organisational development)</b> | No direct HR implications arising from this report<br><br><b>Contact officer: Julie Mccarthy ,</b><br><b>julie.mccarthy @cheltenham.gov.uk. 01242 264355</b>                |
| <b>Key risks</b>   |   |
| <b>Corporate and community plan Implications</b>                           |   |
| <b>Environmental and climate change implications</b>                       |   |

## 1. Background

- 1.1 The Treasury Management Strategy for 2011/12 has been determined by the adoption of the Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management 2009, which includes the requirement for determining a treasury strategy on the likely financing and investment activity for the forthcoming financial year. The Code also recommends that members are informed of Treasury Management activities at least twice a year. This report therefore ensures this authority has adopted the code and complies with its requirements, one of which is the provision of a Mid-year Report to Members.
- 1.2 The government are pushing through major changes which will have a big impact on the way the Housing Revenue Account (HRA) is financed in the future. The effect of these changes are reflected in section 5 of this report.

## 2. Economic update for the first six months

- 2.1 The following key points have been provided by the councils Treasury Advisors, Arlingclose Ltd.
- 2.2 Global growth prospects deteriorated considerably over the six months to September, moving from an expectation of modest growth to the risk of a double-dip recession. In the UK the first quarter growth was 0.5% and in the second quarter was 0.2%.
- 2.2 Inflation remained stubbornly high as the annual CPI was 4.5% in August 2011. The Bank of England believed the elevated rate of inflation reflected the temporary impact of several factors, the increase in the VAT rate to 20%, past increases in global energy prices and import prices.
- 2.3 Weakness persisted in the job market as unemployment rose to 7.9%. Job creation was unable to absorb the 90,000 quarterly increase in job seekers. With average earnings growth of 2.9%, scarce availability of credit, stagnant house prices, all combined to lower disposable income, squeezed

household spending power and leaving consumer confidence fragile.

- 2.4** Central bankers' policies were driven by the feeble growth outlook rather than the upward trend in inflation. The Bank of England's August Inflation Report downgraded the growth forecast even as it acknowledged energy prices could push the annual CPI to 5% before inflation fell back to the 2% target over the medium-term. The UK's strategy of combining low interest rates for two and a half years and Quantitative Easing at £275bn with tight fiscal policy supported the rebalancing of the economy and also commanded support in the markets.
- 2.5** The European sovereign debt crisis deepened. The agreement in July to address Greece's economic problems and increase the mandate for the European Financial Stability Facility (EFSF) only bought time for the Eurozone as market pressure increased in Italy and Spain, but did little to address the issue of overburdened sovereign balance sheets.
- 2.6** The economic uncertainty resulted in analysts postponing the likelihood of an increase in the UK Bank Rate until late 2012.

### 3. Portfolio position 1/4/2011 to 30/9/2011

Movements in the Council's borrowing during the first six months of 2011/12 financial year can be seen in the table below. Long term loans are deemed to be those repayable over a period of more than one year.

| Source of Loan                    | Balance at 1 April 2011<br>£ | Raised during Apr-Sept<br>£ | Repaid during Apr-Sept<br>£ | Balance at 30 Sept 2011<br>£ |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------|------------------------------|
| <b>Temporary Borrowing</b>        |                              |                             |                             |                              |
| - Building Societies              | 5,000,000                    | 0                           | 5,000,000                   | 0                            |
| - Banks                           | 0                            | 0                           | 0                           | 0                            |
| - Local Authorities               | 8,000,000                    | 68,540,000                  | 65,840,000                  | 10,700,000                   |
| Temporary Investment              | 323,759                      | 774,419                     | 1,055,878                   | 42,300                       |
| <b>Total Short Term Borrowing</b> | <b>13,323,759</b>            | <b>69,314,419</b>           | <b>71,895,878</b>           | <b>10,742,300</b>            |
| <b>Long Term Borrowing</b>        |                              |                             |                             |                              |
| - Public Works Loan Board         | 11,000,000                   | 1,400,000                   | 3,792                       | 12,396,208                   |
| - Market Loans                    | 15,900,000                   | 0                           | 0                           | 15,900,000                   |
| <b>Long Term Borrowing</b>        | <b>26,900,000</b>            | <b>1,400,000</b>            | <b>3,792</b>                | <b>28,296,208</b>            |
| <b>Total External Borrowing</b>   | <b>40,223,759</b>            | <b>70,714,419</b>           | <b>71,899,670</b>           | <b>39,038,508</b>            |

- 3.1** In February 2011 the Council's borrowing costs for 2011/12 was estimated to be £1,212,600. This is now forecast to be £1,216,700. Temporary borrowing of £68.54m at an average interest rate of 0.40% has occurred between 1<sup>st</sup> April and 30<sup>th</sup> September 2011 to meet temporary cash flow shortfalls against a forecasted rate of 0.38%.
- 3.2** The calculation for the HRA Item 8 Debit last February estimated the consolidated rate of interest to be 3.08% on all borrowing for this financial year. However due to the council's weighted average borrowing estimated to be lower than the Capital Financing Requirement (CFR), which is a measure of the authorities underlying need to borrow for capital purposes, a different formula is required to calculate the HRA Item 8 Debit than what was used previously. This has reduced the consolidated rate of interest to around 2.80%. This could result in £46,900 less interest being payable by the HRA to the General Fund for 2011/12.
- 3.3** New borrowing of PWLB fixed rate loans increased by nearly 1% in October 2010 however the PWLB remained an attractive source of borrowing for the Council as it offers flexibility and control. The large downward move in gilt yields in the second quarter resulted in PWLB rates falling. The Council funded £1.4m of its capital expenditure on behalf of Cheltenham Borough Homes for the new homes built in Brighton Road. An annuity loan of 50 years was taken out at a rate of 4.52%. This is cost neutral to the General Fund as CBH are repaying the loan and interest payments. Further PWLB borrowing is forecast to occur again later in the financial year to fund the Everyman Theatre renovation and for further CBH new builds in the St. Paul's ward. An update on these loans will appear in the Outturn Report at year end.

## 4. Investments

The DCLG's Guidance on Local Government Investments in England gives priority to security and liquidity and the Council's aim is to achieve a yield commensurate with these principles.

Security of capital remained the Council's main investment objective. This was maintained by following the Council's counterparty policy as set out in its Treasury Management Strategy for 2011/12 approved by Council on the 11<sup>th</sup> February 2011. This restricted new investments to the following

- Debt Management Office (DMO)
- Other Local Authorities
- UK Banks – Minimum long term rating of A+ or equivalent across all three rating agencies (Fitch, Standard & Poors and Moody's)
- Other - Cheltenham Festivals/Gloucestershire Airport Company, Everyman Theatre and Cheltenham Borough Homes

Counterparty credit quality is assessed and monitored with reference to :-

- Credit ratings
- Credit Default Swaps
- Share Price

Using Arlingclose's suggested creditworthiness approach in the current economic climate it is considered appropriate to keep investments short-term and more recently only up to six months for new investments.



**4.1 Investments** - Movements in the Council's investment portfolio during the first six months of 2011/12 can be seen in the table below.

| Source of Loan                           | Balance at<br>1 April<br>2011<br>£           | Raised<br>during<br>Apr-Sept<br>£           | Repaid<br>during<br>Apr-Sept<br>£           | Balance at<br>30 Sept<br>2011<br>£           |
|--|--|---|---|--|
| <b>Short term Lending</b>                |  |   |   |  |
| - Building Societies                     | 0  | 0   | 0   | 0  |
| - Banks                                  | 7,000,000                                    | 2,000,000                                   | 2,000,000                                   | 7,000,000                                    |
| Bank of Scotland Call A/C                | 900,000                                      | 40,250,000                                  | 41,150,000                                  | 0  |
| Debt Management Office                   | 0  | 0   | 0   | 0  |
| <b>Total Short Term Lending</b>          | <b>7,900,000</b>                             | <b>42,250,000</b>                           | <b>43,150,000</b>                           | <b>7,000,000</b>                             |
| <b>Icelandic Banks In administration</b> | <b>Balance at<br/>1 April<br/>2011<br/>£</b> | <b>Raised<br/>during<br/>the year<br/>£</b> | <b>Repaid<br/>during<br/>the year<br/>£</b> | <b>Balance at<br/>30 Sept<br/>2011<br/>£</b> |
| - Kaupthing Singer & Friedlander         | 1,410,000                                    | 0   | 150,000                                     | 1,260,000                                    |
| - Glitnir                                | 3,000,000                                    | 0   | 0   | 3,000,000                                    |
| - Landsbanki                             | 5,000,000                                    | 0   | 0   | 5,000,000                                    |
| <b>Total Icelandic Banks</b>             | <b>9,410,000</b>                             | <b>0</b>                                    | <b>150,000</b>                              | <b>9,260,000</b>                             |
| <b>Total External Investments</b>        | <b>17,310,000</b>                            | <b>42,250,000</b>                           | <b>43,300,000</b>                           | <b>16,260,000</b>                            |

**4.2** In February 2011 the Council's Investment income for 2011/12 was budgeted to be £175,700. The average cash balances representing the council's reserves and working balances, was £8.173m during the period. The UK Bank Rate has been maintained at 0.50% since March 2009 and is not expected to rise until late 2012 or beyond. The Council anticipates an investment outturn of £172,500 at a rate of 2.44% for the whole year. Security of capital has remained the Council's main investment objective. This has been maintained by following the Council's counterparty policy as set out in its Treasury Management Strategy Statement for 2011/12.

**4.3** The lack of real progress in resolving the sovereign debt crisis in Europe began to affect even the stronger Eurozone nations and their banking systems. Having reviewed all credit indicators the Council, advised by Arlingclose, believed that there were no solvency issues with the banks on the

recommended lending list however the share price moves were too sharp to ignore and a prudent response to the tensions and negativity in the markets was required. The Council responded to the advice given by Arlingclose by first scaling back maturities for any new investments and then as further advised by Arlingclose, suspending Clydesdale Bank, Lloyds Banking Group, Royal Bank of Scotland and Nationwide Building Society from the lending list in early October 2011 as those organisations did not meet the Council's minimum criteria of A+ or equivalent. The situation will be reviewed again in February 2012.

- 4.4** Included within the investments of £16.26m as at 30<sup>th</sup> September 2011, the Council has £9.26m deposited in the collapsed Icelandic banks. The Council has received £150,000 from the administrators of Kaupthing Singer & Friedlander in the first half of this financial year, which relates to 5p in the pound and another 5p in the pound payment was received in October 2011. To date the Council has now received 63p in the pound. The administrators currently estimate that total distributions should be in the range of 78p to 86p in the pound.
- 4.5** Recently the Icelandic Supreme Court has upheld the District Court decision that the test cases involving Local Authority deposits with Landsbanki and Glitnir banks as having priority creditor status. This means that local authority deposits will be at the front of the queue when the Winding Up Boards (WUB's) of the two banks start to make the repayments. It is expected that we will receive back 98% of the Landsbanki deposits and a 100% of the Glitnir deposits.

## **5. Reform of Council Housing Finance**

- 5.1** The government are pushing through major changes which will have a big impact on the way the Housing Revenue Account (HRA) is financed in the future. In its publication 'Implementing Self-Financing for Council Housing' issued in February 2011, the DCLG set out the rationale, methodology and financial parameters for the initiative. Subject to the Localism Bill receiving Royal Assent and a commencement order being passed, final self-financing determinations are expected towards the end of January 2012 and the proposed transfer date is 28<sup>th</sup> March 2012.
- 5.2** The self-financing model provides an indicative sustainable level of opening housing debt. As the Council's debt level generated by the model is higher than the Subsidy Capital Financing Requirement (SCFR), the Council will be required to pay the CLG the difference between the two, which is £27.881m as set out in the self-financing consultation paper issued on the 21st November 2011. This will require the Council to fund this amount in the medium term through external borrowing/internal resources. On the 20<sup>th</sup> September 2011, following an announcement by HM Treasury, the Public Works Loan Board (PWLB) confirmed that the interest rate offered to local authorities would be temporarily reduced to allow councils to borrow at lower levels for their one-off HRA reform settlement payment. This will enable the Council to borrow at around 13 basis points above the equivalent gilt yield (currently rates are 1% above the gilt yield) to fund the HRA transaction. These lower rates will only be available on 26<sup>th</sup> March 2012.
- 5.3** As a consequence of the increase in debt due in March 2012 it is necessary to increase the Prudential Indicators for 2011/12 for the Authorised Borrowing Limit from £81m to £109m and the Operational Boundary for Borrowing from £71m to £99m to comply with the Prudential Code. The Authorised Limit is the possible maximum level of borrowing that may be needed to be incurred and any limit above is prohibited. The amount set reflects a level of borrowing which, although affordable in the short term may not be sustainable. The Operational Boundary for external debt is based on the most likely, prudent but not worst case scenario, without the additional headroom included within the authorised limit. This limit represents a key management tool for in year monitoring.

## 6. Prudential Indicators

- 6.1 During the financial year to date the Council has operated within the treasury limits and Prudential Indicators set out in the Council's Treasury Policy Statement and Annual Treasury Strategy Statement.

## 7. Outlook

- 7.1 At the time of writing this activity report in November 2011, given the precarious outlook for growth it is believed the Bank of England would only raise rates after there was firm evidence that the economy had survived the fiscal consolidation. Therefore, the outlook is for official interest rates to remain low for the foreseeable future.

|                    | Dec-11 | Mar-12 | Jun-12 | Sep-12 | Dec-12 | Mar-13 | Jun-13 | Sep-13 | Dec-13 | Mar-14 | Jun-14 | Sep-14 | Dec-14 |
|--------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Official Bank Rate |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Upside risk        | --     | --     | --     | 0.25   | 0.25   | 0.25   | 0.5    | 0.75   | 1      | 1.25   | 1.5    | 1.75   | 1.75   |
| Central case       | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    | 0.5    |
| Downside risk      | --     | --     | --     | --     | --     | --     | --     | --     | --     | --     | --     | --     | --     |

## 8. Performance management

- 8.1 In compliance with the requirements of the Treasury Management CIPFA Code of Practice this report provides members with a summary report of the treasury management activity during the first six months of 2011/12. None of the Prudential Indicators have been breached and a prudent approach has been taken in relation to investment activity with priority being given to security and liquidity over yield.

|                               |   |
|-------------------------------|---|
| <b>Report author</b>          | <b>Contact officer: Mark Sheldon, <a href="mailto:mark.sheldon@cheltenham.gov.uk">mark.sheldon@cheltenham.gov.uk</a><br/>01242 264123</b> |
| <b>Appendices</b>             | none  |
| <b>Background information</b> | Treasury Management Strategy, Council February 2011   |

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Page 26

**Cheltenham Borough Council  
Council – 12 December 2011  
Community governance review**

|                                       |  |
|---------------------------------------|--|
| <b>Accountable member</b>             | <b>Councillor Colin Hay, cabinet member corporate services</b>   |
| <b>Accountable officer</b>            | <b>Jane Griffiths, Director of commissioning</b>   |
| <b>Accountable scrutiny committee</b> | <b>Economy and business improvement</b>  |
| <b>Ward(s) affected</b>               | <b>All</b>   |
| <b>Significant Decision</b>           | <b>Yes</b>   |
| <b>Executive summary</b>              | <p>The Local Government and Public Involvement and Health Act 2007 transferred the powers to take decisions on the creation of parishes and their electoral arrangements from the Secretary of State to district and unitary councils.</p> <p>The council had been approached by two parish councils, Up Hatherley and Leckhampton and Warden Hill, who are considering whether there should be a review of their boundaries. Letters were sent to all the parish councils to identify whether there was support for undertaking a community governance review in their areas and Charlton Kings have also expressed an interest in a boundary review, whilst Swindon and Prestbury Parish Councils have indicated that they do not want a review of their boundaries at this time</p> <p>The council reviewed the parish boundaries in 2002. The guidance suggests that councils should consider conducting a review every 10-15 years. Therefore, Council should determine whether to conduct a community governance review in respect of parish boundaries in 2012/13 ahead of the 2014 parish elections or later in 2016/17 ahead of the 2018 elections.</p> |
| <b>Recommendations</b>                | <p><b>Council to determine whether to undertake a community governance review of parish boundaries in 2012/13 ahead of parish elections in 2014.</b></p> <p><b>If Council determines to undertake such a review to authorise the Director of Commissioning to set up a cross party member working group (which would also involve parish council representatives) to support the review and to build the review into the corporate strategy action plan for 2012/13 and that terms of reference for the review to be drawn up by the working group for approval by Council no later than July 2012.</b></p>  |

|   |   |
|---|---|
| <p><b>Financial implications</b></p>  | <p>There is no budget to fund this review however costs could be kept to a minimum by using current websites and the support of parish councils and other community groups.</p> <p><b>Contact officer: Andrew Sherbourne,<br/>andrew.sherbourne@cheltenham.gov.uk, 01242 264337</b></p>   |
| <p><b>Legal implications</b></p>  | <p>There are specific statutory requirements for conducting a community governance review as referred in the report. Any change to parish boundaries would be made through a reorganisation order following completion of the review.</p> <p><b>Contact officer: Peter Lewis, peter.lewis@tewkesbury.gov.uk, 01684 272012</b></p> |
| <p><b>HR implications (including learning and organisational development)</b></p> | <p>Nor direct HR implications but officer resource would be required to support the review but if this was planned it could be built into the corporate strategy action plan and resourced accordingly through workplans.</p> <p><b>Contact officer: Julie McCarthy,<br/>Julie.McCarthy@cheltenham.gov.uk, 01242 264355</b></p>   |
| <p><b>Key risks</b></p>   | <p><b>The risks are set out in appendix 1.</b></p>  |
| <p><b>Corporate and community plan Implications</b></p>                           | <p>The review does not form part of the current years action plan but if members were minded to support the review then it could be built into work plans for 2012/13. Such a review would support the outcomes for developing a strong sense of community and residents being involved in supporting local issues.</p>           |
| <p><b>Environmental and climate change implications</b></p>                       |   |

## **1. Background**

- 1.1 Chapter 3, part 4 of the 2007 Local Government and Public Involvement and Health Act ('the Act') gave district councils the power to undertake community governance reviews. The processes to be followed are set out in the Act and guidance for such reviews has been issued by the Secretary of State a copy of which is set out in appendix 2.
- 1.2 The council received an enquiry from Up Hatherley Parish Council in 2010 and from Leckhampton Parish Council in September 2011 as to when and how the council might undertake a review of their boundaries. Under the Act, the council may undertake a community governance review if it so decides and, additionally, is under a duty to carry out a review if it receives a valid petition. No petition has been received in this case. The guidance suggests that a review should be conducted every 10 to 15 years. The parish boundaries were last reviewed in 2002.
- 1.3 The council wrote to all the parish councils in October 2011 to ascertain whether there was any support for a review and asking them whether they were prepared to offer any financial or officer support in conducting a review. There responses are summarised in section 3 below.

## **2. Reasons for recommendations**

- 2.1 Letters were sent to the parish councils in October 2011.
- 2.2 We have heard from all of the parish councils, and Up Hatherley Parish Council, Leckhampton and Warden Hill Parish Council and Charlton Kings Parish Council have responded to indicate that they believe there are some anomalies with their boundaries and that they would want to be involved in supporting the review. Prestbury Parish Council has indicated that it has no aspirations to either expand or contract its Parish Boundary within the Borough at this time, and Swindon Parish Council has indicated that it is not requesting a review of its boundaries.
- 2.3 The council has no budget for undertaking a review. Costs could be kept to a minimum using websites and support from parish councils and other community groups. Officer resource would be required to support the review but if this was planned it could be built into the corporate strategy action plan and resourced accordingly through workplans.

## **3. Alternative options considered**

- 3.1 The council could decide not to undertake a review at this time, and choose to undertake a review ahead of the parish elections in 2018. This would mean that the review would be completed was just within the 15 year guidance as set out by the secretary of state.
- 3.2 It should be noted that the Local Government Boundary Commission has just completed its review of county divisions and that these are based on existing parish boundaries and therefore the timing of a parish review is not ideal. Any changes to boundaries would therefore need to deal with associated electoral arrangements ie warding of parishes.
- 3.3 The council could choose only to act if a valid petition is received from a parish council but it would be more appropriate to deal with a review in a planned way.

## **4. Consultation and feedback**

- 4.1 The council has a duty to consult with the Gloucestershire County Council if it determines that a community governance review should be undertaken, and must notify them of the intention to undertake a review and the terms of reference. The head of democratic services at the county council has been sent a copy of the draft report and she has indicated that they would follow a similar procedure to that being undertaken with the Stroud review ie contact the political groups

and the relevant members and make a copy of the relevant documents available in the office if they wanted to view it but that any comments county members have should be submitted directly to the council.

- 4.2 If the council was proposing to undertake a review then it would be appropriate to engage with the a wide range of stakeholders and residents and a consultation plan would need to be developed as part of the review.

**5. Performance management –monitoring and review**

- 5.1 If the council were minded to conduct a review it is proposed that a cross party member working group is established. The council could also use the C5 group which is made up of representatives from each of the parish councils to support the process.
- 5.2 Any recommendations from the review would need to be reported to council.

|                               |  |
|-------------------------------|--|
| <b>Report author</b>          | <b>Contact officer: Jane Griffiths, Director of Commissioning,<br/>Jane.Griffiths@cheltenham.gov.uk,<br/><br/>01242 264126</b> |
| <b>Appendices</b>             | 1. Risk Assessment<br><br>2.   |
| <b>Background information</b> | 1.   |



| The risk  |  |                |             | Original risk score (impact x likelihood) |                |       | Managing risk |   |  |                     |                              |
|-----------|--|----------------|-------------|---|----------------|-------|---------------|---|--|---------------------|------------------------------|
| Risk ref. | Risk description   | Risk Owner     | Date raised | Impact 1-4                                | Likelihood 1-6 | Score | Control       | Action  | Deadline   | Responsible officer | Transferred to risk register |
| 1         | The review will take officer time which is currently not included within workplans | Jane Griffiths | 28.11.11    | 2   | 4              | 8     | R             | The review will need to be planned and built into resource commitments. Parish councils will need to support the review process | Resource commitments would need to be agreed prior to agreement of the scope of the review | Jane Griffiths      | Commissioning                |
|           |  |                |             |   |                |       |               |   |  |                     |                              |
|           |  |                |             |   |                |       |               |   |  |                     |                              |
|           |  |                |             |   |                |       |               |   |  |                     |                              |
|           |  |                |             |   |                |       |               |   |  |                     |                              |

Page 31

**Explanatory notes**

**Impact** – an assessment of the impact if the risk occurs on a scale of 1-4 (4 being the greatest impact)

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6 (6 being most likely)

| Impact Description | Impact score | Probability | Likelihood Description | Likelihood Score |
|--------------------|--------------|-------------|------------------------|------------------|
| Negligible         | 1            | 0% - 5%     | Almost impossible      | 1                |
| Marginal           | 2            | 5% - 15%    | Very low               | 2                |

|          |          |  |           |             |          |
|----------|----------|--|-----------|-------------|----------|
| Major    | <u>3</u> |  | 15% - 30% | Low         | <u>3</u> |
| Critical | <u>4</u> |  | 30% - 60% | Significant | <u>4</u> |
|          |          |  | 60% - 90% | High        | <u>5</u> |
|          |          |  | > 90%     | Very high   | <u>6</u> |

**Control** - Either: Reduce / Accept / Transfer to 3rd party / Close

## Cheltenham Borough Council

Council – 12 December 2011

### Adoption of Hackney Carriage Byelaws

|                                       |  |
|---------------------------------------|--|
| <b>Accountable member</b>             | <b>Cabinet Member Housing and Safety - Councillor Klara Sudbury</b>  |
| <b>Accountable officer</b>            | <b>Director of Operations - Rob Bell</b>   |
| <b>Accountable scrutiny committee</b> | <b>Social &amp; Community Overview and Scrutiny Committee</b>  |
| <b>Ward(s) affected</b>               | <b>All</b>   |
| <b>Key Decision</b>                   | <b>No</b>  |
| <b>Executive summary</b>              |  |
| <b>Recommendations</b>                | <b>That Council RESOLVE to the Hackney Carriage byelaws dated 22<sup>nd</sup> November 1951 be repealed and the revised model byelaws attached as Appendix 2 be adopted.</b> |

|  |   |
|--|---|
| <b>Financial implications</b>  | There are no financial implications relevant to this report.<br><br><b>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125</b> |
| <b>Legal implications</b>  | As contained in the report<br><br><b>Contact officer: Martin Aylett, martin.aylett@teWKesbury.gov.uk, 01684 27 2015</b>                                   |
| <b>HR implications (including learning and organisational development)</b> | No direct HR implications arising from this report<br><br><b>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</b>         |
| <b>Key risks</b>   | <b>As outlined in Appendix 1</b>  |
| <b>Corporate and community plan Implications</b>                           | <b>None</b>   |

## 1. Background

- 1.1 On the 7<sup>th</sup> of October 2011 the Licensing Committee resolved to recommend to Full Council the adoption of new byelaws for Hackney Carriages (for the avoidance of doubt a Hackney Carriage is also known as a Taxi).
- 1.2 The Council's constitution delegates the power to make and revoke byelaws to Full Council on the recommendation of the Licensing Committee the Council is therefore asked to consider the adoption new model byelaws for Hackney Carriages.

### **Power to set Hackney Carriage Conditions & Byelaws**

- 1.3 Cheltenham Borough Council is responsible for the licensing of Hackney Carriage drivers and vehicles and Private Hire drivers, vehicles and operators.
- 1.4 The Council has powers under Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 to attach to the grant of a licence such conditions as it considers reasonably necessary.
- 1.5 However, the power to attach conditions to the granting of a licence under Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 does not extend to the issue of Hackney Carriage driver's licences.
- 1.6 The only means of conditioning a Hackney Carriage driver's licence is by way of adopted bylaws made under the section 68 of the Town Police Clauses Act 1847 and section 171 of the Public Health Act 1875.
- 1.7 Section 68 of the Town Police Clauses Act 1847 states that byelaws can be used for:-
  - (a) regulating the conduct of proprietors and drivers of hackney carriages plying for hire within the Borough of Cheltenham, determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their duty,
  - (b) regulating the manner in which the number of each carriage shall be displayed,
  - (c) regulating the number of persons to be carried by hackney carriages, and in what manner such number is to be shown on vehicles,
  - (d) fixing the stands of such hackney carriages, and the distance to which they may be compelled to take passengers,
  - (e) fixing the rates or fares and for securing the due publication of such fares,
  - (f) securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

### **Current Hackney Carriage Byelaws**

- 1.8 The Council's current Hackney Carriage byelaws date back to November 1951.
- 1.9 Clearly since then there have been significant changes and improvements across the board affecting vehicle manufacture, taxi meter technology, law, regulations and general licensing approaches.
- 1.10 Given that byelaws are the only means by which the Council can condition the issue of a Hackney Carriage driver's licence, it is important that these are correct and up to date in order to make them practical and enforceable.

### **The Department for Transport Model Byelaws for Hackney Carriages**

- 1.11 The Department for Transport (“DfT” hereafter) has developed a set of model byelaws for Hackney Carriages. These model byelaws are attached at **Appendix 2**.
- 1.12 The model byelaws were contained in the DfT’s Hackney Carriage Byelaws Guidance Notes issued in July 2005 and have been brought up to date and is a nationally accepted set of byelaws.

### **Relevant Considerations when setting Hackney Carriage Byelaws**

- 1.13 When considering making hackney carriage byelaws the DfT suggests that as a first step, licensing authorities will want to consider whether their regulatory objectives - in terms of exerting controls over taxi owners and drivers - can best be achieved by attaching conditions to licences or by making byelaws.
- 1.14 Having considered the matter carefully, the DfT takes the view that the byelaw making power in the 1847 Act should be considered in the context of local authorities' wider responsibilities in relation to hackney carriage licensing i.e. that the purpose of the power is to enable local licensing authorities to regulate hackney carriage drivers and proprietors in such a way as to ensure that they are fit and proper persons and in order to ensure the safety of the travelling public.

### **Additional Control Measures, Omissions or Amendments to Byelaws**

- 1.15 The updated model byelaws introduced a number of additional control measures, omissions and amendments to the Council’s current Hackney Carriage byelaws. The additional control measures, omissions and amendments are listed in **Appendix 3** with officer comments.
- 1.16 To ensure effective control of Hackney Carriage licensing in the borough, it is important that the Council adopts the additional control measures.

### **Deviations from the Model Byelaws**

- 1.17 As already mentioned, the DfT would expect local authorities to base their byelaws on the model.
- 1.18 Regardless of this however, there is scope for the Council to deviate from the model. Reasons for deviating from the model will normally be based on achieving certain policy objectives not addressed in the model.
- 1.19 Where the Council wishes to introduce a new byelaw which deviates from the model, the DfT expects the Council to take a rigorous approach in drafting to ensure that the tests of legal validity are met. The 4 elements essential to validity are:
- byelaws must be within the powers of the local authority which makes them;
  - byelaws must not be repugnant to the general law;
  - byelaws must be certain and positive in their terms; and
  - byelaws must be reasonable.
- 1.20 Any request for provisional approval of byelaws which deviate from the model should be accompanied by an explanation of the policy objective, a justification of their validity and confirmation that the byelaws have been approved by legal advisers.
- 1.21 The Local Government Act 1972 gives the Secretary of State power to confirm or refuse byelaws which are submitted to him and confirmation depends on validity.

**1.22** The principal element of the Secretary of State's approval and confirmation process will involve consideration of the policy issues, mainly whether the objective is reasonable and the byelaw appropriate to achieve it.

**1.23** Although there is scope for the Council to deviate from the model, officers do not consider this to be necessary. The Council adopted a comprehensive Taxi and Private Hire policy that took effect on the 1<sup>st</sup> of December 2010. This policy together with the model byelaws is considered sufficient to ensure applicants are fit and proper persons and to ensure the safety of the travelling public. It is therefore considered that the model bye laws provide a pragmatic solution to Cheltenham Borough Council's current out of date bye laws.

## **2. Reasons for recommendations**

**2.1** To ensure that the Council can effectively discharge its licensing function under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

## **3. Alternative options considered**

**3.1** The Council can resolve not to adopt the updated DfT model byelaws. However, this is not a desirable outcome and could pose a number of risks to the Council as outlined in **Appendix 1**.

**3.2** Alternatively, the Council can resolve that certain policy objectives are not addressed in the model and can seek to add additional byelaws although again officers do not consider this to be necessary.

## **4. Consultation and feedback**

**4.1** On the 13<sup>th</sup> of May 2011 the Licensing Committee approved the proposed DfT model byelaws for the purpose of consultation.

**4.2** In line with Cabinet Office recommendations a 12 week consultation was undertaken with the Hackney Carriage trade between May and August 2011 on the adoption of new model Hackney Carriage byelaws.

**4.3** During the consultation, one response from Mr Dave Heather (HCD101) was received. A copy of his comments and officer response that was submitted to the Licensing Committee for consideration is attached at **Appendix 4**.

**4.4** On the 7<sup>th</sup> of October 2011 the Licensing Committee resolved to recommend the adoption of the model byelaws by Full Council.

|                      |   |
|----------------------|---|
| <b>Report author</b> | <b>Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk</b><br><b>Senior Licensing Officer</b><br><b>01242 77 5004</b> |
|----------------------|---|

|                               |   |
|-------------------------------|---|
| <b>Appendices</b>             | <ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. DfT Model Hackney Carriage Byelaws</li><li>3. Additional Control Measures, Omissions or Amendments to Byelaws</li><li>4. Consultation Comments</li></ol>  |
| <b>Background information</b> | <ol style="list-style-type: none"><li>1. Report "Review of Hackney Carriage Byelaws" and minutes for the Licensing Committee hearing on the 13th of May 2011.</li><li>2. Report "Hackney Carriage Byelaws" and minutes for the Licensing Committee hearing on the 7th of October 2011.</li><li>3. DfT Hackney Carriage Byelaws – Guidance and Model Byelaws, July 2005.</li></ol> |

| The risk  |   |                          |               | Original risk score (impact x likelihood) |                |       | Managing risk |  |                       |                          |                              |
|-----------|---|--------------------------|---------------|---|----------------|-------|---------------|--|-----------------------|--------------------------|------------------------------|
| Risk ref. | Risk description  | Risk Owner               | Date raised   | Impact 1-4                                | Likelihood 1-6 | Score | Control       | Action   | Deadline              | Responsible officer      | Transferred to risk register |
|           | If the Council does not resolve to adopt the updated byelaws there is a risk that it cannot effectively discharge its licensing function under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. | Senior Licensing Officer | December 2011 | 3   | 4              | 12    | Adoption      | Adoption of the Updated Hackney Carriage Byelaws | No Statutory Deadline | Senior Licensing Officer | No                           |
|           | If the Council does not resolve to adopt the updated byelaws there is a risk that public safety could be comprised by out of date control measures.   | Senior Licensing Officer | December 2011 | 2   | 3              | 6     | Adoption      | Adoption of the Updated Hackney Carriage Byelaws | No Statutory Deadline | Senior Licensing Officer | No                           |
|           | If the Council does not resolve to adopt the updated byelaws there is a risk that the Council could be subject to legal challenge for not enforcing its own adopted byelaws.  | Senior Licensing Officer | December 2011 | 1   | 2              | 2     | Adoption      | Adoption of the Updated Hackney Carriage Byelaws | No Statutory Deadline | Senior Licensing Officer | No                           |





### Model Byelaws for Hackney Carriages

#### BYELAWS

Made under section 68 of the Town Police Clauses Act 1847, and section 171 of the Public Health Act 1875, by Cheltenham Borough Council with respect to hackney carriages in the Borough of Cheltenham.

#### Interpretation

1. Throughout these byelaws “the Council” means Cheltenham Borough Council and “the district” means the Borough of Cheltenham.

#### **Provisions regulating the manner in which the number of each hackney carriage corresponding with the number of its licence, shall be displayed**

2. (a) The proprietor of a hackney carriage shall cause the number of the licence granted to him in respect of the carriage to be legibly painted or marked on the outside and inside of the carriage, or on plates affixed thereto.
- (b) A proprietor or driver of a hackney carriage shall -
  - (i) not wilfully or negligently cause or suffer any such number to be concealed from public view while the carriage is standing or plying for hire; and
  - (ii) not cause or permit the carriage to stand or ply for hire with any such painting marking or plate so defaced that any figure or material particular is illegible.

#### **Provisions regulating how hackney carriages are to be furnished or provided**

3. The proprietor of a hackney carriage shall:-
  - (a) provide sufficient means by which any person in the carriage may communicate with the driver;
  - (b) cause the roof or covering to be kept water-tight;
  - (c) provide any necessary windows and a means of opening and closing not less than one window on each side;
  - (d) cause the seats to be properly cushioned or covered;
  - (e) cause the floor to be provided with a proper carpet, mat or other suitable covering;
  - (f) cause the fittings and furniture generally to be kept in a clean condition, well maintained and in every way fit for public service;
  - (g) provide means for securing luggage if the carriage is so constructed as to carry luggage;
  - (h) provide an efficient fire extinguisher which shall be carried in such a position as to be readily available for use; and
  - (i) provide at least two doors for the use of persons conveyed in such carriage and a separate means of ingress and egress for the driver.

4. The proprietor of a hackney carriage shall cause any taximeter with which the carriage is provided to be so constructed, attached and maintained as to comply with the following requirements, that is to say -
- (a) the taximeter shall be fitted with a key, flag or other device the turning of which will bring the machinery of the taximeter into action and cause the word "HIRED" to appear on the face of the taximeter;
  - (b) such key, flag or other device shall be capable of being locked in such a position that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
  - (c) when the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures, a fare not exceeding the rate or fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by time as well as for distance in pursuance of the tariff fixed by the Council;
  - (d) the word "FARE" shall be printed on the face of the taximeter in plain letters so as clearly to apply to the fare recorded thereon;
  - (e) the taximeter shall be so placed that all letters and figures on the face thereof are at all times plainly visible to any person being conveyed in the carriage, and for that purpose the letters and figures shall be capable of being suitably illuminated during any period of hiring; and
  - (f) the taximeter and all the fittings thereof shall be so affixed to the carriage with seals or other appliances that it shall not be practicable for any person to tamper with them except by breaking, damaging or permanently displacing the seals or other appliances.

**Provisions regulating the conduct of the proprietors and drivers of hackney carriages plying within the district in their several employments, and determining whether such drivers shall wear any and what badges**

5. The driver of a hackney carriage provided with a taximeter shall –
- (a) when standing or plying for hire, keep the key, flag or other device fitted in pursuance of the byelaw in that behalf locked in the position in which no fare is recorded on the face of the taximeter;
  - (b) before beginning a journey for which a fare is charged for distance and time, bring the machinery of the taximeter into action by moving the said key, flag or other device so that the word "HIRED" is legible on the face of the taximeter and keep the machinery of the taximeter in action until the termination of the hiring; and
  - (c) cause the dial of the taximeter to be kept properly illuminated throughout any part of a hiring which is between half-an-hour after sunset and half-an-hour before sunrise, and also at any other time at the request of the hirer.
6. A proprietor or driver of a hackney carriage shall not tamper with or permit any person to tamper with any taximeter with which the carriage is provided, with the fittings thereof, or with the seals affixed thereto.
7. The driver of a hackney carriage shall, when plying for hire in any street and not actually hired -
- (a) proceed with reasonable speed to one of the stands appointed by the Council;
  - (b) if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand;
  - (c) on arriving at a stand not already occupied by the full number of carriages authorised to occupy it, station the carriage immediately behind the carriage or carriages on the stand and so as to face in the same direction; and
  - (d) from time to time, when any other carriage immediately in front is driven off or moved forward cause his carriage to be moved forward so as to fill the place previously occupied by the carriage driven off or moved forward.

8. A proprietor or driver of a hackney carriage, when standing or plying for hire, shall not make use of the services of any other person for the purpose of importuning any person to hire such carriage.
9. The driver of a hackney carriage shall behave in a civil and orderly manner and shall take all reasonable precautions to ensure the safety of persons conveyed in or entering or alighting from the vehicle.
10. The proprietor or driver of a hackney carriage who has agreed or has been hired to be in attendance with the carriage at an appointed time and place shall, unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.
11. A proprietor or driver of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons than the number of persons specified on the plate affixed to the outside of the carriage.
12. If a badge has been provided by the Council and delivered to the driver of a hackney carriage he shall, when standing or plying for hire, and when hired, wear that badge in such position and manner as to be plainly visible.
13. The driver of a hackney carriage so constructed as to carry luggage shall, when requested by any person hiring or seeking to hire the carriage -
  - (a) convey a reasonable quantity of luggage;
  - (b) afford reasonable assistance in loading and unloading; and
  - (c) afford reasonable assistance in removing it to or from the entrance of any building, station or place at which he may take up or set down such person.

**Provisions fixing the rates or fares to be paid for hackney carriages within the district and securing the due publication of such fares**

14. (i) The proprietor or driver of a hackney carriage shall be entitled to demand and take for the hire of the carriage the rate or fare prescribed by the Council, the rate or fare being calculated by a combination of distance and time unless the hirer express at the commencement of the hiring his desire to engage by time.  
  
(ii) Where a hackney carriage furnished with a taximeter is hired by distance and time the proprietor or driver thereof shall not be entitled to demand and take a fare greater than that recorded on the taximeter, save for any extra charges authorised by the Council which it may not be possible to record on the face of the taximeter.
15. (i) The proprietor of a hackney carriage shall cause a statement of the fares fixed by council resolution to be exhibited inside the carriage, in clearly distinguishable letters and figures.  
  
(ii) The proprietor or driver of a hackney carriage bearing a statement of fares in accordance with this byelaw shall not wilfully or negligently cause or suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.

**Provisions securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof**

16. The proprietor or driver of a hackney carriage shall immediately after the termination of any hiring, or as soon as practicable thereafter, carefully search the carriage for any property which may have been accidentally left therein.

17. The proprietor or driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him -
- (a) carry it as soon as possible and in any event within 48 hours if not sooner claimed by or on behalf of its owner, to the office of the Council and leave it in the custody of the officer in charge of the office on his giving a receipt for it; and
  - (b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to five pence in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater) but not more than five pounds.

Penalties

18. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding Level 2 on the Standard Scale and in the case of a continuing offence to a further fine not exceeding two pounds for each day during which the offence continues after conviction therefor.

Repeal of Byelaws

19. The series of byelaws relating to hackney carriages which were made by:
- (a) The byelaws relating to hackney carriages which were made by Cheltenham Borough Council on the 22nd day of November 1951 and which were confirmed by Mayor, Aldermen and Burgesses of the Borough of Cheltenham on the 1<sup>st</sup> day of October 1951;
- are hereby repealed.

List of additional control measures, omissions or amendments to byelaws

| Proposed New Byelaws  | Current Adopted Byelaws  |
|---|--|
| <p>2. (a) The proprietor of a hackney carriage shall cause the number of the licence granted to him in respect of the carriage to be legibly painted or marked on <i>the outside and inside of the carriage, or on plates affixed thereto.</i></p>  | <p>(a) cause the hackney carriage licence plate approved by the Council and showing the number of the licence granted to be displayed in a conspicuous position to be approved by the Council.</p>   |
| <p>3. (c) provide any necessary windows and a means of opening and closing <i>not less than one window on each side;</i></p>  | <p>3. (c) Provide windows in each door with means of opening and closing.</p>  |
| <p>3. (f) cause the fittings and furniture generally to be kept in a clean condition, well maintained and <i>in every way fit for public service;</i></p> <p><i>[Officer Comment: Wording has been changed to reflect the Council's statutory duty to ensure that the vehicles it licence' is "fit" to be so licensed by virtue of s.60 of the Local Government (Miscellaneous Provisions) Act 1976.]</i></p>   | <p>3. (f) Cause all fittings and furniture to be clean and adequate for the safety and convenience of persons conveyed in such carriage.</p>   |
| <p>3. (g) provide means for securing luggage <i>if the carriage is so constructed as to carry luggage;</i></p> <p><i>[Officer Comment: Makes provision for Hackney Carriages not constructed to take luggage although the Council will not normally licence such Hackney Carriages as a matter of policy.]</i></p>  | <p>3. (g) Cause means to be provided for carrying and securing luggage.</p>  |
| <p>3. (i) provide at least two doors for the use of persons conveyed in such carriage and a separate means of ingress and egress for the driver.</p>  | <p>Provision not included in the Council's current byelaws.</p>  |
| <p>4. (c) when the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures, a fare not exceeding the rate or fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by time as well as for distance in pursuance of the <i>tariff fixed by the Council;</i></p> <p><i>[Officer Comment: Hackney Carriage fares are no longer set by way of byelaws. S.65 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Council powers to set fares.]</i></p> | <p>4. (iii) When the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in figures clearly legible and free from ambiguity a fare not exceeding the rate of fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by distance in pursuance of the byelaw in that behalf;</p> |
| <p>4. (e) the taximeter shall be so placed that all letters and figures on the face thereof are at all times plainly visible to any person being conveyed in the carriage, <i>and for that purpose the letters and figures shall be capable of being suitably illuminated during any period of hiring;</i></p>  | <p>4. (v) The taximeter shall be so placed that all letters and figures on the face thereof may be at all times plainly visible to any person being conveyed in the carriage.</p>  |

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| <p>5. The driver of a hackney carriage provided with a taximeter shall –</p> <p>(a) when standing or plying for hire, <i>keep the key, flag or other device fitted in pursuance of the byelaw</i> in that behalf locked in the position in which no fare is recorded on the face of the taximeter;</p> <p>(b) before beginning a journey for which a fare is charged for distance and time, bring the machinery of the taximeter into action by moving the said key, flag or other device so that the word “HIRED” is legible on the face of the taximeter and keep the machinery of the taximeter in action until the termination of the hiring; and</p> <p>(c) cause the dial of the taximeter to be kept properly illuminated throughout any part of a hiring which is between half-an-hour after sunset and half-an-hour before sunrise, and also at any other time at the request of the hirer.</p> | <p>5. Every driver of a hackney carriage provided with a taximeter shall :-</p> <p>(a) When standing or plying for hire, keep the taximeter locked in the position in which no fare is recorded on the face of the taximeter.</p> <p>(b) As soon as the carriage is hired by distance, and before commencing the journey, bring the machinery of the taximeter into action by moving the key, flag or other device fitted for the purpose, so that the word "HIRED" is legible on the face of the taximeter;</p> <p>(c) At the end of a hiring secure that the fare recorded on the face of the taxi-meter shall remain visible until the hirer shall have reasonable opportunity of observing such fare;</p> <p>(d) Cause the dial of the taximeter to be kept properly illuminated throughout any part of a hiring which is during the hours of darkness as determined in Section 1 of the Road Transport Lighting Act, 1927, and also at any other time at the request of the hirer.</p> <p><i>[Officer Comment: The Road Transport Lighting Act 1927 has been repealed]</i></p> |
| <p>7. (a) proceed with reasonable speed to one of the stands appointed by the Council;</p> <p><i>[Officer Comment: The provision of stands or ranks for Hackney Carriages are no longer a matter to be dealt with by way of byelaws. S.63 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Council powers to appoint stands for Hackney Carriages.]</i></p>   | <p>7. (a) Proceed with reasonable speed to and station the carriage on one of such stands or the stands provided at any Railway Station if authorised by the Railway Authorities to use such stands.</p>  |
| <p>8. A proprietor or driver of a hackney carriage, when standing or plying for hire, shall not make use of the services of any other person for the purpose of importuning any person to hire such carriage.</p>  | <p>13. A proprietor or driver of a hackney carriage, when standing or plying for hire, shall not, <i>by calling out or otherwise</i>, importune any person to hire such carriage and shall not make use of the services of any other person for this purpose.</p> <p><i>[Officer Comment: It is an offence for, amongst others, a Hackney Carriage driver "...to solicit persons to hire vehicles to carry them as passengers" under section 167 of the Criminal Justice and Public Order Act 1994 so there is no need for the offence to be maintained in byelaws.]</i></p>  |
| <p>11. A proprietor or driver of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons</p>   | <p>Provision not included in the Council's current byelaws.</p>   |

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| <p>than the number of persons specified on the plate affixed to the outside of the carriage.</p>   | <p>Page 45</p>   |
| <p>Provision not included in the updated byelaws.</p>  | <p>11. Every proprietor or driver of a hackney carriage who shall knowingly convey in the carriage the dead body of any person, shall, immediately thereafter, notify the fact to the Medical Officer of Health of the Council.</p>  |
| <p><i>[Officer Comment: Rules with regards to advertising on windows for vehicles have been relaxed subject to the provisions of the Construction &amp; Use regulations 1986.]</i></p>   | <p>12. The proprietor or driver of a hackney carriage shall not suffer any printed, written or other matter to appear on any window of such carriage, with the exception of the Road Fund Licence and of one Association badge which may be carried on the near side of the windscreen.</p>  |
| <p><i>[Officer Comment: Remitted from updated byelaws. Unnecessarily prolonging a journey is now an offence under s.69 of the Local Government (Miscellaneous Provisions) Act 1976.]</i></p>   | <p>14. Every driver of a hackney carriage, when hired to drive to any particular destination shall, subject to any directions given by the hirer, proceed to such destination by the shortest available route.</p>   |
| <p><i>[Officer Comment: ]</i></p>  | <p>15. The driver or proprietor of a motor hackney carriage shall take all reasonable precautions to prevent the discharge therefrom in any street or public place of oil or spirit, and shall not repair such carriage in any street or public place so as to cause any such discharge, except where such repairs are essential to secure the continued safe functioning of the vehicle and shall not wash such carriage in any street or public place.</p> |
| <p><i>[Officer Comment: Remitted from updated byelaws. Littering is now an offence under Environmental Protection Act 1990.]</i></p>   | <p>16. No driver of a hackney carriage shall during the time that such carriage is standing at one of the stands referred to in these Byelaws deposit litter thereon.</p>  |
| <p><i>[Officer Comment: Remitted from updated byelaws. Smoking in a licensed Hackney Carriage is now an offence under the provisions of the Health Act 2006.]</i></p>  | <p>18. A driver of a hackney carriage shall not, at any time when driving for hire, smoke tobacco or any other like substance except with the consent of the hirer.</p>  |
| <p><i>[Officer Comment: The provision of stands or ranks for Hackney Carriages are no longer a matter to be dealt with by way of byelaws. S.63 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Council powers to appoint stands for Hackney Carriages.]</i></p>      | <p>Entire section “<b>19. Provisions for fixing the stands of such hackney carriages</b>” remitted from updated byelaws.</p>   |
| <p><i>[Officer Comment: Remitted from updated byelaws. Hackney Carriage fares are no longer set by way of byelaws. S.65 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Council powers to set fares.]</i></p>  | <p>Entire section “<b>Fares for Distance</b>”, “<b>Additional Charges</b>” and “<b>Fares for Time Hirings</b>” remitted from updated byelaws.</p>  |
| <p>14. (ii) Where a hackney carriage furnished with a taximeter is hired by distance and time the proprietor or driver thereof shall not be entitled to demand and take a fare greater than that recorded on the taximeter, save for any extra charges authorised by the Council which</p> | <p>20. Provided always that where a hackney carriage furnished with a taximeter is hired by distance and time the proprietor or driver thereof shall not be entitled to demand and take a fare greater than that recorded on the taximeter, save for any extra charges authorised by the Council which it may not be possible to record</p>  |

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| <p>it may not be possible to record on the face of the taximeter.</p> <p><i>[Officer Comment: Hackney Carriage fares are no longer calculated in the way suggested by the latter part of para. 20 of the existing byelaws. As a result that section has been remitted in the updated byelaws.]</i></p>  | <p>Page 46 face of the taximeter, together with any permitted additional charge except where the hiring commences between midnight and 6 a.m. when the recorded fare for the distance travelled, or time spent in waiting shall be increased by a sum equivalent to fifty cent thereof.</p>  |
| <p>15. (i) The proprietor of a hackney carriage shall cause a statement of the fares fixed by council resolution to be exhibited inside the carriage, in clearly distinguishable letters and figures.</p> <p>(ii) The proprietor or driver of a hackney carriage bearing a statement of fares in accordance with this byelaw shall not wilfully or negligently cause or suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.</p>   | <p>21. (1) Every proprietor of a hackney carriage plying for hire for which any fares are fixed by any byelaw in that behalf shall</p> <p>(a) Cause a statement of such fares which shall be provided by the Council to be carried in a position accessible and visible to the hirer inside the carriage.</p> <p>(b) Renew such statement as often as is necessary to keep the same clearly visible.</p> <p>(2) The proprietor or driver of a hackney carriage bearing a statement of fares in accordance with this byelaw shall not wilfully or negligently cause or suffer the statement to be altered, concealed or rendered illegible at any time while the carriage is plying or being used for hire.</p>                                       |
| <p>17. The proprietor or driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him –</p> <p>(a) carry it as soon as possible and in any event within 48 hours if not sooner claimed by or on behalf of its owner, to the office of the Council and leave it in the custody of the officer in charge of the office on his giving a receipt for it; and</p> <p>(b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to five pence in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater) but not more than five pounds.</p> | <p>23. Every proprietor or driver of a hackney carriage shall if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him,</p> <p>(1) Carry it within twenty-four hours, if not sooner claimed by or on behalf of its owner, to the office of the Council, and leave it in the custody of the officer in charge of the office on his giving a receipt for it.</p> <p>(2) Be entitled to receive from any person to whom the property shall be redelivered an amount equal to one shilling in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater, but not more than five pounds.</p> |
| <p>18. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding Level 2 on the Standard Scale and in the case of a continuing offence to a further fine not exceeding two pounds for each day during which the offence continues after conviction therefor.</p>   | <p>24. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding five pounds and in the case of a continuing offence to a further fine not exceeding forty shillings for each day during which the offence continues after conviction therefor.</p>   |



| Consultation Comments   | Officer Comments/Recommendations  |
|---|---|
| <p>2(a) The reference to "legibly painted or marked..." would lead to all types of cavalier interpretation regarding style, paint etc; suggest remove this reference and keep with current practice of plate approved/supplied by CBC fixed permanently to rear of vehicle i.e. whether working or not. (This will comply with my reading of current legal requirements). Also details (as plate) displayed inside of vehicle so as to be readable from inside and outside of vehicle. I.e. continue with current practice.</p> | <p>2(a) complies with requirements set out in section 51 of the Town Police Clauses Act 1847 ("TPCA47" hereafter) which states "...be painted on a plate placed on some conspicuous place on the outside of such carriage...". Officers do not consider that this requirement will lead to misinterpretation since the same section above also prescribes the format and information to be displayed on licence plates.</p> |
| <p>3(c) should be one per door into all passengers' compartments plus driver's.</p>   | <p>DfT Circular 8/86 stipulates that the purpose of the model byelaws is to "...cover the range of <i>standard controls</i> which most local authorities would want to impose and we would expect local authorities to base their byelaws on the model." The requirement under 3(c) is the standard but does not by virtue of that exclude anything over and above such a standard.</p>                                     |
| <p>3(i) In the event of an accident there must be exits from both sides of the vehicle; therefore there must be 4 doors.</p>  | <p>Officer comments as per the above.</p>   |
| <p>4(d) change word "printed" to "displayed"</p>  | <p>Officers do not consider there to be a significant difference in meaning and it will therefore not constitute a point of confusion. It is therefore not considered that the suggested rewording constitutes a sufficient reason to deviate from the model byelaws on this point.</p>   |
| <p>8 Phrase "shall not make use...any other person...". This does not mention the driver. Suggest reword statement to read "no one (driver or agent) shall solicit hire"</p>  | <p>It is already an offence for, amongst others, a Hackney Carriage driver "...to solicit persons to hire vehicles to carry them as passengers" under section 167 of the Criminal Justice and Public Order Act 1994. For this reason, officers do not recommend para. 8 be amended.</p>   |
| <p>10 This statement does not refer to Hackney Hire working! It is a statement of how Private Hire operates i.e. PREBOOKED. Although I agree with the comments expressed I feel that the statement be removed.</p>  | <p>A right exists for Hackney Carriages to undertake advance booking work. Para. 10 ensures that when a Hackney Carriage driver does undertake advance booking work, that they punctually attend. For this reason, it is not recommended that para. 10 be amended.</p>  |
| <p>12 Remove "If" badges are issued by CBC. Current practice is to wear one badge and display one badge in the vehicle in clearly visible places. Suggest this continues.</p>   | <p>Cheltenham Borough Council does issue badges and for this reason the suggested rewording does not constitute a sufficient reason to deviate from the model byelaws on this point.</p>  |
| <p>14(i) "...unless the hirer express...engage by time" Almost impossible to enforce unless a stopwatch is used and agreement on cost/time agreed plus a</p>  |   |

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| <p>calculation would be needed. This is an area where conflict could occur. Suggest remove this phase.</p> <p>14(ii) Agree with statement but feel that it be extended to cover "quoted/estimated" fares. Suggest any quotes are prefaced by the words "fare is as per meter but it will be approx £..." and consult any references that the driver may have (e.g. pre-printed sample destination/distance calculations)</p> <p>15 section i) &amp; ii). Suggest a rewrite of the "Statement of Fares" to make it easier to understand in a non ambiguous way. Must be comprehensible by both Drivers and members of the public.</p> <p>16 Add "at least at end of shift"</p> <p>17 What is the position if lost items are unclaimed? Does ownership go to the driver? Or to the Council?</p> <p>18 Assume this refers to cash penalties as imposed by the Courts. What penalties and effects on Driver's licence?</p> | <p>The requirement under para. 14(ii) is a requirement in law by virtue of section 58 TPCA47 "Overcharge by hackney coachmen". Byelaws cannot be repugnant to the law and for this reason it is not recommend that this para. Be amended.</p> <p>Comments noted but these are not considered sufficient reason to deviate from the model byelaws.</p> <p>Including "at least at end of shift" would be inconsistent with the intention of para. 16 by virtue of the fact that the paragraph ensures that a vehicle is inspected at the end of each and every journey (or as soon as practicable thereafter) not only once at the end of the shift. The suggested rewording will be addressed by the current wording in any case and it is therefore not recommended that para. 16 be amended.</p> <p>The Council will put procedures in place to deal with unclaimed property. These will be inline with Gloucestershire Constabulary's lost property procedures.</p> <p>Depending on the merits of each case, the Council will have discretion to either prosecute for an offence under the byelaw or to seek a review of the licence.</p> <p>Persons convicted can be fined by the convicting court. The fine for first offences cannot not exceeding level 2 (i.e. not exceeding £500) although further fines can be imposed for continuing offences.</p> |
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## Cheltenham Borough Council

Council – 12 December 2011

### New Arrangements for Overview and Scrutiny

|                                       |  |
|---------------------------------------|--|
| <b>Accountable member</b>             | <b>Cabinet Member Corporate Services, Councillor Colin Hay</b>   |
| <b>Accountable officer</b>            | <b>Andrew North, Chief Executive</b>   |
| <b>Accountable scrutiny committee</b> | <b>All</b>   |
| <b>Ward(s) affected</b>               | <b>All indirectly</b>  |
| <b>Significant Decision</b>           | <b>No</b>  |
| <b>Executive summary</b>              | <p>In May 2011, the Group Leaders asked the Chief Executive to consider whether the current arrangements for overview and scrutiny within the Council would be effective with the move to become a commissioning council. They agreed that a review should be carried out to identify what changes needed to be made, in time for their implementation immediately following the borough elections in May 2012.</p> <p>This report sets out the conclusions of the review and asks Council to agree the principles of the new arrangements so that more detailed work can be done. A further report will be brought back to Council in March 2012 which will ask Council to approve the constitutional and any other procedural changes necessary to support the implementation of the new arrangements.</p>   |
| <b>Recommendations</b>                | <p><b>The Council is asked to</b></p> <ol style="list-style-type: none"> <li><b>1. Approve the key principles of the new scrutiny arrangements set out in sections 5.3 to 5.21 of the report</b></li> <li><b>2. Authorise officers to develop the detailed procedures and processes to support the new arrangements ready for implementation immediately following the borough elections in May 2012, in consultation with the Project Sponsor, Councillor Penny Hall and the Cabinet Member Corporate Services.</b></li> <li><b>3. Request the Constitution Working Group to review the constitutional changes required to support the new arrangements and include them in its planned revisions to the Council’s Constitution due for approval by Council in March 2012.</b></li> <li><b>4. Authorise officers to reconvene the independent Members Remuneration Panel to review any changes to the Special Responsibility Allowances arising from the new arrangements.</b></li> </ol> |

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| <p><b>Financial implications</b></p>  | <p>As outlined in section 6 of the report.</p> <p>The changes in responsibilities may lead to a change in allowances which may have budgetary implications.</p> <p><b>Contact officer: Mark Sheldon,</b><br/><b>mark.sheldon @cheltenham.gov.uk, 01242 264123</b></p>  |
| <p><b>Legal implications</b></p>  | <p>The Authority must have at least one Overview and Scrutiny Committee. Scrutiny committees may review both executive and non executive functions and can make reports and recommendations to the Council or the Cabinet on those functions and “on matters which affect the authority’s area or the inhabitants of that area”. A scrutiny committee may also take the role of the crime and disorder committee under the Police and Justice Act 2006.</p> <p>Whilst scrutiny committees are politically balanced and have public agendas and meetings (unless confidential or exempt information is discussed), there are no such requirements for working groups. Therefore, it is for the Authority to decide whether Scrutiny Task Groups should be politically balanced and to what extent their work and proceedings would be made public (taking in to account freedom of information principles).</p> <p>Contact officer: Peter Lewis, peter.lewis@tewkesbury.gov.uk, 01684 272012</p>  |
| <p><b>HR implications (including learning and organisational development)</b></p> | <p>As outlined in Section 5, the new arrangements will provide the opportunity for members to be involved in specific scrutiny task groups, with the opportunity to develop the necessary skills and expertise. This may have training and development implications.</p> <p>The need for officer support for the new arrangements is recognised, however it needs to be noted that the council has no dedicated scrutiny officers (as is the case in larger authorities). Members involved will need to actively participate in the work of the task group.</p> <p>It is envisaged that the proposed arrangements will enable the Council’s finite resources to be used effectively way, for example reducing some of the duplication of effort involved in current arrangements, and as priorities change, support resources can be redirected. Officer and member capacity to support the new arrangements will need to be monitored and reviewed to ensure it delivers the envisaged benefits.</p> <p>The new arrangements will need to be fully communicated in particular those who support and are regularly engaged with scrutiny.</p> <p><b>Contact officer: Amanda Attfield</b><br/><b>amanda.attfield@cheltenham.gov.uk 01242 264186</b></p> |
| <p><b>Key risks</b></p>   | <p>These are set out in Appendix 1.</p>  |

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| <b>Corporate and community plan Implications</b>     | An effective overview and scrutiny process can contribute to positive outcomes on any of the objectives in the Corporate Strategy.<br><br>Increased public involvement in Overview and Scrutiny, which will be facilitated by the new arrangements, will support the corporate objective 'Our residents enjoy a strong sense of community and are involved in resolving local issues'. |
| <b>Environmental and climate change implications</b> | None   |

## 1. Background

- 1.1 Cheltenham Borough Council established its scrutiny function in November 2001, with three new committees being formed in October 2002 to mirror the new corporate structure at that time. These committees were the Economy and Business Improvement (EBI), Environment and Social and Community Overview and Scrutiny Committees and they have remained in place since that time.
- 1.2 A review of scrutiny was carried out in 2004 and again in 2006 and despite a number of recommendations being implemented, there has continued to be a perception amongst officers and members that the overview and scrutiny function is not operating as effectively as it could be.
- 1.3 In May 2011, the Group Leaders asked the Chief Executive to consider whether the current arrangements for scrutiny within the Council would be effective with the move to become a commissioning council. They agreed that a review should be carried out to identify what changes needed to be made, in time for their implementation following the borough elections in May 2012.
- 1.4 The final project brief was agreed in July 2011 with the following objective:

**'To ensure an effective scrutiny process operates in Cheltenham Borough Council which supports commissioning and achieves positive outcomes for the town'**

An emphasis was made in the brief that the new scrutiny arrangements should focus on outputs rather than inputs, that is achieving positive outcomes for the town. This was in line with the council's philosophy on commissioning.

The project brief gave a strong steer that members and officers were generally supportive of a move away from the current three committee structure to a more simple structure based on one committee and task and finish groups.

## 2. The aims of overview and scrutiny

- 2.1 Overview and Scrutiny aims to
- support the Council in achieving its vision and delivery of its Corporate Strategy
  - promote open and transparent decision-making, democratic accountability and to hold the Cabinet to account for its actions
  - achieve positive outcomes for the people of Cheltenham by monitoring and challenging service delivery to ensure it meets customer needs and encourage innovation and good practice
- 2.2 It will support the four principles of effective scrutiny advocated by the Centre for Public Scrutiny:
- Provides "critical friend" challenge to Executive policy makers and decision makers
  - Enables the voice and concerns of the public and its communities

- Is carried out by 'independent minded' governors who lead and own the scrutiny process
  - Drives improvement in public services
- 2.3** In this report the term "overview and scrutiny" is frequently abbreviated to "scrutiny" and some explanation may be helpful as a definition was requested in the workshops.
- 2.4** When overview and scrutiny was first introduced, **overview** was often referred to as policy review. It seeks to involve itself before a decision is made, to bring information and ideas to the table to help improve decision making. It gave Members a role in policy and decision making far earlier than had previously been possible. It also involves monitoring of on-going actions to ensure they are delivering the intended and best outcomes. Similarly a definition of scrutiny was defined. The **scrutiny** of decisions takes place after decisions have been made. It is an opportunity to question why the course of action was taken, and if necessary propose an alternative. Decisions can be monitored over a longer period of time to ensure that the intended outcomes are realised. In its strongest form it can stop a decision being implemented until it has been scrutinised using a mechanism called "call-in".
- 2.5** The latest views on the distinction between the two functions was checked with the Centre for Public Scrutiny who produce many guides and research papers for scrutiny. The view of their senior advisor was that it is a "*slightly artificial distinction because in reality things tend to work rather more like a continuum between the two. Separating them out also risks that you lose track of the necessary links between the two concepts. There's some value in defining what the two are, but really it's more important to get an idea of what it is for you, in your authority. There's no archetypal "best structure" for committees, or scrutiny more generally. I am not sure that a comprehensive definition is therefore necessary, or indeed possible beyond the general definitions*" ( given above).

### **3. Method of approach**

- 3.1** Councillor Penny Hall was appointed Project Sponsor, and Councillor Colin Hay as Cabinet Member Corporate Services was acknowledged as a key stakeholder for the review which was managed by the Democratic Services Manager. The Strategic Cross Party Members Group whilst still in existence, acted as a sounding board for the review to ensure the commissioning requirements were met.
- 3.2** The aim of the review was to involve a wide cross-section of members and officers and so all members, managers and other officers involved in scrutiny were invited to participate. A total of 22 members and 22 officers and 1 co-optee have contributed.
- 3.3** The review was informed by a variety of sources to enable a view to be formed on what matters are being scrutinised and how effectively this is being done. The sources of information included:
- An analysis of the items on scrutiny agendas over a 12 month period starting from June 2010 by source, type and outcome.
  - A scrutiny questionnaire sent to all members, officers and co-optees in August 2011.
  - The Democratic Services Manager worked with the scrutiny team at Gloucestershire County Council to run a workshop at the Democratic and Member Services network meeting on 30 September to identify examples of best practice from other councils.
  - Research on the web to look at other councils' approach to scrutiny.
  - A workshop with officers involved in commissioning (12 September 2011) to consider the potential impact of commissioning on overview and scrutiny.
  - An interactive workshop with members and officers involved in the scrutiny process in October to review the results of the fact finding stage and offer suggestions for the future.
  - A second workshop in November with officers and members to discuss the proposed new arrangements and identify outstanding issues and further work needed.

## 4. Information Gathering Phase

### 4.1 Scrutiny Questionnaire

- 4.1.1 The questionnaire was sent to all members, the Senior Leadership Team, Service Managers and co-optees. 20 responses were received from members, 11 from officers and 1 from one of our 2 co-optees. Responses were analysed and are summarised in Appendix 2.

Results showed that 65% of members who responded thought that overview and scrutiny could be operating more effectively. 50% of members responding thought the size and structure of scrutiny needed reviewing as well as the agenda for scrutiny meetings and reports. These responses confirmed the need and appetite for a review of the scrutiny arrangements.

The results to the questionnaire also provided a valuable source of comments from members and officers and these were used to validate the new proposed arrangements.

### 4.2 Analysis of overview and scrutiny committee agendas over a 12 month period

- 4.3 All the scrutiny items on the agendas of all three O&S committees between the period July 2010 and the end of June 2011 were recorded on a spreadsheet. Each topic was classified by its derivation, for example was it a matter that had been referred by Cabinet, was it an item on the Cabinet Forward plan or had it been requested by the committee. Similarly it was classified by type, for example was it on the agenda for consultation, performance management or simply to inform members of the committee. Finally they were classified by outcome or what actually happened as a result of the agenda item.

- 4.4 The results of this analysis are best illustrated pictorially in the charts contained in Appendix 3.

- 4.5 The highlights were as follows:

- Each O&S committees currently deal with approximately 20 to 25 separate agenda items each year and typically at least 4 at any one meeting.
- Very few topics are due to external requests from the public.
- EBI has the highest proportion of performance management and pre-decision scrutiny of items coming up on the Cabinet agenda. This would be expected due to the overarching nature of the committee and its remit.
- Environment and Social and Community committees have a higher proportion of consultation type scrutiny but a much larger proportion of their agenda is taken up with items designed to inform and update the committee.

#### **In terms of outcomes, the findings were the most significant in terms of the future focus of scrutiny on positive outcomes:**

- 50% of all items on the scrutiny agenda result in the committee being informed but have no specific outcomes in terms of actions or recommendations
- 21% of items resulted in the Cabinet being requested to note comments of the committee
- 14% of items deal with recommendations from working groups which are then forwarded to Cabinet
- In the last 12 months there have been no examples where the scrutiny committee itself, as opposed to a working group, tabled a report to Cabinet on any issue with a set of recommendations.

An important point was highlighted during the workshops, that although there may be no specific recommendations arising from a discussion, officers and Cabinet will take note of the comments and this may often influence the report they then subsequently present to Cabinet for a decision.

### 4.6 Autumn workshops with members and officers

- 4.6.1 A workshop was held on 12 September with a group of officers involved in the commissioning

process together with officers from One Legal. This identified the need for the overview and scrutiny to be defined in the corporate governance arrangements for any commissioned service. It also noted the variety of options for setting up a commissioning arrangement and therefore any scrutiny arrangements would need to be flexible enough to accommodate these variations.

- 4.6.2** Two workshops were held on 6 October and 24 October and were attended by members and officers. The sessions provided the opportunity to review the results of the agenda analysis and questionnaire and went on to discuss the groups' ideas for change.

Key issues raised were:

- officer induction/mentoring in scrutiny
- timing of pre-decision scrutiny
- making clear recommendations to Cabinet
- style of reports and the introduction of them at meetings
- how to keep members informed without overloading the scrutiny agenda
- ensuring O&S has a place in new governance arrangements
- getting the public more involved in scrutiny
- raising awareness of individual members role in proposing items for the scrutiny agenda
- task and finish groups were an effective way of progressing issues in depth

- 4.6.3** The results of the questionnaire and the feedback in the workshops, appeared to confirm the initial steer for the new arrangements being centred on a single overview and scrutiny committee and task and finish groups. On this basis the new arrangements were worked up into a blueprint for scrutiny which was presented to members and officers in two further workshops on 16 November.

- 4.6.4** In total 16 members and 13 officers attended one or more of the workshops. The issues raised were used to identify areas for further work which were followed up in time for this report or listed for follow up next year.

## **4.7 Experience of other authorities**

- 4.7.1** In Gloucestershire, there is a wealth of experience of scrutiny arrangements. Gloucestershire County Council adopted the approach of a Scrutiny Management Committee, meeting bimonthly, with other standing committees supported by a scrutiny team of five officers. Forest of Dean have recently adopted a similar approach with a single overarching committee, meeting monthly, and standing panels. Gloucester City also adopted a similar structure in May 2009. As part of the review we consulted with officers from these councils to seek their views.

- 4.7.2** One significant piece of advice from the county was to set up the overarching committee to meet bimonthly as monthly was too frequent. They advocated diarising monthly slots which could be used if necessary and building more flexibility into the arrangements so that agreement could be sought outside the formal meeting. For example the county has a protocol in place which enables an urgent task group to be set up by officers in consultation with the three lead members on the Scrutiny Management Committee and then ratified at the next formal meeting.

- 4.7.3** The Democratic Services Manager worked with the scrutiny team at Gloucestershire County Council to run a workshop at the Democratic and Member Services network meeting on 30 September to identify examples for best practice from other councils. In particular we were keen to see what changes councils going down the commissioning route had made to their scrutiny arrangements.

- 4.7.4** The results confirmed a view that was already forming, that the principles of overview and scrutiny applied equally whether a service was in-house or provided by a third party or partnership. The only difference was in the approach and protocols must be agreed upfront when dealing with providers outside the council and clear terms of reference set for any review.

- 4.7.5** Another significant issue raised by the other councils, is that they have all taken steps to avoid items for purely updating coming to the scrutiny agenda. Whilst acknowledging the importance of



keeping members updated, alternative methods were used such as briefing notes attached to the agenda or electronic circulation of information.

## **5. Proposed new scrutiny arrangements**

- 5.1** The proposed new arrangements for scrutiny are designed to provide a flexible and responsive framework to support effective overview and scrutiny, particularly as the council moves forward to becoming a commissioning council. It will ensure that members have the opportunity to get involved in scrutiny task groups where they have a particular interest and members have the opportunity to develop the necessary skills and expertise. The need for strong officer support is recognised and the new structure enables the limited resources available to be used in the most effective way and moved within the structure as priorities change. A diagram of the proposed new arrangements are illustrated in Appendix 4.1.
- 5.2** A lot of the detail will be worked out between now and the implementation in May 2012 but at this stage, Council is being asked to approve the key principles of the new arrangements which are set out below.
- 5.3 Key principles**  
From May 2012, the current 3 O&S committees will be disbanded and replaced with a single Overview and Scrutiny Committee and task and finish groups as set out below

### **The Overview and Scrutiny Committee (OSC)**

- 5.4** The Overview and Scrutiny Committee is responsible to co-ordinating the scrutiny function. It can carry out scrutiny in its own right but typically will set up smaller task groups to carry out more in depth work. It also ensures the scrutiny arrangements are operating effectively, follows up the implementation of recommendations, maintains quality and promotes good practice.
- 5.5** It will ensure its own agenda does not get overloaded which would prevent it from being effective in its role, by being selective and making full use of tasks groups.
- 5.6** The Overview and Scrutiny Committee (OSC) is made up of non-executive members and is politically balanced. It is chaired by a member from a party not forming part of the ruling administration and will be a similar size to one of the current O&S committees. The vice chair would be from a member of the ruling administration and a lead member from other political groups would be appointed to promote cross party agreement.
- 5.7** Two of those members will be the council's representatives on the Gloucestershire Health and Overview and Scrutiny Committee (GHOSC) and the Gloucestershire Crime and Disorder Overview and Scrutiny Committee (and the new Police and Crime Panel when it is set up) as this will facilitate effective two-way communication in receiving updates and feeding back potential topics for scrutiny to those groups.
- 5.8** The OSC may wish to co-opt individuals to participate in the work of the committee when carrying out scrutiny of a particular topic but co-optees are more likely to be appointed to scrutiny task groups where they have a particular knowledge of, or expertise in the topic being considered.
- 5.9** The committee will be supported by officers from Democratic Services and a lead officer would be nominated from the management team.
- 5.10** It is intended that the OSC would meet bi-monthly but initially may meet monthly until it is up and running effectively.

### **Terms of Reference**

- 5.11** These will be refined during the next phase but the terms of reference would be based on the following:
- to agree the scrutiny workplan taking into account corporate priorities and available officer resources

- to establish time-limited scrutiny task groups (STGs) to carry out in-depth reviews of a particular issue, setting the high level terms of reference at the start
- to nominate members to Cabinet working groups when representatives from scrutiny are requested
- to receive recommendations from scrutiny task groups and forward to Cabinet or the appropriate body (this may for example be a commissioning board)
- to act as an interface with the Cabinet, receiving requests from Cabinet for assistance, clarifying issues on the forward plan and questioning Cabinet Members
- to decide how to deal with call-ins and decide appropriate action which may involve establishing a scrutiny task group
- to receive any councillor calls for action and petitions referred to scrutiny and decide appropriate action
- to receive and comment on major policy issues such as the Corporate Strategy
- as requested, to assist with; consideration of proposals for commissioning services, scrutiny of commissioned services where agreed performance is not being delivered (see appendix 4.2)
- to scrutinise the major programmes of work within the Council and ensure they have robust business cases and benefits are subsequently realised
- to monitor the implementation of any scrutiny recommendations accepted by the Cabinet or other bodies
- to promote good practice for O&S across the council
- to promote the development of member skills and competencies in scrutiny
- to participate in joint scrutiny with other authorities and work with other authorities in Gloucestershire to strengthen the scrutiny role via the Gloucestershire scrutiny group
- to ensure the O&S function uses officer resource effectively and liaise with Executive Board on any concerns regarding officers support
- to deal with any crime and disorder matters (under new legislation the council must nominate an O&S committee to deal with these matters)

### Scrutiny Task Groups

- 5.12** A scrutiny task group is a task and finish group set up to carry out an in-depth scrutiny review on a particular issue as identified by the OSC. The membership will be appointed by the OSC and it will receive its terms of reference from the OSC and normally reports its recommendations back to the main committee at the end of the review. In some cases it may be directed by the OSC to report its recommendations directly to Cabinet or another body.
- 5.13** The OSC will appoint a member to lead each scrutiny task group and agree other members in consultation with the group leaders and taking account of member interests and areas of expertise. This is where the recently completed Member Skills Audit can be utilised. The members will be selected from the pool of non-executive members i.e they do not have to be members of the OSC but clearly at least one member of the OSC will facilitate communication between OSC and the task group. Officers will normally be included in the membership in a support or advisory role. This process can be completed outside of the OSC if necessary using a similar protocol to the one adopted by the county described in paragraph 4.7.2.
- 5.14** The OSC must also consider officers resource and other resources needed to support the task group and agree this with the appropriate directors.
- 5.15** The OSC will define the high level terms of reference for the task group and receive the

recommendations of the scrutiny task group unless it is specifically stated in the terms of reference that the group should report directly to Cabinet or another body.

- 5.16** Each task group will be supported by an officer who will be nominated when the group is set up in consultation with the Director of Commissioning. The officer may be from the service area or from a project team. They will be responsible for arranging meetings, taking notes, inviting attendees, liaising with appropriate parties and assisting members in producing reports of their findings. Members should be aware that in adopting this structure, the council has no dedicated scrutiny officers to devote to this task as would be the case in a larger authority such as Gloucestershire County who have a team of five officers to support their scrutiny work. Therefore there must be a focus on members actively participating in the work of the task group and helping themselves.
- 5.17** It is not envisaged that there would be more than four task groups operating at any one time and it would aim to complete its work usually within 6 months but exceptionally no longer than a year. There may be a requirement to set up some task groups on a standing basis.
- 5.18** Scrutiny task groups are not formal committees of Council and therefore they do not have to follow strict procedural rules or be politically balanced; however they should always aim to have cross-party representation. Similarly they are not obliged to hold their meetings in public or conform to the statutory requirements for the publication of agendas and minutes. Nevertheless, all task groups will seek to be transparent in their operation and seek to involve the public at all key stages in order to deliver on the Authority's ethos of transparency and public accountability and to comply with the principles of freedom of information. There will be some occasions when information or meetings should properly be dealt with in private but these should be, so far as possible, kept to a minimum. The frequency of meetings will be determined by the task group.
- 5.19** The group may include co-optees which can either be appointed by the OSC when a task group is set up or the task group may decide to bring one or more co-optees onto the group during the course of the review. Normally co-optees would be brought in for their particular knowledge or expertise in the subject of the review.
- 5.20** There was some discussion at the workshops regarding the path of the resulting recommendations. The consensus was that they should go back to the OSC before being passed on to Cabinet. This will enable OSC to keep track of the scrutiny workplan and maintain consistency and quality control. It would also provide an important stage in the democratic process where reports would be published on the web and discussed in public at a formal committee with the powers to carry out the overview and scrutiny functions. It is not envisaged that the OSC would challenge the substance of the recommendations on the basis that it is the scrutiny task group has carried out the detailed work in coming up with its recommendations. The OSC would be more concerned with reviewing the outcomes against the original terms of reference which they had set the task group.

### **Terms of Reference**

- 5.21** The scrutiny task group will be responsible for:
- ensuring it has a full understanding of the terms of reference and defining the scope and constraints of the review and seeking clarification where necessary
  - planning its method of approach for the review including identifying any resources it requires
  - calling appropriate witnesses and receiving information
  - drafting scrutiny reports and forwarding its recommendations as appropriate
  - receiving feedback on their recommendations and subsequent follow up as appropriate

### **The Budget Working Group (BWG)**

- 5.22** The Budget Working Group was set up by Council in 2010 as a result of the economic crisis and

increasing pressures on the council's financial resources. The group aims to ensure that members work collectively, accepting political differences, on solutions to the budget gap. The working group's role is to develop the budget process, support the development of Members' scrutiny role and to consider ideas from Members for reducing the budget gap.

- 5.23** The BWG is made up of 6 non-executive members from across all parties but is not politically balanced. Although it is carrying it an overview and scrutiny function, the Cabinet Member Finance is usually present by invitation to answer questions and provide their detailed knowledge. It meets 6 times per year.

### **Terms of Reference**

- To consider options for bridging the funding gap i.e. proposals for charging or reduction in expenditure and help formulate the budget proposals and MTFS
  - To review the work programme for commissioning and options being considered
  - To develop members' scrutiny skills and understanding of financial matters to enable them to review and challenge areas of the budget
  - To develop the approach to budget consultation
- 5.24** Other bodies are shown in the structure illustrated in Appendix 4.1 to demonstrate their links with O&S. These include the Cabinet Advisory Groups, the Treasury Management Panel and the Asset Management Working Group. The current commissioning member working groups would fall into this category.

### **Keeping Members informed**

- 5.25** Under the new arrangements it will not be feasible for members to receive purely update reports at the single O&S meeting and therefore new ways must be found to keep all members up to speed. They will need to have this understanding before they can carry out effective scrutiny. This information may be communicated by member seminars, electronically or in paper copy and more thought will need to be given to this prior to implementation.

### **Member Culture and training and development**

- 5.26** The successful operation of these new arrangements will also require a significant culture change across members and officers and this should not be underestimated. Members will need to adopt more innovative ways of working, find new ways of engaging with the public and enhance their questioning skills. Further training and development will be needed and this will be organised as part of the induction process following the elections in May 2012.

### **Officer Support**

- 5.27** Ideally there would be dedicated scrutiny officers to support the OSC and all the scrutiny task groups. Although this is the situation at the county council, in district councils it is more common that democracy officers support the scrutiny function alongside the other roles. Particularly in the current time of budgetary constraints, the emphasis on the new arrangements must be to optimise utilisation of our current officer resources.
- 5.28** Currently officers from Democratic Services each support one of the three O&S committees. As well as the administration of the meetings, this support includes working with the chair and vice-chair to maintain the committee's workplan and briefing and liaising with the relevant officers and Cabinet Members to organise their input to meetings. Democratic Services also support the budget working group. Any task groups set up are typically supported by an officer from the relevant service area who organise the task group meetings and work with members to produce their report.

- 5.29 Under the new arrangements, it is proposed that Democratic Services would support the Overview and Scrutiny Committee. This would involve administrative support for the meeting, maintenance of the workplan, follow-up of recommendations and a co-ordinating role of all the scrutiny activity. It is envisaged that the Democracy Officer allocated to this role could spend as much time as the officer currently supporting Cabinet on ongoing basis. There will be no Democratic resources freeing up from the new arrangements but existing resources will be redirected.
- 5.30 A lead officer will be required to support the O&S Committee. This could be a member of the Senior Leadership team and may require some additional input to that currently provided by the lead officer role to one of the existing committees in view of the level of activity.
- 5.31 Scrutiny Task Groups will continue to be supported by a lead officer. Where a project has been set up, this officer could be part of the project team. They will be responsible for administering the meetings and keeping relevant notes and documentation of meetings and guidance would be given by Democratic Services.

## 6. Budget implications

- 6.1 In the current budget climate this report has been written on the assumption that there are no additional officer resources available as set out in section 5.
- 6.2 Currently O&S has no dedicated budget. Members may wish to consider whether they wish to allocate a small budget to scrutiny in 2012/13 and future years. One area members are keen to pursue is public engagement in the scrutiny process. There will be a cost in taking meetings out to the public, publicity etc so members need to consider how this would be financed. One option would be to provide any necessary budget from the service area or project being scrutinised but this may be more difficult if is a commissioned service.

## 7. Next Steps

- 7.1 As set out in the recommendations, all areas of the scrutiny arrangements will need to be developed in time for the implementation in May 2012. This would include the constitutional changes, consideration of members allowances, development of induction for officers and members and protocols and guides.

## 8. Alternative options considered

- 8.1 As set out in the report.

## 9. Consultation and feedback

- 9.1 All members and officers and co-optees were invited to participate in the review and a wide range of feedback was received and incorporated into the conclusions.

## 10. Performance management –monitoring and review

- 10.1 The progress of the new arrangements for overview and scrutiny will continue to be monitored by the Director Commissioning, the Project Sponsor, Councillor Penny Hall and the Cabinet Member Corporate Services, Councillor Colin Hay.

|                      |  |
|----------------------|--|
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|                               |  |
|-------------------------------|--|
| <b>Appendices</b>             | <ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Summary of the results of the questionnaire</li><li>3. Results of the analysis of scrutiny agendas</li><li>4. Proposed structure for new arrangements<ul style="list-style-type: none"><li>- diagram of new structure</li><li>- diagram of O&amp;S links with a commissioned service</li></ul></li></ol> |
| <b>Background information</b> |  |

| The risk  |  |                        |             | Original risk score<br>(impact x likelihood) |                |       | Managing risk |   |            |                        |                              |
|-----------|--|------------------------|-------------|--|----------------|-------|---------------|---|------------|------------------------|------------------------------|
| Risk ref. | Risk description   | Risk Owner             | Date raised | Impact 1-4                                   | Likelihood 1-6 | Score | Control       | Action  | Deadline   | Responsible officer    | Transferred to risk register |
|           | If any new arrangements are not supported by a change in culture across members and officers they may not be successful in delivering the outcomes required, | Director Commissioning | 27/9/11     | 3  | 3              | 9     | Reduce        | Get members and officers buy in during the review by seeking their views and ideas. Seek advice on cultural change during the next phase. | 31/05/2012 | Director Commissioning |                              |
|           | If the council cannot appoint dedicated scrutiny officers to support the new arrangements they will not be fully effective.                                  | Director Commissioning | 1/12/11     | 3  | 3              | 9     | Reduce        | Optimise the use of existing resources in the new arrangements  | 31/05/2012 | Director Commissioning |                              |
|           | If the task groups operate outside of the democratic process, then scrutiny could become disjointed and progress difficult to control                        | Director Commissioning | 1/12/11     | 3  | 3              | 9     | Accept        | Guidance to officers supporting task groups on keeping documentation and reporting back to Democratic                                     | 31/12/2012 | Director Commissioning |                              |

|  |  |                |         |   |   |   |        |   |  |  |  |
|--|--|----------------|---------|---|---|---|--------|---|--|--|--|
|  | and track.   |                |         |   |   |   |        | services.   |  |  |  |
|  | If members do not put themselves forward for task groups the workload could be unevenly shared across members and be a source of potential conflict or result in task groups not having the right skill mix. | Groups Leaders | 1/12/11 | 3 | 3 | 9 | Reduce | Utilise the skills audit<br><br>Group Leaders to manage, monitor and encourage participation<br><br>Task groups to maintain records of attendance |  |  |  |
|  | If scrutiny does not have any dedicated budget it will be difficult to promote public involvement and engagement   | Council        | 1/12/11 | 2 | 3 | 6 | Reduce | Utilise relevant project budgets<br><br>Consider allocating small budget to O&S as part of budget round   |  |  |  |

**Explanatory notes**

**Impact** – an assessment of the impact if the risk occurs on a scale of 1-4 (4 being the greatest impact)

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6 (6 being most likely)

| Impact Description | Impact score | Probability | Likelihood Description | Likelihood Score |
|--------------------|--------------|-------------|------------------------|------------------|
| Negligible         | 1            | 0% - 5%     | Almost impossible      | 1                |
| Marginal           | 2            | 5% - 15%    | Very low               | 2                |
| Major              | 3            | 15% - 30%   | Low                    | 3                |
| Critical           | 4            | 30% - 60%   | Significant            | 4                |
|                    |              | 60% - 90%   | High                   | 5                |



|  |  |  |       |           |   |
|--|--|--|-------|-----------|---|
|  |  |  | > 90% | Very high | 6 |
|--|--|--|-------|-----------|---|

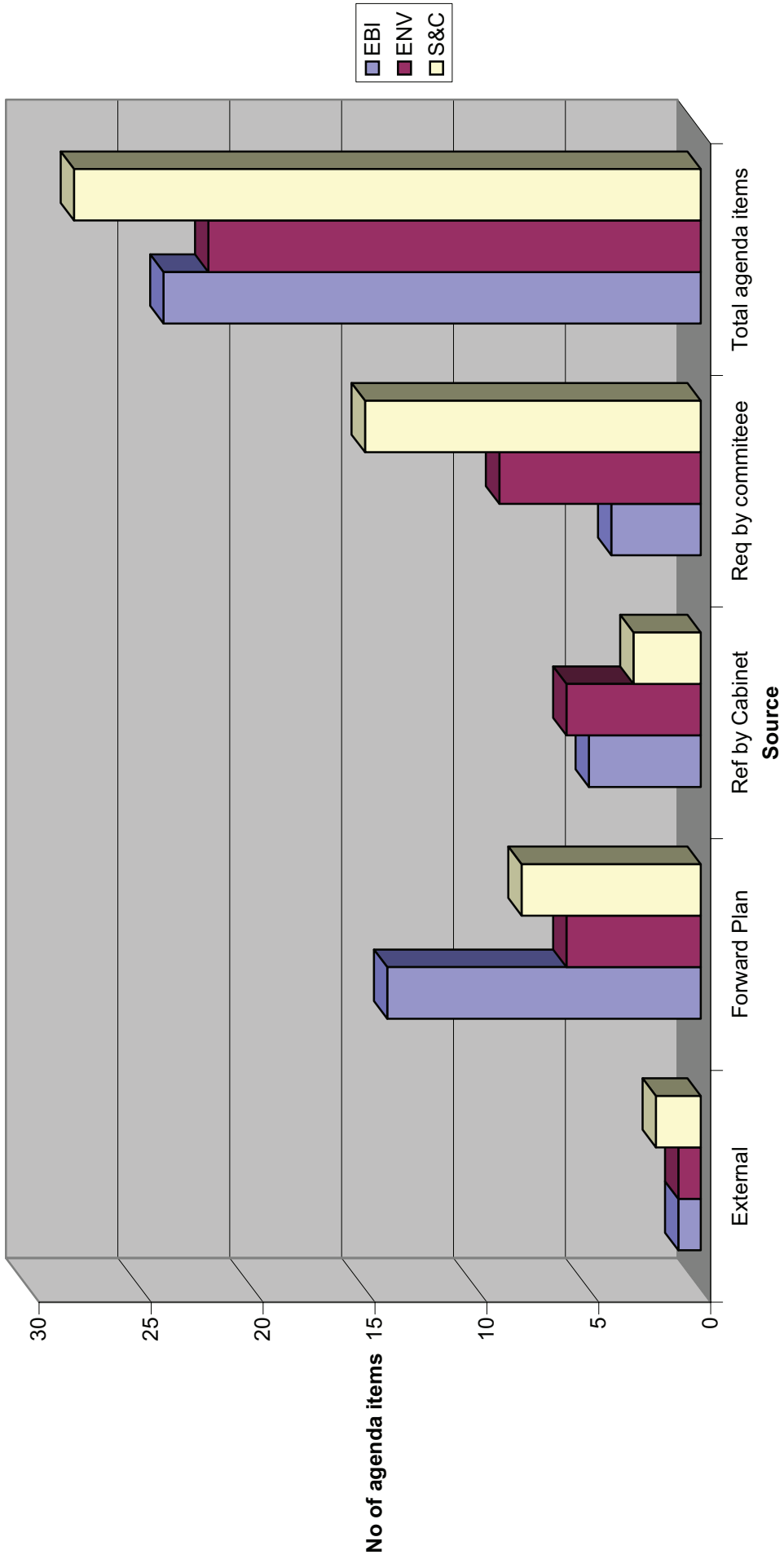
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Page 64

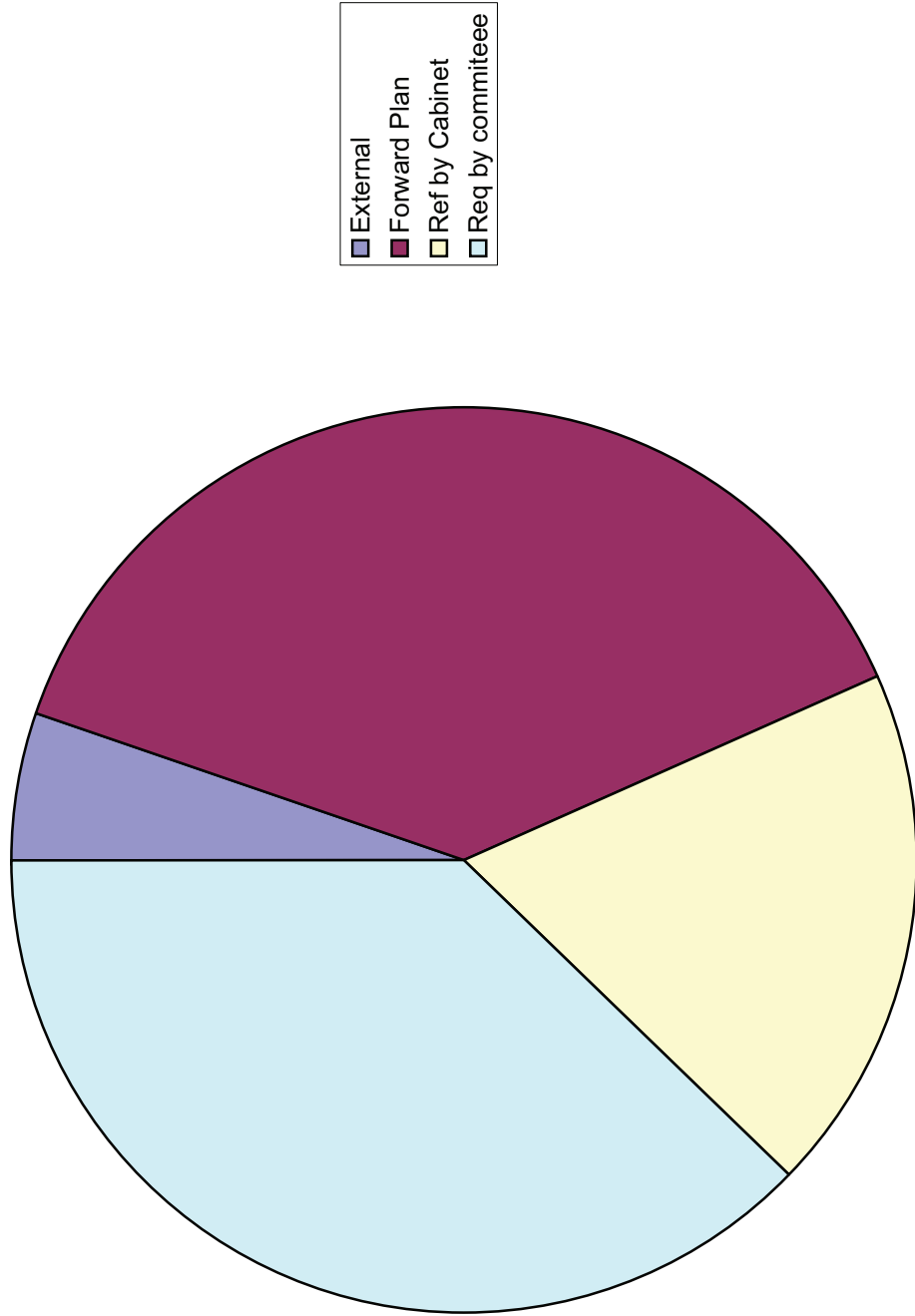
| <b>Question 1(Off)</b>   |  | <b>How often are you invited to attend scrutiny?</b>                         |  |                               |                         |      |  |
|--------------------------|--|--|--|-------------------------------|-------------------------|------|--|
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>3 or more pa</b>  | <b>1-2 pa</b>                                | <b>Occasionally</b>           | <b>Never</b>            |      |  |
| Officers                 |  | 64%  | 9%   | 27%                           | 0%                      |      |  |
| <b>Question 1</b>        |  | <b>How well do you think scrutiny is operating in CBC at the moment?</b>     |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Very Effective</b>  | <b>Effective</b>                             | <b>Less than effective</b>    | <b>Poor</b>             |      |  |
| Members                  |  | 0%   | 20%  | 65%                           | 15%                     |      |  |
| Co-optees (1 only)       |  |  |  |                               |                         |      |  |
| <b>Question 2</b>        |  | <b>Is the Cabinet being effectively held to account?</b>                     |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Effectively held to account</b>   | <b>Held to account but could be improved</b> | <b>Rarely held to account</b> | <b>No or don't know</b> |      |  |
| Members                  |  | 5%   | 35%  | 55%                           | 5%                      |      |  |
| Officers                 |  | 9%   | 73%  | 18%                           | 0%                      |      |  |
| Co-optees                |  |  |  | 100%                          |                         |      |  |
| <b>Question 3</b>        |  | <b>Is scrutiny contributing to the development of new policy/strategy?</b>   |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Yes</b>   | <b>No</b>                                    | <b>Partially</b>              | <b>Not sure</b>         |      |  |
| Members                  |  | 5%   | 10%  | 75%                           | 10%                     |      |  |
| Officers                 |  | 27%  | 0%   | 55%                           | 18%                     |      |  |
| Co-optees                |  |  |  |                               |                         |      |  |
| <b>Question5Off</b>      |  | <b>Does scrutiny contribute to the development of your service?</b>          |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Yes</b>   | <b>No</b>                                    | <b>Partially</b>              | <b>Not sure</b>         |      |  |
| Officers                 |  | 36%  | 27%  | 27%                           | 0%                      |      |  |
| <b>Question 4</b>        |  | <b>Is scrutiny achieving positive outcomes for the people of Cheltenham?</b> |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Yes</b>   | <b>No</b>                                    | <b>Partially</b>              | <b>Not sure</b>         |      |  |
| Members                  |  | 10%  | 25%  | 55%                           | 5%                      |      |  |
| Officers                 |  | 9%   | 0%   | 64%                           | 27%                     |      |  |
| Co-optees                |  |  |  |                               | 100%                    |      |  |
| <b>Question 5</b>        |  | <b>Do you have the skills and expertise to carry out your scrutiny role?</b> |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Yes</b>   | <b>No</b>                                    | <b>Partially</b>              | <b>Not sure</b>         |      |  |
| Members                  |  | 55%  | 0%   | 25%                           | 0%                      |      |  |
| Officers                 |  | 91%  | 0%   | 9%                            | 0%                      |      |  |
| Officers view of members |  | 27%  | 27%  | 36%                           | 9%                      | 100% |  |
| <b>Question 6</b>        |  | <b>What areas of scrutiny need the most review?</b>                          |  |                               |                         |      |  |
|                          |  |  |  |                               |                         |      |  |
|                          |  | <b>Size and structure</b>  | <b>Agenda and reports</b>                    | <b>Training</b>               | <b>Officer support</b>  |      |  |
| Members                  |  | 50%  | 50%  | 15%                           | 10%                     |      |  |
| Officers                 |  | 55%  | 27%  | 27%                           | 36%                     |      |  |
| Co-optees                |  |  |  |                               |                         |      |  |
| <b>Question 7</b>        |  | <b>How do you think the scrutiny work plan should be determined?</b>         |  |                               |                         |      |  |

|  | Business/Forward plan | Chairs in consultation with Directors | Discussed by all scrutiny members               | Don't know                            |  |  |
|--|-----------------------|---------------------------------------|---|---------------------------------------|--|--|
| Members  | 60%                   | 35%                                   | 55%   | 0%                                    |  |  |
| Officers   | 55%                   | 27%                                   | 55%   | 0%                                    |  |  |
| Co-optees  |                       |                                       | 100%  |                                       |  |  |
| <b>Question 8 What form should the agenda take?</b>                    |                       |                                       |   |                                       |  |  |
|  | One topic in depth    | Lots of smaller topics                | Combination                                     | Other                                 |  |  |
| Members  | 15%                   | 0%                                    | 60%   | 15%                                   |  |  |
| Officers   | 36%                   | 0%                                    | 45%   | 9%                                    |  |  |
| Co-optees  |                       |                                       |   |                                       |  |  |
| <b>Question 9 How do you rate the effectiveness of working groups?</b> |                       |                                       |   |                                       |  |  |
|  | Very effective        | Effective could be improved           | Less than effective                             | Poor                                  |  |  |
| Members  | 25%                   | 50%                                   | 5%  | 0%                                    |  |  |
| Officers   |                       |                                       |   |                                       |  |  |
| Co-optees  |                       |                                       |   |                                       |  |  |
| <b>Question 10 What is your preference for size and structure</b>      |                       |                                       |   |                                       |  |  |
|  | Maintain current      | current with more working grps        | Overarching committee and task and finish group | Ad hoc committees for specific topics |  |  |
| Members  | 10%                   | 20%                                   | 65%   | 20%                                   |  |  |
| Officers   |                       |                                       |   |                                       |  |  |
| Co-optees  |                       |                                       |   |                                       |  |  |
| <b>Question 11 Officer support</b>                                     |                       |                                       |   |                                       |  |  |
|  | More than adequate    | Adequate                              | Not adequate                                    | Don't know                            |  |  |
| Members  | 5%                    | 25%                                   | 20%   | 45%                                   |  |  |
| Officers   | 9%                    | 45%                                   | 27%   | 0%                                    |  |  |
| Co-optees  |                       | 100%                                  |   |                                       |  |  |
| <b>Question 12 What is the most important skill of a scrutineer?</b>   |                       |                                       |   |                                       |  |  |
|  | Financial             | Questioning                           | Team working                                    | Other                                 |  |  |
| Members  | 15%                   | 70%                                   | 30%   | 10%                                   |  |  |
| Officers   |                       |                                       |   |                                       |  |  |
| Co-optees  |                       |                                       |   |                                       |  |  |

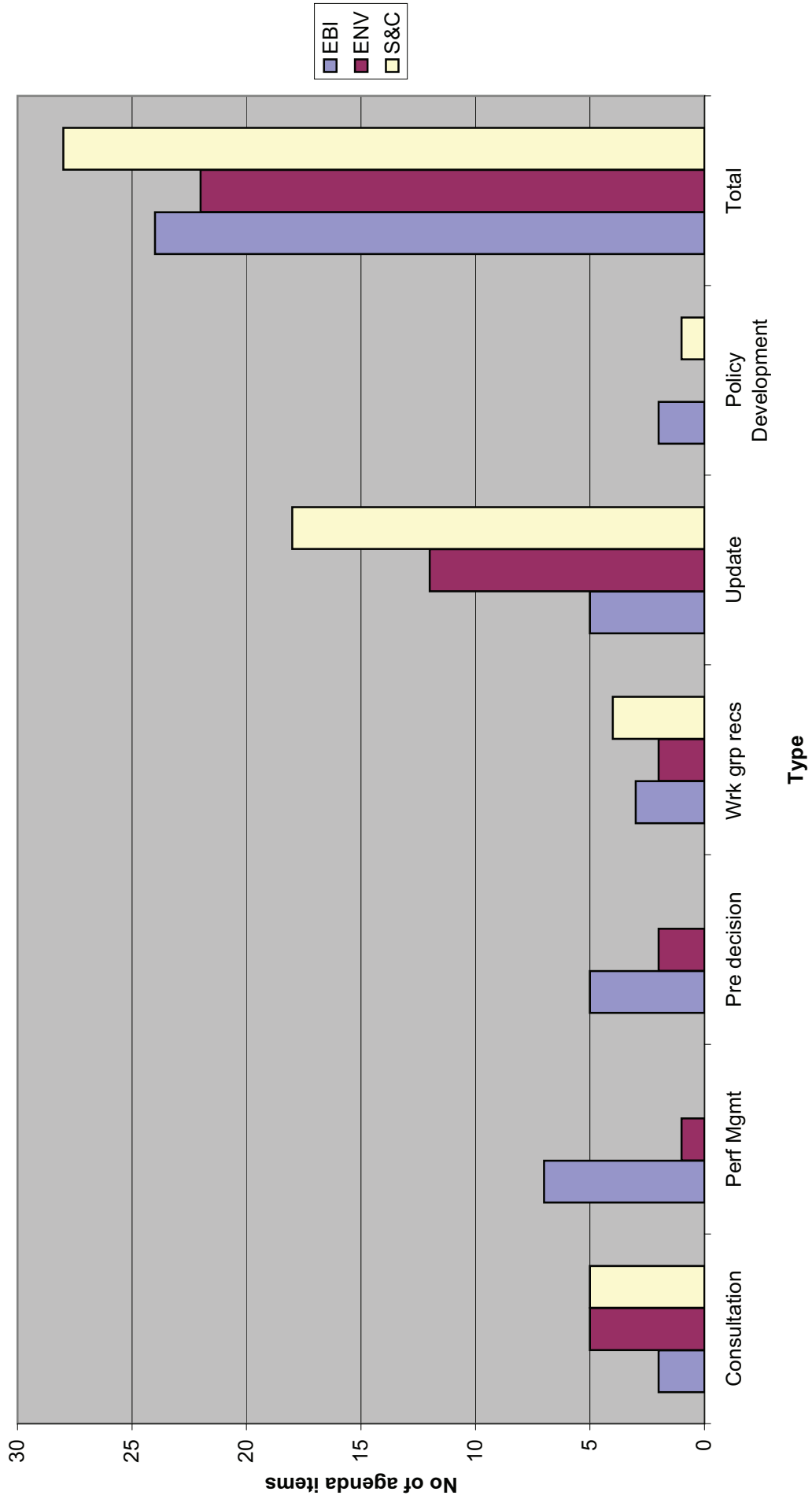
Analysis of scrutiny agenda items by source



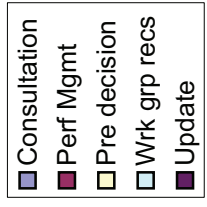
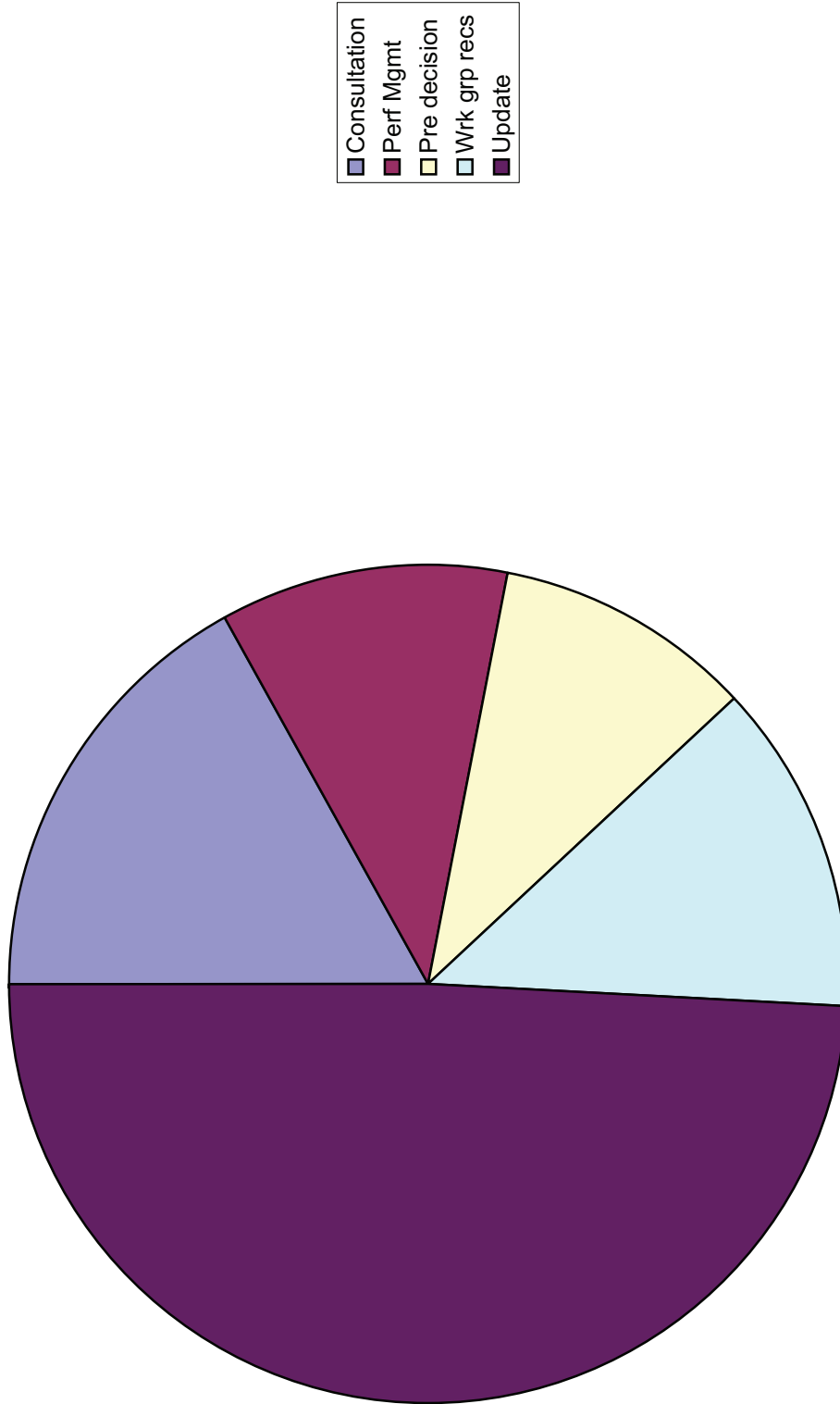
Analysis of scrutiny agenda items by source - all committees



Analysis of scrutiny topic by type

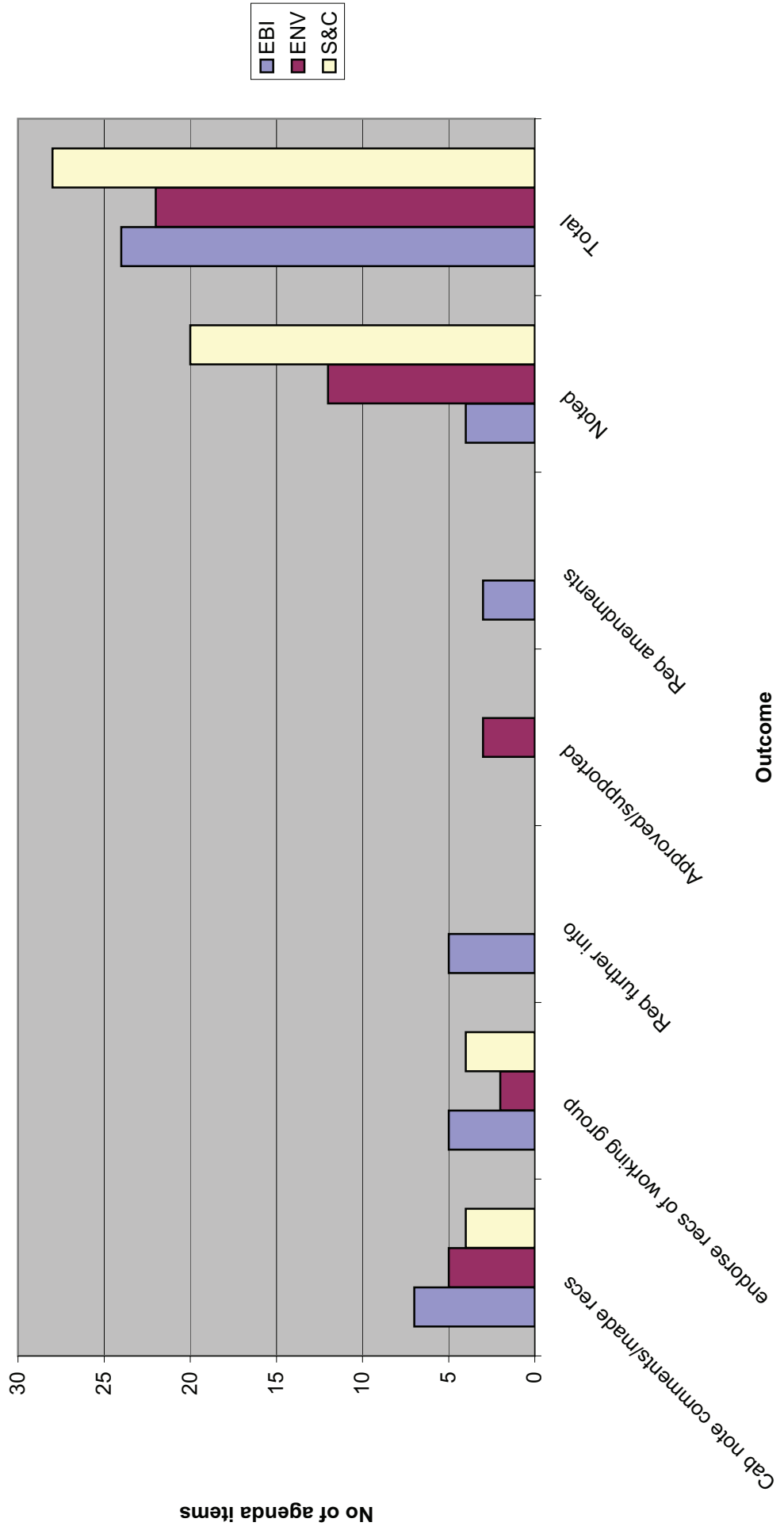


Analysis of agenda items by scrutiny type across all committees

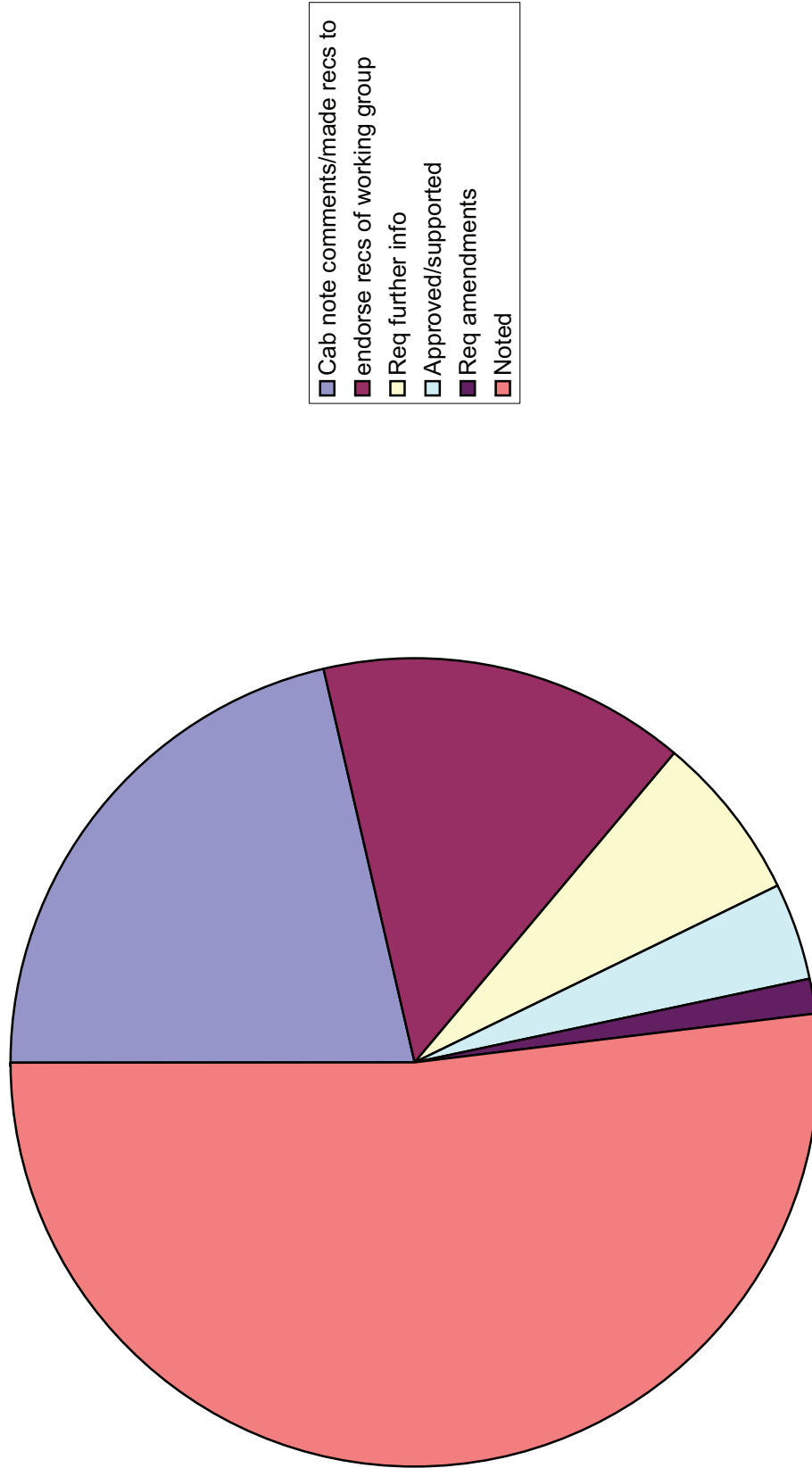




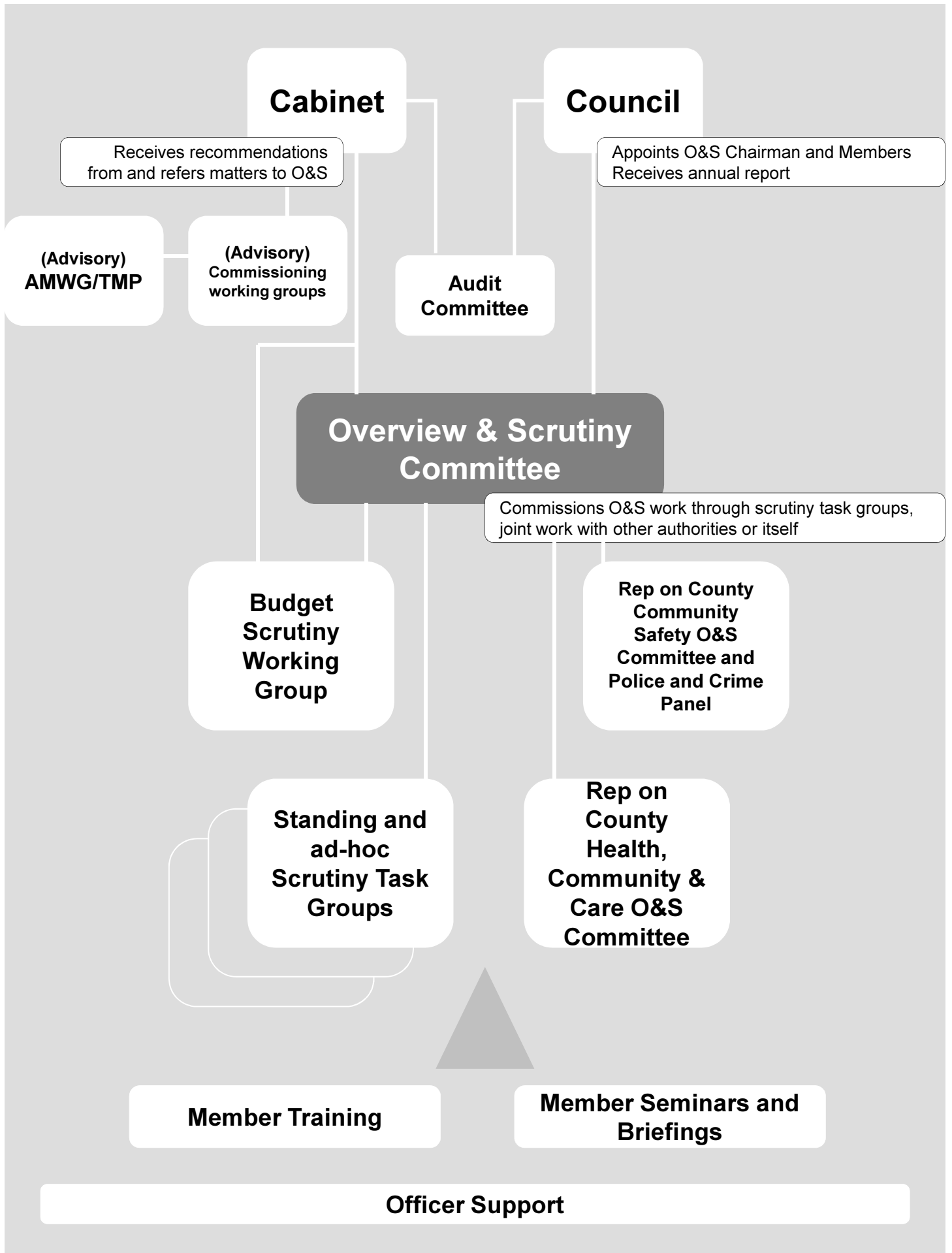
Analysis of scrutiny type by outcome



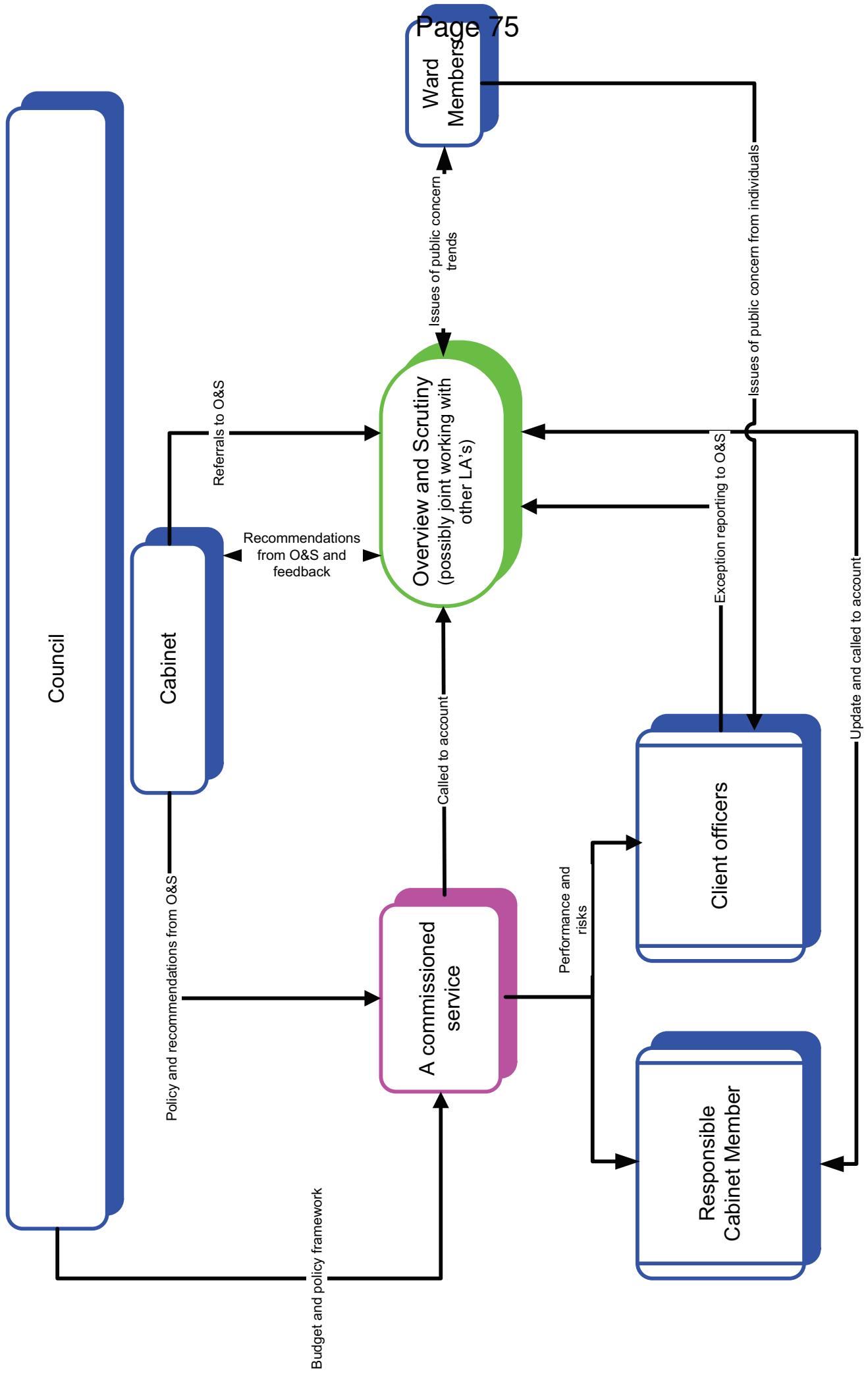
Analysis of scrutiny agenda items by outcome



- Cab note comments/made recs to
- endorse recs of working group
- Req further info
- Approved/supported
- Req amendments
- Noted



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Page 74



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Page 76

## Cheltenham Borough Council

Council – 12 December 2011

### Representation on Certain Charitable Trusts

|                                       |  |
|---------------------------------------|--|
| <b>Accountable member</b>             | <b>Cabinet Member Corporate Services, Councillor Colin Hay</b>   |
| <b>Accountable officer</b>            | <b>Director Commissioning</b>  |
| <b>Accountable scrutiny committee</b> | <b>Economy and Business Improvement</b>  |
| <b>Ward(s) affected</b>               | <b>None</b>  |
| <b>Significant Decision</b>           | <b>No</b>  |
| <b>Executive summary</b>              | <p>The Council nominates trustees to 4 Charitable Trusts (Hays Trust Fund and the Caroline Strickland Homes, which provide almshouses at Naunton Park and Hales Road respectively, and the Turner Long Fund and the Walker Memorial Trust, which both provide for the grant of small sums of money to the elderly).</p> <p>The management of these four Trusts (who are separate legal entities, and whose accounts and records have to be maintained separately from the Council's, and in accordance with Charity Commission requirements) is outside the course of the Council's usual business, and imposes a substantial administrative burden both upon the nominated Members and upon Council staff.</p> <p>Discussions have therefore been taking place with the Cheltenham Family Welfare Association (CFWA) with a view to the CFWA taking over the administrative role in respect of the four Charities. The CFWA also has the necessary expertise to ensure the almshouse trusts are managed according to the high standards required for Almshouse management. The CFWA has expressed a willingness to do so, but as a condition of so doing requires the power of appointment of trustees to be consistent with the other charitable trusts the CFWA manages.</p> <p>This requirement will mean that the Council will surrender its rights to nominate trustees in the future, and that the Mayor will no longer be an ex-officio Trustee on any of the above named charities.</p> |
| <b>Recommendations</b>                | <p><b>Council RESOLVES THAT:</b></p> <ol style="list-style-type: none"> <li><b>(1) It consents to the amendment of the Schemes to the Hays Trust Fund, the Caroline Strickland Homes, the Turner Long Fund and the Walker Memorial Trust whereby the Council will no longer have power to nominate Trustees to those charities; and</b></li> <li><b>(2) It consents to the amendment of the Schemes to the Hays Trust Fund, the Caroline Strickland Homes, the Turner Long Fund and the Walker Memorial Trust whereby the Mayor of Cheltenham Borough Council will no longer be an ex-officio Trustee of those charities.</b></li> </ol>   |

|  |  |
|--|--|
| <b>Financial implications</b>  | There are no financial implications to report. This will however free up member and officer time which was provided to administrate the Charitable Trusts.<br><br><b>Contact officer: Andrew Sherbourne,</b><br><b>andrew.sherbourne@cheltenham.gov.uk, 01242 264337</b> |
| <b>Legal implications</b>  | Contained within the Report<br><br><b>Contact officer: Rose Gemmell, rose.gemmell@tewkesbury.gov.uk,</b><br><b>01684 272014</b>  |
| <b>HR implications (including learning and organisational development)</b> | None arising as a direct result of this report.<br><br><b>Contact officer: Julie Mcarthy, HR Operations Manager</b><br><b><a href="mailto:julie.mccarthy@cheltenham.gov.uk">julie.mccarthy@cheltenham.gov.uk</a> 01242 26 4355</b>                                       |
| <b>Key risks</b>   | <b>None</b>  |
| <b>Corporate and community plan Implications</b>                           | None   |
| <b>Environmental and climate change implications</b>                       | None   |

## 1. Background

- 1.1 The Council has the right to nominate trustees to a number of registered charities. A number of these charities date back many years, pre-dating modern provision for relief of poverty and accommodation for the elderly.
- 1.2 The four charities the subject of this Report are:

### Hays Trust Fund

This was established in 1899, and provides 12 almshouses for occupation by “aged or infirm persons” who are inhabitants of the parish of Cheltenham.

The Trustees are:

- The Rector of the Parish of St Mary the Virgin with St Matthew, Cheltenham;
- The Mayor of Cheltenham Borough Council;
- 5 other trustees who nominated by Cheltenham Borough Council, but need not be Members of Cheltenham Borough Council.

### The Caroline Strickland Homes

The Charity was established in 1911, and provides 5 almshouses for “poor persons who are resident in the Borough of Cheltenham at the time of appointment”.

The Trustees are:

- The Mayor of Cheltenham Borough Council
- 4 other trustees who are nominated by Cheltenham Borough Council, but need not be Members of Cheltenham Borough Council; and
- 2 co-opted trustees.



### **Turner Long Fund**

This Charity was established in 1944, and provides for the relief of financial hardship of elderly people living within the Cheltenham borough boundaries by making grants of money. The grants made are small: the last payments were £100 to each of approximately 20 applicants.

The Trustees are:

- The Mayor of Cheltenham Borough Council;
- 5 other trustees who nominated by Cheltenham Borough Council, but need not be Members of Cheltenham Borough Council.

### **Walker Memorial Trust.**

The Charity was established in 1878, and makes grants on the same terms as the Turner Long Fund. The last payments were £100 to approximately 7 - 10 applicants.

The nomination of Trustees is the same as for the Turner Long Fund.

- 1.3** The provision of Almshouses is outside the usual business of the Council, especially as (with the establishment of Cheltenham Borough Homes) the management of the properties is outside the scope of in-house repair and management services.

Similarly, the allocation of small grants made under the Turner Long and Walker Memorial Charities is also outside the usual scope of the Council's business.

The result is that both the Members who are appointed to the Trusts, and the Officers who (by default) have been dealing with the administration, are expending considerable amounts of time on Trust business. The Trusts themselves, although separate legal entities, have no staff employed by them and are entirely dependent upon input by Members and Council staff to ensure their continued operation.

Discussions have taken place with the Cheltenham Family Welfare Association. The Association is a registered Charity whose activities are (1) the administration of two almshouse charities in Cheltenham, and (2) the administration of charitable funds to assist persons and families in financial difficulties due to sickness or unemployment. The Association employs staff to deal with the management of the Charities under its auspices, who are experienced in the day-to-day running of charities very similar to the four charities the subject of this report. Major refurbishment work is required to both sets of almshouses and the CFWA have experience of this type of work with their existing almshouses.

The Association has indicated that it is willing to take over the administration of the four Council charities, but would require each of the Charities to change their constitution ("the Scheme" approved by the Charity Commission) to match that of the Association's existing charities.

The proposed new Trustee appointments would be as follows:

## **1. Appointment of Trustees**

- a. There must be at least four trustees. Every trustee must be appointed by a resolution of the trustees passed as a special meeting.
- b. In selecting individuals for appointment as trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the charity.
- c. The trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each trustee.

- d. The trustees must make available to each new trustee, on his or her first appointment:
- i. a copy of the deed of trust dated [*as relevant for each charity*] and any amendments made to it;
  - ii. a copy of the Charity's latest report and statement of accounts.

## 2. Eligibility for trusteeship

- a. No one shall be appointed as a trustee:
  - i. if he or she is under the age of 18 years; or
  - ii. if he or she would at once be disqualified from office under the provisions clause 6 as aforesaid.
- b. No one shall be entitled to act as a trustee whether on appointment or on any re-appointment as trustee until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of trustee of the charity.

## 3. Termination of trusteeship

- a. A trustee shall cease to hold office if he or she:
  - i. is disqualified for acting as a trustee by virtue of section 72 of the Charities Act 1993 or any statutory re-enactment or modification of that provision;
  - ii. becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;
  - iii. is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
  - iv. notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

## 4. Vacancies

- a. If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be reappointed. So long as there are fewer than four trustees, none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

The Charity Commission will require the consent of those currently empowered to nominate Trustees to the four Trusts before they approve the new Scheme for the charities.

## 2. Reasons for recommendations

### 2.1 The transfer of responsibilities to CFWA will:

- Provide management and administration which is geared to the specialised needs of the respective trusts and the inhabitants of the almshouses;
- Enable the refurbishment of both sets of almshouses to take place under the expert management of CFWA.

- Relieve Members of obligations which are not directly related to the Council's business;
- Free up Officer time

2.2 Therefore, the recommendations regarding appointments will enable the CFWA to take on the management and administration of the trusts.

### 3. Alternative options considered

3.1 The possibility of retaining the Trusts under the management and control of the Council has been considered, but rejected due to the circumstances set out in paragraph 1.3.

### 4. Consultation and feedback

4.1 Consultation has taken place with the residents of both sets of Almshouses through newsletters, meetings and site visits.

### 5. Performance management –monitoring and review

5.1 Subject to the Council's consent as to the removal of the Mayor and the nominative trustees for the above charities at the meeting on 12 December, a meeting of the trustees will then be convened to change the governing documents for each charity. The appropriate trustees need to pass the above resolutions at a properly constituted meeting with at least a quorum of the trustees present and in agreement. Once passed and the resolutions signed, these will be submitted to the Charity Commission so that they can update their records.

5.2 Once the Charity Commission have confirmed receipt of the resolutions then the appropriate trustees will be able to retire and the CFWA will be able to be appoint their own trustees. It is planned that Councillor Garth Barnes and Carol Wallace, currently Chair and Vice-chair of the Trustees of all four charities will remain as trustees to ensure continuity and that the interests of the trusts are met under the new arrangements.

5.3 The handover from officers in Finance and Democratic Services to CFWA is planned to take place in the New Year and the aim will be for the complete handover to be completed by 31 March 2012.

|                               |  |
|-------------------------------|--|
| <b>Report author</b>          | <b>Contact officer: Rose Gemmell, <a href="mailto:rose.gemmell@tewkesbury.gov.uk">rose.gemmell@tewkesbury.gov.uk</a>,<br/>01684 272014</b> |
| <b>Appendices</b>             | 1. Risk Assessment   |
| <b>Background information</b> | 1. None  |

# Risk Assessment

## Appendix 1

| The risk  |   |                  |             | Original risk score<br>(impact x likelihood) |                |       | Managing risk |  |          |                        |                              |
|-----------|---|------------------|-------------|--|----------------|-------|---------------|--|----------|------------------------|------------------------------|
| Risk ref. | Risk description  | Risk Owner       | Date raised | Impact 1-4                                   | Likelihood 1-6 | Score | Control       | Action   | Deadline | Responsible officer    | Transferred to risk register |
|           | If the council does not have the resources with the right levels of skills and expertise they may not be able to support the administration of the trusts to the appropriate high standards |                  | July 2010   | 3  | 3              | 12    | Reduce        | Utilise the skills and expertise to bring about the transfer to CFWA   |          | Rosalind Reeves<br>DSM |                              |
|           | If the handover to CFWA is not completed successfully there could be dissatisfaction from residents and a reputational risk to the council  | Trustees<br>CFWA | July 2010   | 3  | 3              | 9     | Manage        | Ensure some continuity of trustees under the new arrangement. Communicate with residents throughout the transition and emphasise the future benefits to residents that CFWA management will provide. |          | Rosalind Reeves<br>DSM |                              |
|           | If the transfer to CFWA does not go ahead the council may not be in a position to manage the refurbishment work needed to both sets of almshouses.  |                  |             | 4  | 3              | 12    | Reduce        | Enable the expertise of CFWA to be utilised by completing the transfer   |          | Rosalind Reeves<br>DSM |                              |
|           |   |                  |             |  |                |       |               |  |          |                        |                              |
|           |   |                  |             |  |                |       |               |  |          |                        |                              |

**Explanatory notes**

**Impact** – an assessment of the impact if the risk occurs on a scale of 1-4 (4 being the greatest impact)

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6 (6 being most likely)

| Impact Description | Impact score |  | Probability | Likelihood Description | Likelihood Score |
|--------------------|--------------|--|-------------|------------------------|------------------|
| Negligible         | <u>1</u>     |  | 0% - 5%     | Almost impossible      | <u>1</u>         |
| Marginal           | <u>2</u>     |  | 5% - 15%    | Very low               | <u>2</u>         |
| Major              | <u>3</u>     |  | 15% - 30%   | Low                    | <u>3</u>         |
| Critical           | <u>4</u>     |  | 30% - 60%   | Significant            | <u>4</u>         |
|                    |              |  | 60% - 90%   | High                   | <u>5</u>         |
|                    |              |  | > 90%       | Very high              | <u>6</u>         |

**Control** - Either: Reduce / Accept / Transfer to 3rd party / Close

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Page 84

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Page 94