



## **Local Government Act 1972**

**I Hereby Give You Notice** that an **Ordinary Meeting** of the **Durham County Council** will be held in the **Council Chamber, County Hall, Durham** on **Wednesday 20 March 2013 at 10.00 am** to transact the following business:-

1. To confirm the minutes of the meeting held on 20 February 2013 (Pages 1 - 14)
2. To receive any declarations of interest from Members
3. Chairman's Announcements
4. Leader's Report
5. Questions from the Public
6. Petitions
7. County Durham Youth Justice Plan 2012-2014 - Report of Corporate Director, Children & Adults Services (Pages 15 - 42)
8. Health and Wellbeing Board - Report of Head of Legal and Democratic Services (Pages 43 - 50)
9. Local Authority Health Scrutiny - Proposed changes to the Council's Constitution - Report of Assistant Chief Executive (Pages 51 - 62)
10. The Charter Trustees Boundary - Report of Head of Legal and Democratic Services (Pages 63 - 72)
11. Annual Review of the Constitution - Report of Head of Legal and Democratic Services (Pages 73 - 126)
12. Contract Procedure Rules - Report of Corporate Director, Resources (Pages 127 - 146)

13. Request for Changes to the Boundary between Shincliffe Parish Council and Cassop-Cum-Quarrington Parish - Draft Terms of Reference - Report of Head of Legal and Democratic Services (Pages 147 - 156)
14. Appointment of Co-opted Members to the Audit Committee - Report of Corporate Director, Resources (Pages 157 - 160)
15. Central Durham Crematorium Joint Committee - Changes to Constitution/Terms of Reference - Report of Head of Legal and Democratic Services (Pages 161 - 188)
16. Mountsett Crematorium Joint Committee - Changes to Constitution/Terms of Reference - Report of Head of Legal and Democratic Services (Pages 189 - 202)
17. Motions on Notice

### **Councillor Wilkes to Move**

*This Council notes:*

- a) *That the Localism Act 2011 permits councils to change from one form of governance to another, including a return to a non-cabinet committee system;*
- b) *That committees are the most democratic form of decision making and enable all councillors to be involved and gain experience in many areas; and*
- c) *That other councils have reverted to a committee system which has ensured both democracy and accountability for all councillors and therefore all electors.*

*This Council believes that:*

- a) *Too many elected members of all parties are insufficiently involved in the decision making process, so that the people who voted for them do not have a voice in the council.*
- b) *A committee system operated successfully at Durham County Council for over 100 years prior to the introduction of the leader/cabinet arrangements legislated for by Tony Blair's Labour government; and*
- c) *Due to the current Cabinet system ordinary councillors of all parties have been denied the right to a public vote on many important decision making processes, and that this is fundamentally undemocratic.*

*This Council therefore urges the new council to change back to a committee system at the earliest opportunity.*

## **Councillor Temple to Move**

*Durham County Council welcomes the Government's protection of its public health grant for two years, with grants totalling £44.5 million for 2013-4 and £45.8 million for 2014-5, some of the most generous grants per head in England.*

*This council further recognises, however, that in the longer term these allocations have to change because they cannot be justified in terms of either national or regional variations. It therefore supports both its own officers and the Association of North East Councils in their efforts to explore with the independent committee advising government a more evidence based formula for calculating the Public Health Grant. This formula should both reflect the underlying health issues which councils have to tackle and support and reward councils which tackle the gap between their healthiest and least healthy communities.*

### 18. Questions from Members

**And** pursuant to the provisions of the above-named act, **I Hereby Summon You** to attend the said meeting

Dated this 12th day of March 2013



Colette Longbottom  
Head of Legal and Democratic Services

**To: All Members of the County Council**

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**DURHAM COUNTY COUNCIL**

At a Ordinary Meeting of the County Council held in the Council Chamber, County Hall, Durham on **Wednesday 20 February 2013 at 10.00 am**

**Present:**

**Councillor L Marshall in the Chair**

Councillors P Charlton (Vice-Chairman), J Alvey, B Alderson, J Armstrong, B Arthur, B Avery, J Bailey, A Bainbridge, B Bainbridge, D Barnett, A Bell, E Bell, J Bell, R Bell, J Blakey, G Bleasdale, D Bowman, D Boyes, P Brookes, B Brunskill, D Burn, C Carr, J Chaplow, J Cordon, A Cox, R Crooks, R Crute, K Davidson, M Dixon, N Foster, D Freeman, P Gittins, B Graham, B Harrison, N Harrison, S Henig, M Hodgson, G Holland, K Holroyd, A Hopgood, L Howvels, S Hugill, J Hunter, E Huntington, G Huntington, S Iveson, O Johnson, P Jopling, A Laing, J Lee, J Lethbridge, C Marshall, D Marshall, N Martin, E Mavin, P May, J Moran, D Morgan, D Myers, A Napier, A Naylor, M Nicholls, J Nicholson, B Ord, R Ord, M Plews, C Potts, G Richardson, J Robinson, S Robinson, C Robson, J Rowlandson, A Shield, J Shiell, J Shuttleworth, M Simmons, D J Southwell, B Stephens, D Stoker, P Stradling, P Taylor, T Taylor, K Thompson, L Thomson, R Todd, E Tomlinson, J Turnbull, Andy Turner, Allen Turner, C Vasey, C Walker, M Wilkes, J Wilkinson, M Williams, A Willis, M Wood, C Woods, R Yorke, B Young and R Young

Apologies for absence were received from Councillors A Barker, D Brown, J Brown, M Campbell, J Docherty, D Farry, J Gray, D Hancock, R Liddle, D Maddison, C Magee, J Maslin, E Murphy, B Myers, L O'Donnell, M Potts, A Savory, W Stelling, O Temple, G Tennant, B Wilson, J Wilson and S Zair.

Prior to the formal start of the meeting the Chairman reported with great sadness the following deaths:

- County Councillor Enid Paylor who served on the County Council from 2008-2012 and previously on Sedgfield Borough Council from 2003 to 2007.
- Former Durham City Councillor Councillor Maggie Robinson who served on the City Council from 1999-2008.
- Former Wear Valley District Councillor Joan Jopson who served on the District Council from 1991-1995 and was Chairman of the Council in her final year of office.

Members stood for a moment's silence as a mark of respect.

## **1 Minutes**

The Minutes of the meeting held on 9 January 2013 were confirmed by the Council as a correct record and signed by the Chairman, subject to Councillor B Bainbridge being shown as in attendance.

## **2 Declarations of Interest**

The Head of Legal and Democratic Services made reference Council Tax setting which was Item No. 10 on the agenda for the meeting. Members of the Council had been invited to apply for a dispensation on the basis of their tenancies or interest in land within County Durham which would give rise to a declarable prejudicial interest.

Almost all Members had applied for and had been granted a dispensation. Any Members who had not applied for a dispensation were advised to leave the meeting during the discussion of this item.

Councillors Brookes and Hovvels declared an interest in Item No. 14 on the agenda as Members of Trimdon Parish Council.

## **3 Chairman's Announcements**

### **Proceedings Relating to Budgetary Items**

The Chairman proposed that under rule 13.4 of the Council's Rules of Procedure Group Leaders be allowed more than the allotted five minutes when discussing the budget.

### **Resolved:**

That the proposal be approved.

### **South Asian Festival – 7 March**

The Chairman reported that over 50 schools in the County had links with schools in Central and South Asia. These lay principally in Sri Lanka, Pakistan, Bangladesh and Nepal and had been developed by the Council's international relations team and funded by government departments and the British Council's Connecting Classrooms scheme.

To celebrate these links, over half of the linked schools in County Durham would be taking part in a series of workshops to explore the cultural diversity of the region. Members were most welcome to join the Chairman to take part and to observe during the day.

### **International Women's Day**

The Chairman reported that International Women's Day, which was an annual event, took place on 8 March with the theme being set nationally. It was celebrated throughout the world in different ways. This year the theme was 'The Gender Agenda: Gaining Momentum' and this year female pupils from County Secondary Schools had been invited to County Hall to enjoy inspirational and educational workshops which ranged from a make-up artist to the stars, to a Church of England

Vicar and from Chinese crafts to Bollywood Dancing. Eighty girls were registered to attend the event which aimed to inspire them and help them believe that anything was possible in their futures.

The event would begin with a welcome from the Chairman and Mrs Sue Snowdon. This would be Mrs Snowdon's very first duty in her new role as she had been appointed as the first female Lord Lieutenant of County Durham and would succeed Sir Paul Nicholson who was retiring from office on 7 March.

### **Japanese Day of Culture**

The Chairman reminded Council of the Japanese Day of Culture which was taking place in the Durham Room. There would be a Japanese gift wrapping workshop, origami, Japanese etiquette and basic conversation.

### **Agenda**

The Chairman reported that Item No. 15 had been withdrawn from the agenda and would be considered at a future meeting of the Council.

## **4 Leader's Report**

The Leader welcomed Councillor Napier to the meeting on his return from a period of ill-health.

The Leader informed Council that he had attended an event at the Baltic on Friday 15 February regarding the North East Economic Review chaired by Lord Adonis. The event had emphasised the importance of greater joint working between all seven Local Authorities in the LEP area.

The Leader expressed disappointment that Rural Sparsity Funding, which had been announced for County Durham, had subsequently been withdrawn. The funding was to have been spent on flood alleviation works. However, the Council had identified £250,000 from Corporate Contingencies to spend on a two-year preventative inspection and maintenance programme, which would complement schemes being carried out by the Environment Agency.

The Leader congratulated both Stanley AAP and Town Council on a recent community event which had attracted 1,600 local residents to decide priorities for the community budget.

## **5 Questions from the Public**

The Chairman informed Council that some questions had been received from a member of the public who had been advised, in writing, by the Head of Legal and Democratic Services, that the questions related to issues that had been covered in correspondence which had now been closed. The questioner had been referred to the Local Government Ombudsman.

## **6 Petitions**

No petitions had been submitted for debate.

## **7 Report from the Cabinet**

The Council noted a report on issues considered by Cabinet on 16 January and 6 February 2013.

## **8 Budget 2013/14**

The Council considered a report of the Corporate Director of Resources which provided information on the robustness of the estimates and the adequacy of reserves in accordance with the requirements of Section 25 of the Local Government Act 2003.

**Moved** by Councillor Napier, **Seconded** by Councillor Henig and

### **Resolved:**

That the Council have regard to the report when approving the budget and the level of Council tax for 2013/14.

## **9 General Fund Medium Term Financial Plan, 2013/14 - 2016/17 and Revenue and Capital Budget 2013/14**

The Council considered a report from Cabinet which detailed budget recommendations for 2013/14 and the Medium Term Financial Plan 2013/14 to 2016/17.

In moving adoption of the Cabinet report, Councillor Henig made a statement on the Budget and Precept for 2012/13, summarised as follows:

The Medium Term Financial Plan had been built on the last two years of unprecedented levels of cuts in Government funding. Anticipated cuts in funding for the period 2011/12 to 2014/15 had originally been announced at a level of 28% in 2010, but this had now increased to 35% to 36%, with the possibility that this would increase to 40% by 2017/18. Government spending cuts had been administered unfairly, with affluent areas of the Country, including West Oxfordshire and Windsor and Maidenhead, experiencing smaller levels of cuts than more deprived areas. Cuts would amount to £200m by 2017/18, and at this level, the Council would not be able to deliver the same level of services as it had on 2009/10.

Proposed savings for 2013/14 were shown in Appendix 2 of the report.

Despite the level of cuts, the Council would achieve the following in 2013/14:

- For the fourth consecutive year, the County Council's element of council tax bills would stay the same.
- The Adult Social Care budget would increase by £1m.
- All households in receipt of council tax benefit would be protected under the local council tax support scheme, despite a 10% cut in government funding.
- The highways winter maintenance programme would be protected in order to keep the main highways infrastructure open for the public.

A key priority for the Council was its capital programme, to stimulate regeneration and job creation across the county. In line with the Council's key priority to stimulate regeneration and job creation, an additional £3.25m of revenue had been allocated to fund prudential borrowing to invest in new and current capital projects amounting to £159m in 2013/14 with a total programme for the period 2013/14 to 2016/17 of £315m.

A full list of new projects was shown at Appendix 7 of the report, and included £1m on the Town Centres Programme, £1.5m on two new household waste recycling centres at Crook and Stainton Grove, near Barnard Castle, £1.4m on a new customer access point in Stanley and £2m on Villa Real bridge..

Referring to public consultation, the Leader informed Council that in December 2012 an extensive consultation exercise had led to over 1,500 people giving their views on how the council had managed spending reductions, their impact to date and providing ideas for further future reductions. This consultation showed that there was a high level of satisfaction with how the council had managed spending reductions, and comments from the consultation were considered during the budget process.

Councillor Henig thanked all staff involved in the process of preparing the budget.

In seconding the adoption of the Cabinet report, Councillor Napier added his thanks to all involved in the budget process. Government cuts had fallen disproportionately in those areas which least could afford them yet the Council had managed to achieve savings of £21m, as shown at Appendix 2 of the report, to achieve a balanced budget for 2013/14. The Council had unanimously endorsed the protection of 65,000 Council Tax Benefit households to ensure they were no worse off in this respect when Welfare Reform measures were introduced, had achieved no Council Tax increase for the fourth year running and had increased the Adult Social Care budget by £1m. The Council's Capital Programme, which amounted to £315m over the period of the MTFP was designed to generate jobs and stimulate the economy of the County.

An Amendment was **Moved** by Councillor Martin and **Seconded** by Councillor Southwell as follows:

***Highways Maintenance (Capital) Budget 2013/14***

*In order to make inroads into the capital highways maintenance backlog, the Council should invest an extra £1.3 million in 2013/14.*

***Improving Customer Service in the Contact Centre***

*In order to provide a 'fit for purpose' telephone service to our customers by increasing opening times and reducing waiting times, an additional 8 customer service operatives be recruited to the Customer Services Team.*

*Additional cost = £150,000 - Funded by stopping publishing the County Durham News - Annual saving = £150,000.*

**Increase the funding to Citizen Advice Bureau by £50,000**

*Funded by withdrawing the clothing allowance for the Chairman and Vice Chairman and reducing the amount of remuneration for 'special responsibility allowances' to elected members.*

**Invest a further £300,000 a year into the public transport subsidy budget to improve bus routes and the frequency of buses for the public**

*Funded by reducing casual car mileage rates for employees and councillors to 45 pence a mile.*

**Introduce a 3 year pilot programme at a cost of £250,000 a year to improve career opportunities for young people. The service would be provided by the Regeneration and Economic Development Service in schools and would support the new role of secondary schools as being the sole support for providing careers advice to young people.**

*The £750,000 cost over the 3 years to be funded from general reserves.*

**Introduce a 3 year pilot programme at a cost of £1 million a year in order to support employment and business development. The service would be provided by the Regeneration and Economic Development Service and would provide support and advice to new business start-ups on the Local Enterprise Growth Initiative (LEGI) model.**

*The £3 million cost over the 3 years to be funded from general reserves.*

**Add £1,500,000 of expenditure to the 2013/14 capital programme to fund up to 20 new minor schemes using the criteria along the lines of the former 'Urban and Rural Renaissance Initiative' programme.**

*To be funded from the as yet uncommitted £10,500,000 capital budget in 2014/15 which could be brought forward into 2013/14 with the subsequent revenue cost of £150,000 to fund the borrowing to be met from the 2013/14 revenue contingency budget.*

Upon a vote being taken, the Amendment was **lost**.

An Amendment was **Moved** by Councillor R Bell and **Seconded** by Councillor A Bainbridge as follows:

**In respect of the Cabinet's 2013/14 Revenue Budget:-**

*That free car parking be provided for the first 2 hours across the whole of the county apart from in the City of Durham. This would cost an estimated £610,000 a year and would be funded by:*

- *Stopping the publication of County Durham News but retain the Events Guide and Guide to Services. This would result in an annual saving of £150,000.*
- *Reducing the Corporate Contingency budget for one year only in 2013/2014, saving £460,000.*

*The contingency budget would be replenished in 2014/2015 by commencing a programme of Unitising all back office, and support service functions during 2013 including:*

- *Policy, planning and performance (estimated full year effect saving £500,000)*
- *Business Support and administration (estimated full year effect saving £500,000)*
- *Communications and marketing (estimated full year effect saving £500,000)*

At this point a recorded vote was requested in accordance with Council Procedure Rule 16.4. The result of the vote was as follows:

### **For the Amendment**

Councillors A Bainbridge, B Bainbridge, B Barnett, R Bell, B Brunskill, B Harrison, N Harrison, K Holroyd, S Hugill, J Hunter, P Jopling, E Mavin, P May, G Richardson, J Rowlandson, A Shield, D Stoker and K Thompson.

### **Against the Amendment**

Councillors B Alderson, J Alvey, J Armstrong, B Arthur, B Avery, E Bell, J Bell, J Blakey, G Bleasdale, D Bowman, D Boyes, P Brookes, C Carr, J Chaplow, P Charlton, J Cordon, R Crooks, R Crute, K Davidson, M Dixon, N Foster, D Freeman, P Gittins, B Graham, S Henig, M Hodgson, L Hovvells, E Huntington, S Iveson, O Johnson, A Laing, J Lee, J Lethbridge, L Marshall, D Marshall, C Marshall, J Moran, D Morgan, D Myers, A Napier, A Naylor, M Nicholls, J Nicholson, B Ord, R Ord, M Plews, C Potts, J Robinson, C Robson, J Shiell, J Shuttleworth, B Stephens, P Stradling, P Taylor, R Todd, E Tomlinson, J Turnbull, Allen Turner, Andy Turner, C Vasey, C Walker, A M Williams, A Willis, R Yorke, B Young and R Young.

### **Abstentions**

Councillors D Burn, G Holland, A Hopgood, N Martin, M Simmons, D Southwell, T Taylor, L Thomson, M Wilkes, J Wilkinson, M Wood and C Woods

The Amendment was **lost**.

An Amendment was **Moved** by Councillor R Bell and **Seconded** by Councillor A Bainbridge as follows:

***In respect of the Medium Term Financial Plan 2014/15 to 2016/17, in order to reduce the forecasted £51m funding shortfall across this 3 year period:-***  
*That the Council continues to protect front line services and commission corporate management team to deliver savings by:*

1. *Carrying out a senior pay review of first, second, third and fourth tier officers. Saving 10% of the wages bill would yield £500,000 per year recurring saving.*
2. *Carrying out a strategic value for money review of all Service Direct services including the option to outsource. Saving 1% of the current Gross*

*Expenditure of £146 million would yield £1,500,000 per year recurring saving.*

3. *Reduce the levels of sickness absence from an average of 10 days a year to 8 days a year, by implementing a Performance Management Culture making managers and staff more accountable for sickness absence. This reduction would yield efficiency savings of £1.8 million per year and £200,000 per year recurring cashable savings.*

Upon a vote being taken, the Amendment was **lost**.

An Amendment was **Moved** by Councillor Shuttleworth and **Seconded** by Councillor Arthur as follows:

**Highways Maintenance (Revenue)**

*In order to improve the roads and pathways across the county, an extra £1,040,000 of revenue patching work should be carried out every year to repair and make good the increasing numbers of pot holes across the county.*

*Additional cost = £1,040,000*

*Funded by:*

- (i) *reducing the corporate risk contingency budget = £440,000*
- (ii) *downsizing the corporate policy and communications team to 3 employees = £600,000*

**Gully Cleaning (Revenue)**

*In order to reduce the risks of flooding, invest £150,000 a year in cleaning out gullies more regularly.*

*Additional cost = £150,000*

*Funded by stopping publishing the County Durham News – Annual saving = £150,000*

**Highways Maintenance (Capital)**

*In order to make inroads into the capital highways maintenance backlog, the Council should invest an extra £4 million a year, every year across the medium term financial plan from 2014/15.*

*Additional cost to the capital programme = £4 million a year*

*Funded by £400,000 a year of the £2 million prudential borrowing already earmarked in the medium term financial plan to fund new capital schemes*

Upon a vote being taken, the Amendment was **lost**.

Upon a further vote being taken it was

**Resolved**

That the report of the Cabinet and its recommendations be adopted in full.

**10 Council Tax setting in order to meet the County Council's Budget Requirement for 2013/14**

The Council considered a report from Cabinet which detailed the information to calculate and set the Council tax for the Council's area for 2013/14 (for report see file of Minutes).

The Corporate Director of Resources informed Council of an amendment to the report at Appendices 4 and 5. At Appendix 4 the Council Tax Band D for Whorlton and Westwick Parish should read 1,314.20, with appropriate adjustments to other Council Tax Bands, and at Appendix 5, the Council Tax Band D for Whorlton and Westwick Parish should read 1,561.12, with appropriate adjustments to other Council Tax Bands.

**Moved** by Councillor Henig, **Seconded** by Councillor Napier that the report of the Cabinet and its recommendations, as amended, be adopted, and with it the setting of the Council Tax.

**Resolved:**

That the following be adopted:

- (a) It be noted that on 19 December 2012 the Cabinet calculated the Council Tax Base 2013/14;
  - i) for the whole Council area as 128,205.0 band D equivalent properties [Item T in the formula in Section 31B of the Local Government Finance Act 1992, as amended (the "Act")]; and
  - ii) for dwellings in those parts of its area to which a Parish precept relates as in the attached Appendix 3.
  
- (b) the Council Tax Requirement for the Council's own purposes for 2013/14 (excluding Parish precepts and the Charter Trustees for the City of Durham) is £164,469,066.
  
- (c) the following amounts be calculated for 2013/14 in accordance with Sections 31 to 36 of the Act:
  - i) being the aggregate of the gross expenditure which the Council estimates for the items set out in Section 31A(2) of the Act taking into account all precepts issued to it by Parish Councils: £1,154,100,578.
  - ii) being the aggregate of the gross income which the Council estimates for the items set out in Section 31A(3) of the Act: £979,649,046.
  - iii) being the amount by which the aggregate at (c) i) above exceeds the aggregate at (c) ii) above, calculated by the Council in accordance with Section 31A(4) of the Act as its Council Tax requirement for the year. (Item R in the formula in Section 31B of the Act): £174,451,532.

- iv) being the amount at (c) iii) above (Item R), all divided by Item T ((a) i) above), calculated by the Council, in accordance with Section 31B of the Act as the basic amount of its Council Tax at Band D for the year (including Parish precepts: £1,360.72.
- v) being the aggregate amount of all special items referred to in Section 34 (1) of the Act: (total of all Parish precepts including Charter Trustees): £9,982,466.
- vi) being the amount at (c) iv) above less the result given by dividing the amount at (c) v) above by Item T ((a) i) above), calculated by the Council, in accordance with Section 34(2) of the Act, as the basic amount of its Council Tax at Band D for the year for dwellings in those parts of its area to which no Parish precept relates: £1,282.86.

- (d) it be noted that for 2013/14 County Durham and Darlington Fire and Rescue Authority has recommended the following amounts will be in the precept issued to the County Council, in accordance with Section 40 of the Act, as shown in the table below:

**COUNTY DURHAM AND DARLINGTON FIRE AND RESCUE AUTHORITY**

A	B	C	D	E	F	G	H
£	£	£	£	£	£	£	£
60.30	70.35	80.40	90.45	110.55	130.65	150.75	180.90

- (e) It be noted that for 2013/14 Durham Police and Crime Commissioner has recommended that the following amounts will be in the precept issued to the County Council, in accordance with Section 40 of the Act, as shown in the table below:

**DURHAM POLICE AND CRIME COMMISSIONER**

A	B	C	D	E	F	G	H
£	£	£	£	£	£	£	£
104.31	121.70	139.08	156.47	191.24	226.01	260.78	312.94

- (f) the Council, in accordance with Sections 30 and 36 of the Local Government Finance Act 1992, hereby sets the aggregate amounts shown in the tables below as the amounts of Council Tax for 2013/14 for each part of its area and for each of the categories of dwellings.

**DURHAM COUNTY COUNCIL**

A	B	C	D	E	F	G	H
£	£	£	£	£	£	£	£
855.24	997.78	1,140.32	1,282.86	1,567.94	1,853.02	2,138.10	2,565.72

**AGGREGATE OF COUNCIL TAX REQUIREMENTS  
(excluding Parish, Town Council and Charter Trustees)**

A	B	C	D	E	F	G	H
£	£	£	£	£	£	£	£
1,019.85	1,189.83	1,359.80	1,529.78	1,869.73	2,209.68	2,549.63	3,059.56

- (g) the Council's basic amount of Council Tax for 2013/14 is not excessive in accordance with principles approved under Section 522B Local Government Finance Act 1992.
- (h) the County Council, in accordance with Section 11A (4) of the Act sets a 0% discount for Second and Empty Furnished Homes.
- (i) the County Council, in accordance with Section 11A (4A) of the Act sets a 0% discount for dwellings defined in Classes C or D.
- (j) the County Council, in accordance with Section 11B (1b) of the Act sets a 150% premium for Long Term Empty Homes for 2013/14.
- (k) the Chief Executive be instructed to publish a notice in accordance with Section 38 (2) of the Act, relating to the amounts of council tax set.
- (l) the Chief Executive be instructed to publish a notice in accordance with Section 11A (6) and 11B (6) of the Act, relating to the discount set.

## **11 Housing Revenue Account Medium Term Financial Plan 2013/14 to 2017/18 and 2013/14 Budget**

The Council considered a report from Cabinet which provided details of the Cabinet's budget recommendations in respect of the Housing Revenue Account (HRA) Medium Term Financial Plan (MTFP) for 2013/14 to 2017/18 and the 2013/14 budget (for report see file of Minutes).

Councillor Wilkes commended the Cabinet Portfolio Holder on work done on some housing within the County but hoped sufficient investment was available for improvements to other properties, particularly garages and council owned land.

**Moved** by Councillor Robson, **Seconded** by Councillor Napier and

**Resolved:**

That the report of the Cabinet and its recommendations be adopted in full.

## **12 Council Plan and Service Plans 2013 - 2017**

The Council considered a report of the Assistant Chief Executive that sought approval of the Council Plan 2013-2017

**Moved** by Councillor Henig, **Seconded** by Councillor Napier and

**Resolved:**

That the recommendation contained in the report be approved.

**13 Interim arrangements for the discharge of functions for the period between the County Council elections and the reconstitution of Council Bodies**

The Council considered a report from the Head of Legal and Democratic Services which sought delegated authority for the discharge of County Council functions in the period between the County Council elections and the reconstitution of Council bodies.

**Moved** by Councillor Napier, **Seconded** by Councillor Henig, and

**Resolved:**

That the recommendations detailed in the report be approved.

**14 Request for Reduction of Council Size - Trimdon Parish Council**

The Council considered a report of the Head of Legal and Democratic Services regarding a request from Trimdon Parish Council to reduce the number of Parish Councillors on the Parish Council from 21 to 13 (for copy see file of Minutes).

**Moved** by Councillor Nichols, **Seconded** by Councillor Laing and

**Resolved:**

That an order be made to reduce the number of Parish Councillors on Trimdon Parish Council from 21 to 13.

Councillors Brookes and Hovvels rejoined the meeting.

**15 Members' Allowances Scheme 2013/14**

The Council considered a report of the Head of Legal and Democratic Services that sought agreement to a members allowance scheme for 2013/14, having due regard to the recommendation of the Independent Remuneration Panel.

Councillor Henig, reiterated the personal view he had expressed in previous years that the recommendations of the Independent Remuneration Panel would be better determined at national level and it was incorrect for a Council to vote on its own allowances scheme.

**Moved** by Councillor Napier, **Seconded** by Councillor Henig and

**Resolved:**

That the current Members Allowances Scheme be adopted for 2013/14.

**16 Proposed Amendments to the Planning Code of Practice Section of the Constitution**

The Council considered a report of the Head of Legal and Democratic Services which recommended amendments to the Planning Code of Conduct which were necessary as a consequence of changes made to the Ethical Standards Regime by the Localism Act 2011.

**Moved** by Councillor Foster, **Seconded** by Councillor Davidson, and

**Resolved:**

That the recommendation in the report be approved.

**17 Proposals to Rationalise Committee Functions in Dealing with Planning Applications for Wind Turbines**

The Council considered a report of the Corporate Director of Regeneration and Economic Development which proposed amendments to the Council's constitution to ensure that decisions on applications for wind turbines of a certain size and scale were dealt with by the appropriate planning committee.

**Moved** by Councillor Foster, **Seconded** by Councillor Davidson and

**Resolved:**

That the recommendation in the report be approved.

**18 New Byelaws for Acupuncture, Tattooing, Semi-permanent Skin Colouring, Cosmetic Piercing & Electrolysis**

The Council considered a report of the Corporate Director of Neighbourhood Services which sought approval to adopt legislation that would enable the creation of new byelaws in respect of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.

**Moved** by Councillor B Young, **Seconded** by Councillor Carr, and

**Resolved:**

That the recommendations in the report be approved.

**19 Motions on Notice**

Having regard to the length of time Council business had taken to transact, Councillor Wilkes informed the Council he would withdraw his Motion and submit it to the next meeting of the Council.

**20 Questions from Members**

There were no questions from Members.

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**County Council**

**20 March 2013**

**County Durham Youth Justice Plan  
2012/14**



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**Report of Corporate Management Team**

**Rachael Shimmin, Corporate Director, Children & Adults Services**

**Councillor Claire Vasey, Cabinet Portfolio Holder for Children's Services**

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**Purpose of the Report**

- 1 The purpose of the report is to present County Durham Youth Justice Plan 2012/14 to Council for approval.

**Background**

- 2 The Crime and Disorder Act 1998 (S.40) places a duty on every Local Authority with relevant persons and bodies, to formulate and implement an annual Youth Justice Plan which sets out:
  - How youth justice services in the area are to be provided and funded, and
  - How the Youth Offending Service will be composed and funded, and what statutory functions the service is to carry out.
- 3 County Durham Youth Offending Service (CDYOS) multi-agency Management Board fully supports the attached Youth Justice Plan. It will be refreshed in May 2013 and a new Youth Justice Plan for 2013/15 produced.
- 4 As well as reviewing the progress made in youth justice over the previous period, the plan sets out the key priorities and next step for the partnership, in particular for the County Durham Youth Offending Service.
- 5 The key priorities in the plan are:
  - To reduce first time entrants to the youth justice system
  - To reduce re-offending
  - To reduce the use of custody (both remand and sentenced)
- 5 To achieve these, a range of actions are being implemented. Examples include:
  - Further integrate pre and post court delivery

- Develop and implement Enhanced Transitions Pilot (18-21 years) with Durham Tees Valley Probation Trust (DTVPT) and DCC CAS
- Embed Think Family approach in all CDYOS work
- Improve links with Crown Court and Magistrates Court sentencers
- Expand restorative justice interventions across all CDYOS work (pre and post court)
- Ensure the views of young people and families inform service design and delivery

6. The Plan also sets out the resource plan for the service, including staffing and finance. Council will note that the Youth Justice Plan is resourced through partnership activity and finance and that several of these funding streams have transferred to the new Police and Crime Commissioner. It will be essential to work closely with the PCC in agreeing future priorities.

### **Recommendations and reasons**

7 Council are recommended to approve the Youth Justice Plan.

### **Background papers:**

County Durham Youth Offending Service Youth Justice Plan 2012/14.

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## **Appendix 1: Implications**

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**Finance** - The plan contains information on the resourcing of CDYOS

**Staffing** - The plan contains information on staffing in CDYOS

**Risk** - The resourcing of CDYOS is dependent on a range of funding streams, all of which are still to be finalised for 2013/14

**Equality and Diversity / Public Sector Equality Duty** -

**Accommodation** - None

**Crime and Disorder** - The statutory duty of the youth justice system is to prevent crime and disorder by young people (Crime and Disorder Act 1998, S37(1) ).

**Human Rights** - None

**Consultation** - None

**Procurement** - None

**Disability Issues** - None

**Legal Implications** – The delivery of statutory youth justice functions.

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County Durham Youth Offending Service  
**Youth Justice Plan**  
2012 / 2014





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## Executive Summary

### In 2011 – 2012 we:

#### Miscellaneous

- introduced a suite of Offending Behaviour Programmes
- integrated pre and post court services
- created Practice Improvement Officer posts
- delivered Intervention Planning and Managing Risk and Vulnerability training to all staff
- audited practice against KEEPs and implemented improvement plans
- received national awards for our work
- gave evidence at APPG Inquiry into the impact of decisions on girls
- introduced ESF funded education provision and secured funding for 2012/13
- implemented HMIP Thematic Inspection recommendations
- reduced operating costs by over £200,000 in part by utilising in-house expertise for training/service improvement and reducing administration/management posts
- improved the volunteer programme and expanded the roles of volunteers

#### Reducing FTEs

- embedded the Triage 2 process
- introduced robust risk and vulnerability processes to pre court practice
- included FTEs in the Positive Futures Outcomes Plan
- achieved our best ever FTE figures (294 young people)
- implemented a Healthy Relationships module for PRD

#### Reducing Re-offending

- reduced re-offending (number/rate/frequency – NI 19 measure)
- piloted Compliance Panels
- introduced methods of assessing learning styles
- exceeded our ESF targets for progression into employment/training
- sourced 2 larger Reparation Units to enhance service delivery and delivered 4142 hours of reparation work
- expanded the use of Restorative Justice approaches across all orders

#### Reducing Use of Custody

- introduced Custody Review Panels
- reviewed and improved our Bail Supervision and Support Programme
- reviewed our ISS Programme and developed an action plan
- strengthened our links with IOM partners
- analysed causes of remands into the secure estate
- monitored remand bed nights to provide a baseline figure for improvement

**During April/May 2012 we undertook a comprehensive self assessment.**

**As a result, in 2012-2013 we will:**

### **Miscellaneous**

- increase victim involvement in work with young people
- develop accreditation for CDYOS work with young people in conjunction with Prince's Trust and County Durham Learning Network
- develop discrete Vulnerability Policy and Procedures
- ensure CDYOS plans are integrated into Police and Crime Commissioner planning
- develop a joint protocol with One Point to maximise the value of interventions
- provide training for all staff on Case Recording
- embed new roles for volunteers in service delivery

### **Reducing FTEs**

- implement and deliver the Positive Futures Outcomes Plan ensuring PRD cohort is fully integrated
- further integrate pre and post court delivery, especially in respect of high risk young people
- ensure a holistic model of APIS for pre court delivery
- embed the Think Family approach to all pre court work
- introduce a pre court case closure checklist to ensure continued quality

### **Reducing Re-Offending**

- develop a Transition Pilot (18 -21 years) with DTVP Trust and Children and Adults Services, DCC
- embed the Think Family approach to all post court work
- ensure the views of young people and families inform service design and delivery
- implement learning from the Compliance Panel pilot across whole Service
- evaluate the impact of Offending Behaviour Programmes on recidivism
- maximise the flexibilities inherent in new National Standards to improve service delivery
- continue to improve the quality of exit strategies for supervised young people
- develop an Offending Behaviour Programme for young people who sexually offend

### **Reduce Use of Custody**

- introduce Local Authority accommodation for young people held in Police cells
- develop protocol with Children's Care regarding the Remand Order for Youth
- implement the findings of the Custody Panel
- develop a proactive approach in court to supporting PSR proposals
- explore opportunities for joint training with Courts staff and Magistrates
- further improve links with Crown Court sentencers
- implement the ISS improvement plan

## Introduction

Youth Offending Teams (YOTs) were established under the Crime and Disorder Act 1998, with the principal aim of preventing offending by children and young people. Local Authorities are responsible for establishing a Youth Offending Team within their area. Police, Probation and Health Services are statutorily required to assist in their funding and operation.

County Durham Youth Offending Service (CDYOS) is a statutory multi-agency partnership and is part of Early Intervention and Involvement Services within Children and Adults Services, Durham County Council. Active links are maintained at both local and strategic level to the Criminal Justice / Community Safety arenas. The Service is represented at strategic level in a range of key partnerships (e.g. Children and Families Trust, Safe Durham Partnership (CSP), Local Safeguarding Children Board, Think Family Board) as well as relevant sub groups.

### **Strategic Purpose of CDYOS**

- To prevent re-offending by children and young people
- To reduce First Time Entrants (FTEs) to the youth justice system
- To be achieved by delivering specialist interventions
- Underpinned by safeguarding and public protection

For 2012/14, CDYOS' primary focus is on the following three outcome areas:

- reducing first time entrants
- reducing re-offending
- reducing the use of custody, including secure/custodial remands and ensuring public protection/safeguarding by providing specialist interventions.

This plan outlines our strategies to do so for 2012/14. Please refer to Appendix 4 for our Service Improvement Plan for 2012/13.

### **We are particularly proud of:**

- our integrated pre court structures which have resulted in 74% reduction in first time entrants (2007/8 – 2011/12), reduced youth crime and therefore the number of victims by 50%
- our strong partnership work
- our child centred approach – where safeguarding of young people is a priority alongside preventing re-offending
- our range of professionals in the service who work to their specialist area
- delivering our work in the communities where young people and families live
- delivering 4142 hours of community based reparation in 2011/12
- our willingness to change and improve

## Resourcing and value for money

**Outcome:** Efficient deployment of resources to deliver effective youth justice services to prevent offending and re-offending.

CDYOS is committed to the following principles:

- maintaining front line delivery and core services to young people and partners
- ensuring CDYOS remains in a position to improve practice and outcomes for young people
- ensuring young people are safeguarded and risk is managed
- ensuring Value for Money (VfM).

These underpin all our work re budgetary management.

### Budget 2012/13

CDYOS budget comprises partnership funding, YJB funding and specific grant funding. The budget allocation is reviewed annually by CDYOS Management Board and all partners (Police, Probation, Health and Local Authority) agree funding contributions for the following year. The budget for 2012/13 is £4, 219,548. A detailed budget breakdown and comparison with 2011/12 can be found at Appendix 3.

86.2% of CDYOS budget (£3,635,302) is spent on staff costs.  
89% of this is front line staff.

CDYOS partnership has implemented a comprehensive youth crime prevention strategy which includes pre and post court. The partnership has invested considerable funding – 670k in 12/13 - in our pre court work. The acknowledged success of our pre court strategy has proven success in reducing first time entrants and re-offending and is an Invest to Save Strategy.

### Invest to Save Strategy

Conservative estimated savings to the criminal justice system in Co. Durham (Court, Police,

CPS and YOS costs, not including custody) comparing 2007/8 to 2011/12 are **£15 million per year**.

(Based on Audit Commission costs (2009), allowing for the reduction in County Durham's 10 -17 population and increase in Durham Constabulary detection rates over the period).

The 670k investment per year in pre court saves the criminal justice system (comparing 2007/8 and 2011/12) – as a conservative estimate - **an additional £1.5 million per year**.

Robust financial management is underpinned by regular budget reports to the Management Board.

### Budget Savings 2012/13

CDYOS has to manage within a tough budgetary environment. The Service made savings of **224k** for 2012/13. This equates to 5% of the pooled budget. This was in on top of **previous savings of 840k for 2011/12**.

We managed the budget reductions by:

- Holding all vacancies to minimise risk to staff
- Reducing non-staffing expenditure to an absolute minimum
- Exploring all options re VfM
- Changing the way we work with local partnerships (e.g. Community Safety/ Children and Families Trust)
- Maximising the benefits of reduced central monitoring
- Maximising Durham County Council's support structures

It should be noted the budget savings have been achieved while maintaining improvements in two of the three priority areas (FTEs and re-offending).

## Staffing and Service Delivery

### Service Delivery

CDYOS works with young people across the whole Youth Justice spectrum (pre and post court):

- prevention of offending ( Safe Durham Partnership ASB Escalation Procedures)
- pre conviction arena (bail and remand management)
- fully integrated pre court system (nationally recognised)
- community sentences
- long term custodial sentences.

CDYOS ensures the delivery of court orders (both in the community and custody) in line with National Standards for Youth Justice, national Case Management Guidance and other statutory requirements. We recruit, manage, supervise and deploy volunteers to carry out a range of functions (including the statutory delivery of Referral Orders). We operate a fully staffed court rota for the Youth Court, Remand Court, Crown Court and Special Courts (Saturdays and Bank Holidays). We ensure safeguarding and management of risk, including public protection, in relation to young people in the Youth Justice system.

CDYOS works with victims of youth crime to ensure meaningful input to work with young people who have offended and has expanded restorative justice across all orders within existing resources during 2011/12.

During 2011/12 we worked with almost 1400 cases (pre and post court) with over 32,000 contacts by CDYOS over the year.

### Staffing

The Service is staffed in line with the requirements of the Crime and Disorder Act (1998), including: Social Workers, Probation Officers, Police, Health, Education staff plus a range of other staff e.g. Victim Liaison Officers, Family Support Officers, Intensive Supervision and Surveillance (ISS), Pre Court staff and Restorative Justice staff. The service has 115.7 staff (101.84fte) and 58 active volunteers in 2012/13, a reduction from 148 staff (134 ftes) in 2010/11.

As a result of the increasing complexity of cases managed, CDYOS operates a specialist model of case management, enabling staff to work to their expertise. The primary focus of staff is on their specialist roles. Specialist case managers (e.g. Social Workers/Probation Officers) hold overall responsibility for between 18-20 cases each.

We operate a multi- professional Team around the Child, maximising expertise of professionals in CDYOS, and utilising additional skills from outside the service as required.

The integration of pre and post court staff under single line management at local level (2011) and the establishment of a countywide admin team under single line management (2012) have helped to build capacity and capability, improve outcomes and ensure Value for Money.

'CDYOS continues to make progress in key areas of development. Offending Behaviour programmes are an excellent innovation; work with the pre-court cohort continues to attract national interest and the partnership approach continues with successful approaches to joint working.' (YJB, June 2012)

## Structures and governance

**Outcome:** Integrated strategic planning and working with clear performance oversight to ensure effective delivery of youth justice services.

### Governance – Management Board

CDYOS is accountable to a multi-agency Management Board, chaired by the Head of Early Intervention and Involvement, Children and Adults Services, Durham County Council. The membership and terms of reference of the Management Board are reviewed annually. Membership is at Chief Officer or appropriate Senior Officer level. The Management Board consists of:

- Children and Adults Services, DCC (Chair)
- Durham Constabulary
- Durham Tees Valley Probation Trust
- NHS Co Durham and Darlington
- HM Courts and Tribunals Service
- Improving Progression of Young People Team, DCC
- Local Safeguarding Children Board (LSCB)

The Management Board (via the Chair) reports to the Children and Families Trust, Safe Durham Partnership and County Durham Partnership.

The Management Board ensures CDYOS can deliver effective youth justice services and improve outcomes for young people by:

- Providing clear performance oversight and direction
- Receiving regular budget reports
- Ensuring the service is adequately resourced
- Providing clear governance and accountability
- Reviewing the statutory partners' budget contribution to CDYOS
- Ensuring excellent links with the Children and Families Trust/Safe Durham Partnership/LCJB/LSCB/broader partnership arena

This is achieved by providing:

- Strategic oversight and direction
- Support
- Partnership working
- Planning and resources

'The Management Board meets regularly, providing oversight and effective governance.' (YJB, 2012)

(Please refer to Appendix 2 for Management Board Terms of Reference)

### Structures

Following the merger of Children and Young People's Services and Adult and Health Services, DCC into one directorate under a single Corporate Director– Children and Adults Services – from 1 August 2012, CDYOS became part of Early Intervention and Involvement Services, under the Head of Early Intervention and Involvement.

Early Intervention and Involvement Services include:

- One Point (Integrated Children and Family Services)
- CDYOS
- Community Safety
- Think Family (including Family Pathfinder)
- Countywide Youth Service
- Investing in Children
- Welfare Rights
- Gypsy and Travellers

The new structure – both the new service grouping and the broader directorate - will provide valuable opportunities for joint work and should help to address some of the transition issues for young people who offend aged 18-21. Full integration into the new directorate will maximise opportunities for joint work inherent in the new structure.

## **Reducing Youth Crime – Integrated Strategic Planning**

The primary focus of CDYOS – preventing re-offending by young people, reducing first time entrants to the youth justice system and reducing the use of custody – is fully integrated into the following strategic plans in County Durham:

- Safe Durham Partnership Plan (2011-14)
- County Durham Children, Young People and Families Plan (2012-2016)
- DCC Council Plan (2012-16)
- Sustainable Communities Strategy (2010 - 2030)
- Safe Durham Partnership Reducing Re-Offending Strategy (2011-2014), including Integrated Offender Management developments
- Safe Durham Partnership Anti-Social Behaviour Strategy and Action Plan
- Positive Futures Outcomes Plan (2011-2013)
- Think Family Strategy

This maximises opportunities for joint work across Children and Adult Services, Community Safety and Criminal Justice and ensures a co-ordinated strategic approach across Co Durham.

For 2012/13 and beyond we need to forge links with the Police and Crime Commissioner and ensure CDYOS Partnership priorities are included in the 5 year Police and Crime Plan from April 2013

## Partnership arrangements

**Outcome:** Effective partnership arrangements are in place between YOT statutory partners and other local partners that have a stake in delivering local youth justice services, and these arrangements generate effective outcomes for children and young people who offend or are at risk of offending.

### Partnership Arrangements

Partnership arrangements in place to deliver effective and efficient youth justice services in County Durham include:

- Partners ( Police, Probation and Health) have maintained their specialist staff and financial contributions to the service
- Durham County Council as lead partner
- The Management Board consists of statutory partners plus broader membership (LSCB, HMTCS)
- Seniority of Management Board members
- Management Board members are proactive, working both within and outside the Board, to support the work of the service

### Effective Partnership Work

CDYOS has strong partnership work with an extensive range of partners at both strategic and operational level. Partners include:

- Criminal Justice ( Police, Probation, Courts)
- Community Safety ( DCC, Health, Fire and Rescue)
- Children and Families Trust ( DCC, Health, Police, VCS)
- LSCB
- MAPPA

Strong partnership resourcing is formalised by HR Service Level Agreements with partners (Probation, Police, NHS County Durham and Darlington). HR SLAs are reviewed annually.

The Service operates a range of protocols with partners (including courts, health, CAMHS, Safeguarding and Specialist Services) which are regularly reviewed.

Partnership information sharing protocols/ agreements work very well and ensure holistic assessment, intervention and outcomes for young people who offend. Staff have access to a range of case management systems/ databases in CDYOS offices, including:

- PNC/ Sleuth (Police)
- SystemOne (Health)
- ICS/SSID (Safeguarding/ Children's Social Care)
- ONE (Education)
- Careworks (Youth Justice case management system)

This allows staff and secondees to access critical information regarding the young person/family to support management of risk and vulnerability, and ensure holistic assessment and information sharing to improve outcomes for young people in the youth justice system.

In addition, Careworks is available in house for:

- Emergency Duty Team (EDT)
- 4Real (young people's substance misuse service)
- One Point (integrated early intervention service for young people 0 -19 and families)
- All magistrates courts in County Durham.

Specific examples of effective partnership work include:

- The development of an integrated pre court process would not have been possible without the full support of various partners, especially Durham Constabulary, Crown Prosecution Service, Courts Service, Children's Executive Board, Safe Durham Partnership and Durham County Council Members.
- The Common Assessment Framework (CAF) is fully embedded within CDYOS processes both at pre and post court.
- CDYOS operates a fully staffed court rota including Saturday and Bank Holiday Special Court cover (Social Workers and Probation Officers) with dedicated management cover and clearly identified escalation procedures. These arrangements are formalised in the SLA with Durham Tees Valley Probation Trust in relation to Probation secondees to CDYOS.
- CDYOS commissions its substance misuse service from 4Real, the young people's specialist tier 3 substance misuse service. 4Real includes staff from the VCS.
- CDYOS Triage Workers have close links to Integrated Offender Management units (IOM).
- CDYOS, in partnership with Durham Constabulary, has led on the development of Safer School Partnerships (SSPs) across County Durham. Partnership work across a range of agencies has had a positive impact on FTEs, ASB and re-offending in the two Enhanced SSPs.
- Joint work – on behalf of the Safe Durham Partnership - with Probation, Durham Constabulary, Safer Darlington Partnership, IOM, CDYOS and Darlington YOT to develop a single proxy re-offending measure for Durham Constabulary and both community safety partnerships.

- CDYOS is lead partner for Positive Futures on behalf of the Safe Durham Partnership, with DCC Leisure Services as delivery partner. Partnership work with the Safe Durham Partnership includes Local Multi Agency Problem Solving groups (LMAPs) and High Impact Localities (HILs) etc.
- Development of the Healthy Relationships module for pre court with health input from Community Nurses, seconded to CDYOS.

Key new partnerships for 2012/13 include:

- Work with the Prince's Trust to develop accreditation for CDYOS work (initially reparation and ISS) prior to full service rollout by March 2013.
- Work with County Durham Learning Network, including Steps4Success providers (inc the VCS and colleges) to ensure court ordered reparation is counted as guided learning hours for young people known to CDYOS on Steps4Success programmes/ pathways into training and employment.
- Development of a Transitions pilot for young people 18 plus with Probation and IOM.

### **Reducing Re-offending**

The continuation of CDYOS Performance Improvement Framework, coupled with the development and implementation of our own Offending Behaviour Programmes (March 2012) will further strengthen the partnership's efforts to reduce re-offending. The expansion of pre-court services has already had demonstrable impact on the partnership's efforts to improve performance, and reduce re-offending pre court.

Impact to date (2007/8 – 2011/12) includes:

- 74% reduction in first time entrants (FTEs)
- 77.6% reduction in female FTEs; 72% reduction in male FTEs over the period
- 50% reduction in re-offending after a Pre Reprimand Disposal (PRD) compared to after a Reprimand (both in the number of young people re-offending and number of offences committed)
- Female re-offending after PRD is lower than male re-offending (7.7% female; 27.3% male in 2010/11)
- 62.7% reduction in the number of Referral Orders over the period
- 5 percentage point reduction in the number of girls being sentenced at court over the period (17% in 2007/8 –12% in 2011/12)
- Re-offending (2011 recidivism cohort): 0.4% reduction in the binary rate over 12 months (new national MOJ measure) 2011 v 2010. 13.9% reduction in the frequency rate (2011 v 2009) and 15.4% reduction (2011 v 2010). 25% reduction in number of re-offences committed by the cohort. (2011 v. 2010)

### National Recognition

The achievements/strengths of CDYOS partnership work have been acknowledged by a series of national awards. The success of the PRD has been recognised by a series of awards:

- Howard League – Community Programmes Awards 2010 (Children and Young People category) - runner up
- Children and Young People Now Awards 2010 – winner of the Justice Award
- LGC Awards 2011 – highly commended (Children’s Services)
- Butler Trust Commendation 2011 – Head of Service (for contribution to diverting young people from the criminal justice system)

Other national recognition (2011/12) includes:

- Our pre court work (including the PRD) was fully validated by The Centre for Excellence and Outcomes in Children and Young People’s Services (C4EO) as level 1 (highest level) in August 2011. It was published (September 2011) as effective local practice and disseminated to inform decision and policy making across the children’s sector nationally
- The Head of Service gave evidence to the All Party Parliamentary Group (APPG) Inquiry – Girls and the Penal System in the House of Lords (January 2012) on our success in diverting girls from the criminal justice system
- One of our volunteers received a Butler Trust commendation (2012) for her excellent contribution (over 10 years) to CDYOS
- CDYOS was the only YOS to receive an award from the Butler Trust in 2012 – and the only YOS in the country to receive a commendation two years running
- A visit from HRH The Princess Royal, Royal Patron of the Butler Trust (Sept 2011) as follow up to the Head of Service’s Butler Trust Commendation (2011)
- Our work to divert girls from the criminal justice system was short listed for a Howard League Community Programmes Award (2012)

## Opportunities and Challenges 2012/13

### Opportunities

- Police and Crime Commissioner
- Children and Adults Services, Durham County Council
- Think Family
- Strong Partnership Work
- Strong Management Board
- Success of pre court and impact on re-offending/ post court
- Relatively low custody compared to national average
- Offending Behaviour Programmes
- Transitions Pilot with Probation
- Accreditation / build on ESF project
- Remand Order for Youth

Robust management and governance will continue to ensure that CDYOS improves outcomes for young people in the youth justice system and reduces re-offending. The Service is well placed to build on the progress and improved performance of the last 5 years.

“CDYOS is well positioned with their key partners to address youth offending in County Durham.” (YJB, 2012).

### Challenges

- Future budget efficiencies
- Police and Crime Commissioner
- Ensure CDYOS Partnership priorities are included in the Police and Crime Plan
- Remand Order for Youth
- Maintaining reductions in re-offending
- Payment by Results
- Continuing to ensure the safety of young people in custody
- Continuing to improve performance in the face of on-going real reductions in budget

## Appendix 1

### CDYOS Management Board Membership and Approval of Strategic Plan

#### Board Member

#### Approval of Strategic Plan 2012/14

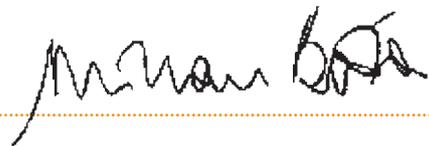
##### **Carole Payne**

Head of Early Intervention and Involvement,  
CAS, DCC (Chair)



##### **Mike Barton**

Deputy Chief Constable, Durham  
Constabulary



##### **Carina Carey**

Director, Durham Tees Valley Probation Trust



##### **Lorrae Rose**

Head of Children's Commissioning,  
NHS County Durham and Darlington



##### **Graham Bishop**

Deputy Clerk to the Justices, Her Majesty's  
Courts and Tribunals Service



##### **Gail Hopper**

Head of Children's Care, CAS, DCC (LSCB  
Vice Chair)



##### **Christine Usher**

Strategic Manager  
The Improving Progression of Young People  
Team, CAS, DCC



##### **Gill Eshelby**

Head of CDYOS, CAS, DCC



## Appendix 2

### County Durham Youth Offending Service Management Board: Terms of Reference

#### **Introduction**

Youth Offending Teams (YOTs) were established under the Crime and Disorder Act 1998, with the principal aim of preventing offending by children and young people.

Local Authorities are responsible for establishing a Youth Offending Team within their area. Police, Probation and Health Services are statutorily required to assist in their funding and operation.

County Durham Youth Offending Service (CDYOS) is part of Early Intervention and Involvement Services, Children and Adults Services, Durham County Council. Active links are maintained at both local and strategic level to the Criminal Justice / Community Safety arena. The Service is represented at strategic level in key partnerships (Children and Families Executive Board, Safe Durham Partnership, Local Criminal Justice Board, Local Safeguarding Children Board) as well as relevant sub groups.

#### **Membership**

Please refer to page 15.

#### **Frequency of Meetings**

Meetings of the Management Board will be convened every 3 months.

#### **Chair of the Management Board**

The Chair / Vice Chair of the Management Board will be reviewed every three years.

#### **Agenda and Reporting**

The CDYOS Head of Service is responsible for the collation of agenda items and associated reports. The Head of Service, in consultation with Chair, will ensure that papers are circulated no later than 7 days in advance of the Board meeting, so that Board members review reports prior to the meeting.

The Chair / Vice Chair of the Management Board will brief the Elected Member regularly. Agendas will be planned throughout the year, with a clear focus on improving performance.

## Roles and Responsibilities

### Strategic Oversight and Direction

- Agree and monitor actions within the Youth Justice Plan/Self Assessment.
- Receive recommendations from the Youth Offending Service Senior Managers in order to make informed strategic decisions which impact on the Service
- Receive half-yearly reports on the progress against the Youth Justice Plan from Managers and identify service priorities, as appropriate
- Review the Business Risk Register twice yearly and provide recommendations to minimize risk to the Service and partner agencies

### Strategic Performance Management

- Monitor progress of the Youth Offending Service against targets, and National and Local Performance Indicators
- Monitor standards of performance and suggested 'good practice' appropriate for each organisation

### Support

- Ensure robust management arrangements are in place to ensure the Youth Offending Service operates efficiently and effectively
- Receive and ratify bids for funding from external sources to address the agreed priorities as mandated by the Board
- Partners / Board members to actively oversee and participate in the recruitment and selection of senior posts in the Youth Offending Service
- Review and make recommendations regarding course of action in relation to issues which pose a threat to the successful operation of the Youth Offending Service

### Partnership Working

- Report progress of the Service to other partnership bodies, as appropriate (e.g. Safe Durham Partnership, County Durham Partnership, Children and Families Executive Board, Local Criminal Justice Board, Local Safeguarding Children's Board etc)
- Ensure that Partnership decisions are communicated within each organisation and that the Board actively ensures that partners understand and prioritise key actions and targets
- Ensure that strategic decisions regarding the work of CDYOS are in harmony with other Partnership objectives across Children and Adults Services/Criminal Justice / Community Safety arenas

### Planning and Resources

- Ensure resources are available to ensure the Youth Offending Service runs effectively and fulfils its roles and functions
- Adequately resource and finance the partnership to achieve the priorities outlined by the YJB, Central Government, partners etc
- Provide and monitor the budget of the Youth Offending Service to ensure effective performance and value for money
- Oversee the establishment of policy, procedures and guidance in line with relevant legislation, National Standards and YJB guidelines
- Review the membership of Youth Offending Service Management Board annually to consider new partnership arrangements (e.g. Children and Families Trust / Safe Durham Partnership/County Durham Partnership etc)

## Current Membership of the CDYOS Management Board

Name	Agency representing	Post in agency	Ethnicity	Gender	Deputy
Carole Payne (Chair)	Children and Adults Services, Durham County Council	Head of Early Intervention and Involvement	White	Female	TBC
Mike Barton	Durham Constabulary	Deputy Chief Constable	White	Male	Chief Superintendent Jane Spraggon
Carina Carey	Durham Tees Valley Probation Trust	Director of Offender Management	White	Female	Martin Cunningham
Lorrae Rose	NHS Co Durham and Darlington	Head of Children's Commissioning	White	Female	Philip Ray
Graham Bishop	HM Courts and Tribunals Service	Deputy Clerk to the Justices (South Durham)	White	Male	Karen Embleton
Gail Hopper	Local Safeguarding Children's Board	LSCB Vice Chair	White	Female	TBC
Christine Usher	Children and Adults Services, Durham County Council	Strategic Manager Provision, Planning & Analysis, The Improving Progression of Young People Team	White	Female	Linda Bailey
Gill Eshelby	County Durham Youth Offending Service, Children and Adults Services, Durham County Council	Head of Service	White	Female	-

## Appendix 3

County Durham Youth Offending Service Budget 2011/12

Agency	Staffing Costs	Payments in Kind	Other Delegated Funds	Total	Reduction	% Reduction
Police	184,300	73,000	128,000	385,300	4,649	1%
Probation	132,244	-	55,161	187,405	7,799	4%
Health	138,069	-	50,267	188,336	-	0%
Local Authority	-	-	2,459,255	2,459,255	206,220	-9%
YJB	-	-	1,023,067	1,023,067	56,894	-6%
Allocation to Police Authority	-	-	-	-	52,936	100%
Crime Concern	-	-	129,000	129,000	-	0%
European Social Fund	-	-	37,412	37,412	8,301	18%
Community Space Challenge	-	-	34,000	34,000	25,500	-300%
<b>Total</b>	<b>454,613</b>	<b>73,000</b>	<b>3,916,162</b>	<b>4,443,775</b>	<b>224,227</b>	<b>-5%</b>

County Durham Youth Offending Service Budget 2012/13

Agency	Staffing Costs	Payments in Kind	Other Delegated Funds	Total
Police	179,651	73,000	128,000	380,651
Probation	141,146	-	54,058	195,204
Health	138,069	-	50,267	188,336
Local Authority	-	-	2,253,035	2,253,035
YJB	-	-	966,173	966,173
Allocation to Police Authority	-	-	52,936	52,936
Crime Concern	-	-	129,000	129,000
European Social Fund	-	-	45,713	45,713
Community Space Challenge	-	-	8,500	8,500
<b>Total</b>	<b>458,866</b>	<b>73,000</b>	<b>3,687,682</b>	<b>4,219,548</b>

### Notes

Health staffing contribution from 2010/11 to be updated. Savings in 2010/11 were £849,000.

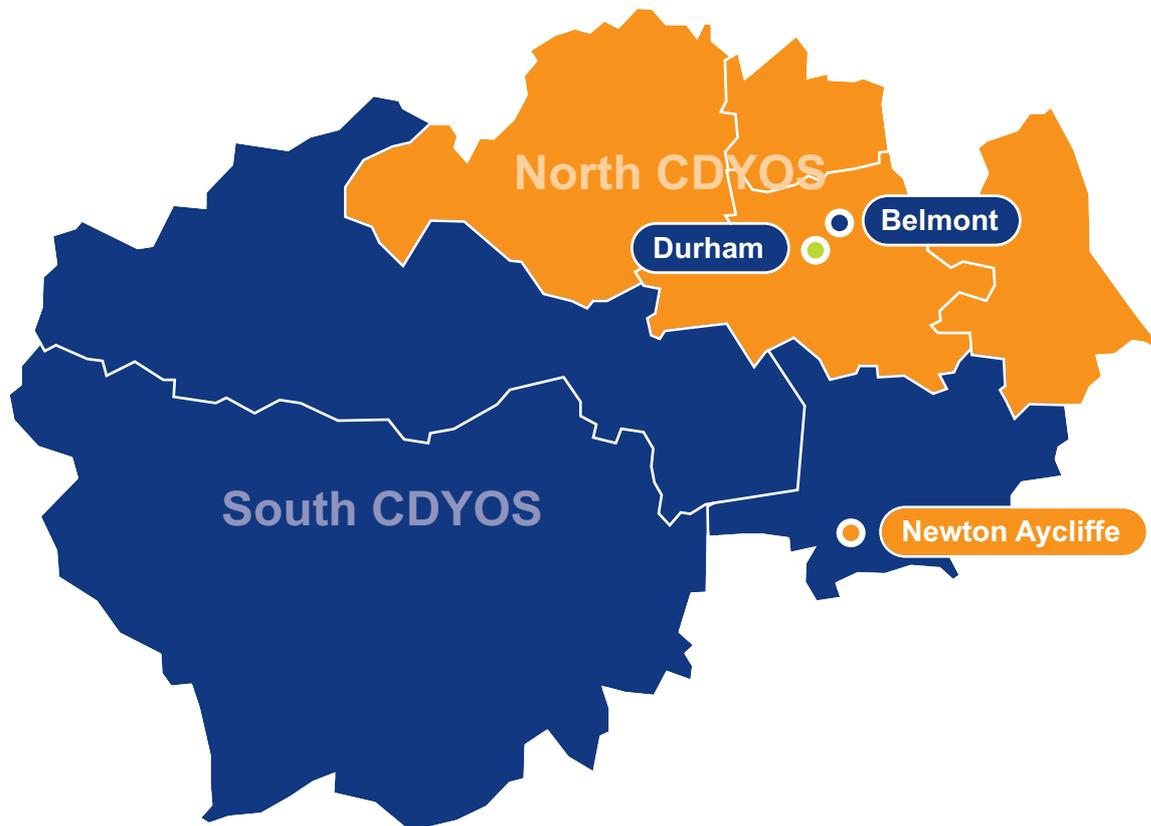
## Appendix 4

### CDYOS Partnership/Service Improvement Plan 2012 – 2013

Priority Area	Action	Deadline	
Miscellaneous	Increase victim involvement in work with young people	31 March 2013	
	Develop accreditation for CDYOS work with young people in conjunction with Prince's Trust and County Durham Learning Network	31 March 2013	
	SLT Lead: Gill Eshelby	Develop discrete Vulnerability Policy and Procedures	31 March 2013
		Ensure CDYOS plans are integrated into Police and Crime Commissioner planning	31 March 2013
		Develop a joint protocol with One Point to maximise the value of interventions	31 March 2013
		Provide training for all staff on Case Recording	31 March 2013
		Embed new roles for volunteers in service delivery	31 March 2013
Reduce First Time Entrants	Implement and deliver the Positive Futures Outcomes Plan ensuring PRD cohort is fully integrated	31 March 2013	
	Further integrate pre and post court delivery, especially in respect of high risk young people	31 March 2013	
	SLT Lead: Dave Summers	Ensure a holistic model of APIS for pre court delivery	31 March 2013
		Embed the Think Family approach to all pre court work	31 March 2013
		Introduce a pre court case closure checklist to ensure continued quality of service	31 March 2013
Reduce Re-offending	Develop a Transition Pilot (18 -21 years) with DTVP Trust and Children and Adults Services, DCC	31 March 2013	
	Embed the Think Family approach to all post court work	31 March 2013	
	SLT Lead: Gill Eshelby	Ensure the views of young people and families inform service design and delivery	31 March 2013
		Implement learning from Compliance Panel pilot across whole Service	31 March 2013
		Evaluate the impact of Offending Behaviour Programmes on recidivism	31 March 2013
		Maximise the flexibilities inherent in new National Standards to improve service delivery	31 March 2013
		Continue to improve the quality of exit strategies for supervised young people.	31 March 2013
Develop an Offending Behaviour Programme for young people who sexually offend	31 March 2013		
Reduce use of Custody	Introduce Local Authority accommodation for young people held in Police cells	31 March 2013	
	Develop protocol with Children's Care regarding the Remand Order for Youth	31 March 2013	
	Implement the findings of the Custody Panel	31 March 2013	
	Develop a proactive approach in court to supporting PSR proposals	31 March 2013	
	SLT Lead: Colin Reed	Explore opportunities for joint training with Courts staff and Magistrates	31 March 2013
		Further improve links with Crown Court sentencers	31 March 2013
		Implement the ISS improvement plan	31 March 2013

## Appendix 5

### County Durham Youth Offending Service Geographical Areas covered by the Service and Office Bases



#### Addresses and Contact Numbers:

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#### **North Area – Belmont, Durham**

- Dave Summers**, North Area Manager

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Belmont Industrial Estate, Durham, DH1 1TH  
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#### **South Area – Newton Aycliffe**

- Colin Reed**, South Area Manager

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Newton Aycliffe, County Durham, DL5 6ZE  
Telephone: 0191 372 8000

## Appendix 6

### Glossary

<b>APIS</b>	All Party Parliamentary Group
<b>APPG</b>	Assessment, Planning Intervention and Supervision
<b>ASB</b>	Anti-social Behaviour
<b>CAMHS</b>	Child and Adolescent Mental Health Services
<b>CPS</b>	Crown Prosecution Service
<b>DCC</b>	Durham County Council
<b>DTVP</b>	Durham Tees Valley Probation Trust
<b>ESF</b>	European Social Fund
<b>FTEs</b>	First Time of Entrants (to the Youth Justice System)
<b>HMCTS</b>	Her Majesty's Courts and Tribunals Service
<b>HMIP</b>	Her Majesty's Inspectorate of Probation
<b>IOM</b>	Integrated Offender Management (Adult Offenders)
<b>ISS</b>	Intensive Supervision and Surveillance
<b>KEEPs</b>	Key Elements of Effective Practice (YJB)
<b>LSCB</b>	Local Safeguarding Children Board
<b>MAPPA</b>	Multi Agency Public Protection Arrangements
<b>PCC</b>	Police and Crime Commissioner
<b>PRD</b>	Pre Reprimand Disposal
<b>PSR</b>	Pre Sentence Report

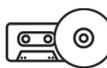
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County Durham Youth Offending Service  
**Youth Justice Plan**  
2012 / 2014

County Council

20 March 2013

Health and Wellbeing Board



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**Report of Corporate Management Team**

**Colette Longbottom, Head of Legal and Democratic Services**

**Councillor Simon Henig, Leader of the Council**

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**Purpose of the Report**

- 1 To present proposals for the composition, functions, and rules of procedure of the County Durham Health and Wellbeing Board. The report is subject to consideration by Cabinet on 13 March 2013.

**Background**

- 2 The Health and Social Care Bill (“the Bill”), introduced into Parliament on 19 January 2011, set out proposals for NHS reforms. The proposals included the transfer of public health functions to local authorities, including the requirement for upper tier local authorities to establish Health and Wellbeing Boards by April 2013. Shadow Health and Wellbeing Boards were expected to be in place after July 2012.
- 3 On 13 July 2011, Cabinet agreed the functions and membership of the Shadow County Durham Health and Wellbeing Board (“the Shadow Board”).
- 4 Membership of the Shadow Board has been of a size that was manageable yet effective, which complied with requirements as set out in the Bill, and appointed additional persons as members. Cabinet has continued to receive update reports from the Shadow Board.

**Legislation**

- 5 Under Section 194 of the Health and Social Care Act 2012, the Council must establish a Health and Wellbeing Board for its area.
- 6 The Health and Wellbeing Board must consist of:-
  - (a) At least one Councillor of the local authority nominated by the Leader;
  - (b) the Director of Adult Social Services for the local authority;<sup>1</sup>
  - (c) the Director of Children’s Services for the local authority;<sup>2</sup>
  - (d) the Director of Public Health of the local authority;
  - (e) a representative of the local Health Watch Organisation for the area of the local authority;
  - (f) a representative of each relevant clinical commissioning group; and

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<sup>1</sup> This role is covered by the Corporate Director of Children and Adults Services

<sup>2</sup> This role is covered by the Corporate Director of Children and Adults Services

(g) such other persons, or representatives of such other persons as the local authority thinks appropriate.

- 7 The Department of Health has stated that the Health and Wellbeing Board will be a forum for collaborative local leadership and will be very different to a normal local authority committee appointed under Section 102 of the Local Government Act. The Act therefore enabled Regulations to provide that any enactment relating to a committee appointed under Section 102 of the 1972 Act, does not apply in relation to a Health and Wellbeing Board or, applies in relation to it with such modifications as may be prescribed by the Regulations.
- 8 The Health and Wellbeing Board is a committee of the local authority, which established it for the purposes of any enactment and is to be treated as if it were a committee appointed by the authority under Section 102 of the Local Government Act 1972.
- 9 Normally, a committee of a local authority is subject to a number of statutory provisions which are referred to in paragraphs 10 to 13 below.
- 10 A local authority may discharge its functions by committee, sub-committee, officer or another local authority. Regulations passed under the Act<sup>3</sup> provide that unless the local authority establishing the Board otherwise directs, the Board may arrange for the discharge of any of those functions by a sub-committee of the Board, or an officer of the authority. Further modification also enables a sub-committee of the Board to arrange for functions to be carried out by an officer of the authority. The rationale behind allowing this flexibility, is to ensure the efficient conduct of business. It is not therefore recommended that any direction is given preventing the use of this facility.
- 11 Section 104 of the 1972 Local Government Act sets out persons who are disqualified from being a member of a committee or sub-committee. Anyone disqualified by part 5 of the Act being elected or being a member of the local authority, is not entitled to be a member of a committee or sub-committee. The disqualifications are lifted except, in relation to persons disqualified by reason of bankruptcy or criminal conviction where the person has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.
- 12 Under Section 13 of the 1989 Local Government and Housing Act, members of committees and sub-committees who are not members of the authority have a non-voting status. The Regulations changed this in that a person who is a member of a health and wellbeing board, a sub-committee of such a board, or a joint sub-committee of two or more such boards, shall not be treated as a non-voting member of that board or sub-committee, unless the local authority which established the board otherwise directs. Before making such a direction, the local authority must consult the board. Whilst it is open to direct that non-member officers should not be allowed to vote, members may consider that a forum for collaborative local leadership, which involves representatives of other public bodies, who are then not allowed to vote,

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<sup>3</sup> The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulation 2013 laid before Parliament on 8 February 2013.

would be impeded in its collaboration. It is therefore recommended that a direction limiting the voting ability of non-council members is not given.

- 13 Under Section 15 and 16 of the Local Government and Housing Act 1989 and Schedule 1 of the same Act, Councils have a duty to apply political balance requirements in relation to its committees and sub-committees. The Regulations disapply these provisions in relation to health and wellbeing boards, and to any sub-committee of the board.
- 14 In summary, therefore, the Health and Wellbeing Board is an unusual committee in that it is stated to be a committee of the local authority, but officers who are appointed to it may vote, the obligations to comply with political balance is lifted, as well as some of the disqualifications from membership.

### **The Functions of the Health and Wellbeing Board**

- 15 Functions of the Board are set out in the legislation are as follows:-
- Promote integrated working between commissioners of health services, public health and social care services, for the purposes of advancing the health and wellbeing of the people in its area;
  - Encourage those who provide services related to wider determinants of health, such as housing, to work closely with the Health and Wellbeing Board;
  - Develop and agree the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy (“JHWS”);
  - Have a formal role in authorising and establishing clinical commissioning groups (“CCGs”);
  - Be involved throughout the process as CCGs develop their commissioning plans and ensure they take proper account of the JHWS when developing these plans; and
  - Provide advice and assistance or other support as it thinks appropriate for the purposes of encouraging the making of arrangements under Section 75 of the National Health Service Act 2006.
- 16 These functions involve joint working and strategic oversight of health and social care functions of both health bodies and the Council. It also involves the production of the Joint Strategic Needs Assessment and Joint and Health Wellbeing Strategy.
- 17 In relation to the Code of Conduct, the provisions of the standards regime in the Localism Act 2011 will be applied to the Board.

## The Statutory Board

18 Cabinet agreed the membership of the Shadow Board on 13 July as follows:-

- Portfolio Holder for Adult Services;
- Portfolio Holder for Safer and Healthier Communities;
- Portfolio Holder for Children and Young People's Services;
- Representation from each Clinical Commissioning Group;
- A representative from LINK (pending introduction of Local Health Watch);
- Corporate Director Children and Adults Services;
- Director of Public Health;

and representation from the following bodies:-

- Tees Esk and Wear Valley NHS Foundation Trust;
- County Durham and Darlington Foundation Trust;
- City of Sunderland NHS Foundation Trust;
- North Tees and Hartlepool NHS Foundation Trust; and
- County Durham and Darlington (this body will cease to exist from April 2013).

19 It is an option to consider widening the membership of the Board, or indeed, reducing it to the minimum required by statute. When Cabinet considered the proposed membership of the Board in July 2011, the membership detailed above was proposed as a reasonable size to be manageable and effective, and as the Board has operated well in shadow form with this composition and having regard to the fact that composition would comply with the proposed regulations, it is recommended that the Executive have a formal Board constituted the same as the Shadow Board.

20 Given that the powers which are to be exercised by the Board are aligned to Executive Powers, it is recommended that the Board be comprised of its current membership.

21 It is necessary for the Council to consider whether political balance applies. It is suggested that the stated nature of the Board, as stated in paragraph 7, and the fact that the Act identifies the person who must be appointed to it, that the requirement of political balance should not be applied to this committee.

- 22 Other authorities in the North East have been contacted to find out their proposals for the composition of a statutory Board, with most indicating that they were currently in the process of considering their own arrangements, and some were looking to see the arrangements that Durham was making, however no council was able to provide any certainty on this at the moment.

### **Rules of Procedure**

- 23 As a Committee of the Council, the Council Procedure Rules will apply to the Health and Wellbeing Board.

### **Recommendations and Reasons**

- 24 The Council is asked to:

- (i) Approve the composition of the Health and Wellbeing Board as follows:

- Representatives nominated by the Leader (being currently,
  - Portfolio Holder for Adult Services;
  - Portfolio Holder for Safer and Healthier Communities;
  - Portfolio Holder for Children and Young People's Services);
- Representation from each Clinical Commissioning Group;
- A representative from Local Healthwatch;
- Corporate Director Children and Adults Services;
- Director of Public Health

and nominated representation from each of the following:-

- Chief Executive of Tees Esk and Wear Valley NHS Foundation Trust;
- Chief Executive of County Durham and Darlington Foundation Trust;
- Chief Executive of City of Sunderland NHS Foundation Trust;
- Chief Executive of North Tees and Hartlepool NHS Foundation Trust;

- (ii) Approve the functions of the Wellbeing Board as follows:

- Promote integrated working between commissioners of health services, public health and social care services, for the purposes of advancing the health and wellbeing of the people in its area;

- Encourage those who provide services related to wider determinants of health, such as housing, to work closely with the Health and Wellbeing Board;
  - Develop and agree the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy (“JHWS”);
  - Have a formal role in authorising and establishing clinical commissioning groups (“CCGs”);
  - Be involved throughout the process as CCGs develop their commissioning plans and ensure they take proper account of the JHWS when developing these plans; and
  - Provide advice and assistance or other support as it thinks appropriate for the purposes of encouraging the making of arrangements under Section 75 of the National Health Service Act 2006.
- (iii) To agree the adoption of a committee in this form, and with these functions.

### **Background Papers**

25 Report to Cabinet 13<sup>th</sup> July 2011 NHS Reforms/Health and Well Being.

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**Contact: Colette Longbottom Tel: 03000 269732**

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## **Appendix 1: Implications**

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**Finance** – There will be some financial impact of Committee Services publishing agendas and minuting the meetings with publication of the Decisions, such costs being similar to agendas, minutes and recording for a Cabinet meeting.

**Staffing** – There will be similar impact on staffing for servicing the meeting as for a Cabinet meeting.

**Risk** – Non specific within this report.

**Equality and Diversity/Public Sector Equality Duty** - Non specific within this report.

**Accommodation** – Non specific within this report.

**Crime and Disorder** – Non specific within this report.

**Human Rights** – Non specific within this report.

**Consultation** – Non specific within this report.

**Procurement** – Non specific within this report.

**Disability Issues** – Non specific within this report.

**Legal Implications** – Within the body of the report.

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**County Council**

**20 March 2013**

**Local Authority Health Scrutiny –  
Proposed changes to the Council’s  
Constitution**



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**Report of Corporate Management Team**

**Lorraine O’Donnell, Assistant Chief Executive**

**Councillor Lucy Hovvells, Cabinet Portfolio Holder for Safer and Healthier Communities**

**Councillor Morris Nicholls, Cabinet Portfolio Holder for Adult Services**

**Councillor Claire Vasey, Cabinet Portfolio Holder for Children and Young People’s Services**

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**Purpose of the Report**

- 1 This report details the implications of the Health and Social Care Act 2012 for local authority health scrutiny and proposed changes to Durham County Council’s constitution to reflect required changes to the Overview and Scrutiny Procedure rules and the Terms of Reference in respect of the Adults Wellbeing and Health Overview and Scrutiny Committee.

**Background**

- 2 Previous legislation (The Health and Social Care Act 2001 and the NHS Act 2006) set out the duty of local authorities in respect of scrutinising Health and Social Care Services. Local authority scrutiny powers are more wide ranging for health providers than other partners in that, independent providers were required to consult and engage with Health Overview and Scrutiny Committees when proposing changes to their services. This power extends to NHS trusts, Foundation Trusts and Primary Care Trusts.
- 3 Failure on behalf on these organisations to engage with the AWH OSC could ultimately have led to the Committee seeking referral of the proposals to the Secretary of State for Health and the establishment of an Independent Review Panel to investigate this. There are no comparable powers of referral in respect of other Overview and Scrutiny Committees.

**Health and Social Care Act 2012**

- 4 The Act contains a number of provisions which impact upon Health Scrutiny:
  - a. Conferring review and scrutiny powers upon local authorities as a corporate entity;

- b. Extending local authorities' formal powers to review and scrutinise all relevant NHS Bodies and relevant health service providers;
- c. As currently applies, local authority review and scrutiny powers are not to be the responsibility of an executive of the authority under executive arrangements, i.e. the Cabinet;
- d. Regulations under this section may authorise a local authority to arrange for its review and scrutiny functions to be discharged by an overview and scrutiny committee of the authority, including by way of a bespoke Health Scrutiny Committee as currently exists;
- e. Any decision to refer a substantial service change proposal to the Secretary of State for Health should be determined by the local authority (this was previously the responsibility of the Local Authority Health Scrutiny Committee).

### **Recommended Approach**

- 5 In exercising and developing its enhanced powers of review and scrutiny, the local authority needs to:-
- (i) confer its powers of review and scrutiny, including the power of referral to the Secretary of State for Health, to the Adults Wellbeing and Health Overview and Scrutiny Committee; noting that the Council's existing Health Scrutiny arrangements, via the Adults Wellbeing and Health Overview and Scrutiny Committee are considered fit for purpose and effective; that existing relationships with NHS Commissioners and providers will be enhanced and the aforementioned new relationships developed alongside other relevant health service providers, e.g. dentists, pharmacies, opticians;
  - (ii) develop a relationship with the Health and Wellbeing Board (HWB) not least to provide a "critical friend" approach to sharing information during the production and refresh of the Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy;
  - (iii) engage with the National Commissioning Board regarding their Commissioning priorities in respect of the provision of public health services for which they are responsible for local provision. Examples of such services include:
    - Offender health programmes;
    - Veterans' health;
    - Immunisation programmes;
    - Screening programmes;
    - Specialised services (including HIV treatment);
    - Emergency Planning resilience and response;
    - 0-5 years Public Health programmes (will come to the Local Authority in 2015);
    - Health visitor expansions and Family Nurse Partnership programmes (will come to the Local Authority in 2015);

- (iv) engage with the Clinical Commissioning Groups (CCGs) regarding their Commissioning priorities and also those health service providers around any changes that they wish to make in respect of their service provision. In undertaking these potential roles, the authority will need to be satisfied that the engagement process adopted has been particularly robust. It is therefore suggested that the Council ask that each Clinical Commissioning Group identify a nominated representative to act as liaison officer with the Council's Adults Wellbeing and Health Overview and Scrutiny Committee;
  - (v) develop a robust "Referral" process which includes a strong process of review /evidence gathering which would inform any decision regarding referral to the Secretary of State;
  - (vi) develop a relationship with the local Healthwatch organisation to enable any referrals from Healthwatch to be examined by the Council as part of the Review and Scrutiny mechanism;
  - (vii) ensure that Public Health services that are transferred across to the Local Authority are subject to review and scrutiny alongside all Council services.
- 6 A "protocol for working together" will be developed between the Adults Wellbeing and Health Overview and Scrutiny Committee and key stakeholders including the National Commissioning Board, Health and Wellbeing Board, Clinical Commissioning Groups, Healthwatch, NHS Partners and the Children and Adults service group. The protocol would include information sharing, communication, engagement reporting mechanisms and organisational liaison.
- 7 Further to 5 (iv) above, a nominated senior officer within each Clinical Commissioning Group has been identified as a link officer with the Adults Wellbeing and Health Overview and Scrutiny Committee. For North Durham CCG that is the Chief Operating Officer and for Durham Dales, Easington and Sedgefield CCG the Director of Performance and Information.

### **Overview and Scrutiny and the Health and Wellbeing Board**

- 8 In considering these issues Regulations regarding the role and function of Health Overview and Scrutiny Committees in discharging the requirements of the Health and Social Care Act 2012 were published on 8 February 2013. The proposals within this report have been examined in line with those regulations.
- 9 For Durham County Council, the Health and Wellbeing Board will be a Committee of the Council which, whilst exercising "Executive like" powers, will not be subject to the Overview and Scrutiny procedure rules as they relate to call-in. That is not to say that the Adults Wellbeing and Health OSC will not develop a relationship with the Health and Wellbeing Board, indeed the Committee already inputs into the JSNA and Health and Wellbeing Strategy.
- 10 Following publication of the prescribed Regulations, draft Terms of Reference have been developed for the Adults Wellbeing and Health Overview and Scrutiny Committee which will enable the Council to deliver its statutory

review and scrutiny functions under the Act. A copy of these is attached to this report (Appendix 3).

### **Department of Health Guidance – Local Authority Health Scrutiny**

- 11 The Department for Health has published guidance to accompany the aforementioned regulations which:-
  - clarifies the primary and secondary legislation that provides local authorities with the powers to scrutinise health services;
  - sets out the statutory guidance which is issued under section 9Q of Part 1A of the Local Government Act 2000, as amended by the Health and Social Care Act 2012;
  - provides advice and guidance on the scrutiny of health services for local authorities, NHS bodies and relevant health service providers.
  
- 12 Regulations enable local authorities to determine the most appropriate means of discharging their health scrutiny responsibilities. This may be through a Health Overview and Scrutiny Committee, a joint scrutiny arrangement or through another alternative.
  
- 13 In recommending that the Council confers its Health Overview and Scrutiny powers onto the Adults Wellbeing and Health OSC, the four core principles will be upheld namely that this :-
  - Provides critical friend challenge to executive policy makers and decision makers;
  - Enables the voice and concerns of the public and its communities to be heard;
  - Is carried out by “independent minded” councillors who lead and own the scrutiny process;
  - Drives improvement in public services.
  
- 14 The Department of Health guidance reinforces these core principles which have been adopted by Durham County Council’s Overview and Scrutiny Committees. It also promotes a constructive approach to health scrutiny based upon mutual understanding between local authority scrutiny and executive functions and local NHS Commissioners and providers.
  
- 15 Guidance highlights the statutory duties which remain for NHS Bodies to consult the local authority on substantial changes and to “consult and involve” patients and the public. The proposals within this report would enable the local authority to confer this role upon the Adults Wellbeing and Health Overview and Scrutiny Committee.
  
- 16 The DoH Guidance confirms that the development of partnership working and the increased emphasis on integration strengthens the community leadership role of scrutiny councillors. It is important for health scrutineers to develop relationships with other parts of the health system that impact on improvement in health and social care.

- 17 Accordingly, the guidance promotes the development of key relationships between local authority health scrutiny and:-
- All NHS Bodies (providers and commissioners) within the local authority areas which for Durham County Council would include County Durham and Darlington NHS Foundation Trust; Tees, Esk and Wear Valleys NHS Foundation Trust; North East Ambulance Service North Durham CCG and Durham Dales, Easington and Sedgefield CCG;
  - Private, independent or third sector providers delivering services under contract to the NHS or the local authority;
  - Health and Wellbeing Boards;
  - HealthWatch;
  - Care Quality Commission;
  - Monitor.
- 18 The Guidance summarises the following health scrutiny powers and duties arising from the Health and Social Care Act 2012. These can be found at Appendix 2.
- 19 The Guidance also confirms that where a local authority has chosen to retain a Health Overview and Scrutiny Committee, it may delegate any or all of its powers to that HOSC as it chooses. This includes the power to refer proposals for service change to Secretary of State. Again, the proposals detailed within this report would meet these requirements.
- 20 Regulations enable local authorities to review “any matter relating to the planning, provision and operation of health services in the area of the local authority”.
- 21 In this context, health services are health and public health services commissioned by clinical commissioning groups (CCGs), the NHS Commissioning Board and the local authority, as well as health and public health services provided by NHS bodies and health service providers commissioned by CCGs, the NHS Commissioning Board or the local authority. This includes providers from the independent and voluntary sectors providing services under contract with the NHS.
- 22 Regulations do not specify any particular issues to be considered, but they may include for example:
- arrangements made by local NHS bodies to secure hospital and community health services to the local population served by the local authority, and the quality and safety of services that are provided;
  - arrangements made by the local authority for public health, health promotion health improvement and for addressing health inequalities;
  - the planning of health services by local NHS bodies, including plans made in co-operation with the local authority’s health and wellbeing board for improving both the health of the local population;

- any matter referred to the health scrutiny function of the local authority by a local Healthwatch organisation
- 23 The potential scope of health scrutiny is broad. Health scrutineers will need to prioritise and focus their efforts where there is opportunity to influence decisions, or to improve the quality and safety of services.
- 24 The guidance sets out important suggestions regarding how local authority health scrutiny and health service commissioners and providers can work together in:-
- Requesting information as part of overview and scrutiny work and how this can be provided;
  - Requiring attendance of an officer of an NHS Body or of a relevant health service provider at an Overview and Scrutiny Committee;
  - Producing scrutiny review reports and recommendations and how these can be responded to;
  - Undertaking consultation by NHS Bodies and relevant health service providers on proposals for service change;
  - Publishing timescales for key decision – making;
  - Ensuring local resolution to disputes over service changes;
  - Responding to formal consultations;
  - Exercising, as a matter of last resort the powers of referral to the Secretary of State for Health, and
  - Establishing joint Health Overview and Scrutiny Committees where health services are commissioned and/ or provided across more than one local authority area.
- 25 Finally, the guidance suggests that local authorities should take the opportunity to review their health scrutiny processes and procedures in conjunction with the new regulations. This is being undertaken through the Adults Wellbeing and Health Overview and Scrutiny Work programme where the development of relationships has been examined and new linkages are being established with the Health and Wellbeing Board, Clinical Commissioning Groups, the NHS Commissioning Board Local Area team for Durham, Darlington and North Tees, local HealthWatch and existing NHS providers.

## **Conclusion**

- 26 In considering the aforementioned issues, Durham County Council needs to consider how best to discharge its powers of review and scrutiny on such matters designated within the Health and Social Care Act 2012, Statutory Instrument No. 218/2013 - The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and associated Department of Health Guidance.

- 27 This report highlights how this should be undertaken through the Adults Wellbeing and Health Overview and Scrutiny Committee in accordance with the proposed terms of reference detailed in Appendix 3.
- 28 Accordingly, constitutional changes relating to the Overview and Scrutiny Procedure Rules, and the Adults Wellbeing and Health Overview and Scrutiny Committee Terms of Reference are required.

### **Recommendation**

- 29 It is recommended that Council agree the following Constitutional changes arising from the implications of the Health and Social Care Act 2012, that :-
- (a) The Council confers its powers of review and scrutiny, including the power of referral to the Secretary of State for Health, to the Adults Wellbeing and Health Overview and Scrutiny Committee;
  - (b) In accordance with the powers of local determination, the Council agrees to the development of a “Protocol for Working Together” between the Adults Wellbeing and Health Overview and Scrutiny Committee and NHS Bodies (local i.e. CCGs and national i.e. NHS CB); the Health and Wellbeing Board, HealthWatch, the Care Quality Commission, Monitor and the Councils Children and Adults Services service grouping.

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## **Appendix 1: Implications**

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**Finance – None**

**Staffing – None**

**Risk - None**

**Equality and Diversity/Public Sector Equality Duty – None**

**Accommodation - None**

**Crime and Disorder –None**

**Human Rights - None**

**Consultation** –The proposals within this report have been developed following the Department of Health Consultation 2012 “Local Authority Health Scrutiny”

**Procurement - None**

**Disability Issues - None**

**Legal Implications** – This report complies with the provisions of the Health and Social Care Act 2012, Statutory Instrument No. 218/2013 - The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and associated Department of Health Guidance.

*Powers of local authorities*

Local authorities may:

- a) review any matter relating to the planning, provision and operation of health services in their area;
- b) request information from NHS bodies and relevant health service providers;
- c) require attendance of NHS staff and members of relevant health service providers at scrutiny meetings;
- d) make reports and recommendations to NHS bodies, relevant health service providers and the local authority, and expect a response where one is requested within 28 days;
- e) respond to consultations by NHS bodies and relevant health service providers on matters of substantial variations or developments to health services. They must publish timescales for making such responses;
- f) refer contested service changes to Secretary of State on specific grounds. They must provide robust evidence in support of this and publish clear timescales within which the referral will be made.
- g) co-opt representatives onto their health scrutiny arrangements;
- h) delegate health scrutiny powers to another local authority, or to a joint committee of a number of local authorities
- i) delegate health scrutiny powers to a HOSC, where one is retained under s244 (as amended)
- j) delegate some health scrutiny functions where a HOSC has not been retained in favour of an alternative mechanism such as a s101 committee
- k) form joint scrutiny arrangements with other local authorities. This is mandatory in relation to proposals for substantial service change

*Duties of NHS bodies and relevant health service providers*

NHS bodies and relevant health service providers must:

- a) provide information requested by local authorities, subject to certain exemptions;
- b) attend before local authority scrutiny meetings to answer questions, subject to exemptions;
- c) on request, respond to reports and recommendations made by local authorities within 28 days of the request being made;
- d) consult the local authority (including joint committees) on proposals for substantial variations or developments to health services;
- e) publish timescales for consulting on and implementing substantial variations or developments to services

## Draft Terms of Reference/Roles for Adults Wellbeing and Health

### General

1. To lead on the review and scrutiny of NHS Services, Adults social care, health inequalities and improvement and Public Health Services;
2. To consider the Sustainable Community Strategy priorities, Joint Health and Wellbeing Strategy, Clinical Commissioning Groups' "Clear and Credible" plans and the Council Plan actions that relate to this agenda.

### For Information/Background

3. To discharge the Local Authority's powers of review and scrutiny on such health related matters as designated within the Health and Social Care Act 2012, Statutory Instrument No. 218/2013 - The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and associated Department of Health Guidance.
4. To develop a relationship with the National Commissioning Board and the Durham Darlington and North Tees Local Area team whilst provide challenge and assurance to their role in determining commissioning priorities regarding the provision of public health services for which they are responsible for local provision including:-
  - Offender health programmes;
  - veteran's health;
  - Immunisation programmes;
  - Screening programmes;
  - Specialised services (including HIV treatment);
  - Emergency Planning resilience and response;
  - 0-5 years Public Health programmes (will come to Local Authority in 2015);
  - Health visitor expansions and Family Nurse Partnership programmes (will come to Local Authority in 2015);
5. To develop a relationship with the Health and Wellbeing Board and provide a "critical friend" approach to sharing information during the production and refresh of the Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy;
6. To engage with the Clinical Commissioning Groups regarding their Commissioning priorities (clear and credible plans) and also those Health service providers around any changes that they wish to make in respect of their service provision. In undertaking these potential roles, the Committee will need to be satisfied that the engagement process adopted has been robust. A nominated senior officer within each Clinical Commissioning Group has been identified as a link officer with the Adults Wellbeing and Health Overview and Scrutiny Committee. For North Durham CCG that is the Chief

Operating Officer and for Durham Dales, Easington and Sedgefield CCG the Director of Performance and Information ;

7. To undertake a strong process of review /evidence gathering which informs any decision regarding referral to the Secretary of State;
8. To develop a relationship with the local Healthwatch organisation to enable any referrals from Healthwatch to be examined by the Council as part of the review and scrutiny mechanism;
9. To take a lead role in the review and scrutiny of those Public Health services that are transferred across to the Local Authority and signpost other Overview and Scrutiny Committees who may require the input of Public Health services in their activity;
10. To implement and monitor the working of a “protocol for working together” between the Adults Wellbeing and Health Overview and Scrutiny Committee and key stakeholders including the National Commissioning Board, Health and Wellbeing Board, Clinical Commissioning Groups, Healthwatch, NHS partners and the Children and Adults service grouping – the protocol would include information sharing, communication, engagement reporting mechanisms and organisational liaison.
11. To undertake the lead role in consideration of and commentary on the Quality Accounts of North East Ambulance Service NHS Foundation Trust, County Durham and Darlington NHS Foundation Trust and Tees, Esk and Wear Valleys NHS Foundation Trust, including inputting into any Stakeholder engagement /development sessions arranged by the Trusts.

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**County Council**

**20 March 2013**

**Charter Trustees Boundary**



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**Report of the Constitution Working Group**

**Colette Longbottom Head of Legal and Democratic Services**

**Councillor Simon Henig, Leader, Durham County Council**

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**Purpose of the Report**

- 1 To inform the Council of the implications for the Charter Trustees Body arising as a result of the Electoral Boundary Review of the County of Durham and to consider the Constitution Working Group's recommended way forward.

**Background**

2. The Local Government (Structural Changes) (Miscellaneous Amendments and Other Provisions) Order 2009 - Part 3, makes provision for the establishment of the Charter Trustees. It states in Regulation 8 that there shall be established for each area listed in the schedule to the Order, a 'body corporate' to be known as the Charter Trustees for the City of Durham. Those members eligible to be Charter Trustees are the Councillors, for the time being, for the electoral areas specified for that body referred to in the second schedule to the Regulations. The schedule describes the body as "the area comprising the County Durham electoral divisions of:

- Belmont
- Brandon
- Coxhoe
- Deerness Valley
- Durham South
- Elvet
- Framwellgate Moor
- Gilesgate
- Nevilles Cross
- Newton Hall
- Sherburn".

For ease of reference, this area is referred to in this report as the "Original Charter Trustee Area".

- 3 The current Charter Trustees are the Councillors representing the electoral division areas identified above. As each electoral division was represented by

two Councillors, the total number of Trustees appointed from the Charter Trustee area was 22.

- 4 In addition, the Charter Trustees Regulations 2009 (the Regulations), make provision for the appointment of additional Charter Trustees. The County Council may therefore appoint additional Councillors as Charter Trustees, provided that at any time no more than three additional Charter Trustees for the area are appointed.
- 5 In 2009, the Cabinet considered a report in this respect noting that the Government had recognised that in the case of Durham City there are important historic, cultural, social and economic links between Durham City and the County. Accordingly it made provision for the County Council to appoint up to three Councillors as Charter Trustees. It was the clear intension that these three additional Members would be the link between the Charter Trustees and the County and that they should be appointed from outside the Charter Trustee Area.
- 6 The Council presently appoints three additional Members to the Charter Trustees thus making the total number on that body 25.

#### **Area of the Charter Trustees**

- 7 As the 2009 Order states that the Charter Trustees for the City of Durham represent the area comprising of the Electoral Divisions set out in paragraph 2, the actual area of the Charter Trustees remains as it was when the 2009 Order was created. The Electoral Boundary Review for County Durham has not, therefore, changed the boundary of the Charter Trustee area.
- 8 This interpretation is supported by the Department for Communities and Local Government who state:  
  
*“Having considered this further our view is that you should read the definition in the 2009 Order as referring to the area which (in April 2009) comprised the electoral divisions specified in the Schedule. So, the area stays the same”.*
- 9 As the area for the Charter Trustees remains the same the precept will continue to be collected from the residents living within the Charter Trustee area.

#### **Charter Trustees**

- 10 Following the electoral boundary review of County Durham, some of the former electoral division boundaries have changed within the original Charter Trustee area and this has therefore had an impact upon the identification of the Charter Trustees. It seems clear that any Electoral Division entirely within the original Charter Trustee boundary, falls within the definition of the area referred to in paragraph 2 above and its members should be Charter Trustees.
- 11 The less straightforward issue is the treatment of the Electoral Divisions which are partly within the original Charter Trustee area, but now extend beyond that

boundary. Resolution of this issue is down to one of interpretation of the Regulations. One interpretation suggested by Department of Communities and Local Government was that these Electoral Divisions should not be represented by a Charter Trustee.

- 12 This approach does not address the fact, however, that in those Electoral Divisions which now partly comprise the area, there will be electorate who will continue to pay a precept for the Charter Trustees and who should therefore arguably be represented by at least one Trustee. The Constitution Working Group therefore considered it appropriate to approach the matter on the basis that part of the “area comprising” that original area should not therefore be excluded from representation.

**Electoral Areas Entirely within the Original Charter Trustee Area**

- 13 The following electoral divisions with the new number of elected members in each are wholly within the Charter Trustee area:

<b>Electoral Division ('ED')</b>	<b>Electorate</b>	<b>No of Members per Division</b>
Belmont	10830	3
Brandon	7503	2
Coxhoe	9562	3
Durham South	2931	1
Elvet and Gilesgate	6905	2
Framwellgate and Newton Hall	10649	3
Neville's Cross	7734	2
Sherburn	6910	2

- 14 **The Group recommends to Council that any members representing any of the electoral areas which remain wholly within the original Charter Trustees boundary will become Charter Trustees. This falls within the definition of the Charter Trustees area in the original Statutory Instrument and ought not to be amended.**

- 15 The remaining part of this report considers options for those areas that are not wholly comprised within the original area.

- 16 The following electoral divisions now extend over the boundary of the Charter Trustee area and the table below gives details of the electorate who will continue to pay a precept to the Charter Trustees:

<b>Partly Within the Area</b>	<b>Electorate paying a Charter Trustee Precept</b>
Deerness ED (excuding Hedleyhope area)	8863
Witton Gilbert area (Esh and Witton Gilbert ED)	2104
Ludworth area (Trimdon and Thornley ED)	513
Brancepeth area (Willington and Hunwick ED)	349

A Map is annexed to the report at Appendix 2 showing the electoral divisions.

- 17 Deerness was formerly named the Deerness Valley Electoral Division, and prior to the Boundary Review had included the area around Brancepeth which has now formed part of the Willington and Hunwick Electoral Division. Deerness Electoral Division now includes an area outside the Charter Trustee Area with 806 electorate.
- 18 The area around Ludworth has an electorate of 513 within the Charter Trustee area established in the 2009 Order. It was previously located in the electoral division of Sherburn, but is now located in the Trimdon and Thornley Electoral Division.
- 19 The Witton Gilbert area has an electorate of 2104 paying a Charter Trustee precept, formerly part of the electoral area of Framwellgate Moor. This is now part of the Esh and Witton Gilbert Electoral Division.

**Options for Deerness, Esh and Witton Gilbert; Trimdon and Thornley; Willington and Hunwick**

- 20 The Group considered two options in respect of areas within the Charter Trustee Area which now form part of electoral divisions which extend outside the boundary of the Charter Trustee Area.

**Option One**

- 21 Members will note from the figures in paragraph 14 above, that Deerness has a significant electorate of 8863 within the Charter Trustee area. The Witton Gilbert area of Esh and Witton Gilbert ED has over 2000 electorate paying the precept, whereas the Ludworth area of Trimdon and Thornley ED, and Brancepeth area of Willington and Hunwick ED, have less than 900.

Taking this into account, under option one, was proposed that each of the areas should have Charter Trustee representation as follows:

<b>Partly Within the Area</b>	<b>Electorate paying a Charter Trustee Precept</b>	<b>No of Members per Division</b>
Deerness ED (excluding Hedleyhope area). (The total electorate for the division is 9669 and it has 3 members.)	8863	3
Witton Gilbert area (Esh and Witton Gilbert ED. This has an electorate of 6487 and 2 members)	2104	1
Ludworth area (Trimdon and Thornley ED. This has an electorate of 10453 and 3 members)	513	1

Brancepeth area (Willington and Hunwick ED. This has an electorate of 6995 and 2 members)	349	1
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- 22 This Option would provide for 24 Charter Trustees representing the whole of the Charter Trustees area and supports the principle that all electors within the Charter Trust area are entitled, under the democratic process, to have a Charter Trustee as of right, and not simply at the discretion of the Principal Authority. This option also enables the Council to appoint a further three Charter Trustees from the wider area, as refer to in paragraph 4 above, making a total of 27 Charter Trustees.

### Option Two

- 23 The second option considered by the Constitution Working Group was to allocate Charter Trustees for the areas by partly using the Council's right to appoint three additional Trustees from its membership. As there are four areas that now extend across the original Charter Trustee Boundary, these appointments would leave one area without a representative. It was therefore recommended that, because of its size, the Deerness membership be treated as in Option 1 and be allocated 3 Trustees, and the other three areas be represented by Council appointees as follows:-

Partly Within the Area	No. of Trustees
Witton Gilbert area (Esh and Witton Gilbert ED)	1
Ludworth area (Trimdon and Thornley ED)	1
Brancepeth area (Willington and Hunwick ED)	1

- 24 Under Option 2 some electors in the areas, shown in the table at paragraph 21 above, would not have a representative as of right but at the discretion of the 'Principal Authority'.

### Conclusion and Reasons

- 25 The Constitution Working Group considered both options and concluded that Option 1 was to be recommended to Council because it enabled each of the four areas to have representation by democratic right.
- 26 Further, it was agreed that Deerness be represented by three Trustees and the Trustees representing the Ludworth, Brancepeth and Witton Gilbert areas be the Members receiving the highest number of votes for their Electoral Division at the 2013 County Election.
- 27 Within option 1, the Constitution Working Group were also of the view that the three additional Trustees be:-

The existing Chairman of Durham County Council  
A designated Cabinet Member  
An additional Member appointed by the Leader of the Council.

## Recommendations and Reasons

28 The Constitutional Working Group recommends to the Council:-

- i. That it be noted that the Charter Trustee area as a whole remains unchanged.
- ii. That where only part of the electoral areas remains within the original Charter Trustee area, that part of the area be considered as part of the “area comprising” that original area and be represented by at least one Charter Trustee.
- iii. That members representing any of the electoral areas which remain wholly within the original Charter Trustees boundary will be Charter Trustees.
- iv. That Option one at paragraph 19 be accepted in that:-
  - (a) The Charter Trustees for Deerness will be all three Elected Members of that Electoral Division.
  - (b) the Trustees representing the Ludworth, Brancepeth and Witton Gilbert areas be one Member from each of these areas receiving the highest number of votes for their Electoral Division at the 2013 County Election.
  - (c) the three additional Trustees be:-
    - The existing Chairman of DCC
    - A designated Cabinet Member
    - An additional Member appointed by the Leader of the Council.

## Background Papers

29 The Local Government (Structural Changes) (Miscellaneous Amendments and Other Provision) Order 2009  
The Charter Trustees Regulations 2009  
Report of Cabinet 15 April 2009 – Creation of Charter Trustees for Durham City

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**Contact: Sharon Spence Tel: 03000 269 731**

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## **Appendix 1: Implications**

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**Finance:** Only the Mayor and Deputy Mayor of the Charter Trustees receive allowances and therefore any increase or reduction in the number of Trustees will have minimal financial impact.

**Staffing** – None within the body of the report.

**Risk:** Some residents or Councillors from Electoral Divisions not wholly within the Charter Trustee area, may not agree with the proposed method and may contest the interpretation of the Regulations within this report for the appointment of additional Trustees.

**Equality and Diversity:** None within the body of the report.

**Accommodation:** None within the body of the report.

**Crime and Disorder:** None within the body of the report.

**Human Rights:** None within the body of the report.

**Consultation:** None within the body of the report.

**Procurement:** None within the body of the report.

**Disability Discrimination Act:** None within the body of the report.

**State Aid:** None within the body of the report.

**Legal Implications:** Within the body of the report

**Appendix 2: 2013 Electoral Divisions in the former Durham City District**



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County Council

20 March 2013



Annual Review of the Constitution

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## Report of Corporate Management Team

Colette Longbottom, Head of Legal and Democratic Services

Councillor Simon Henig, Leader of the Council

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### Purpose of the Report

1. To present proposals for the revision of the Council's Constitution. The report is subject to consideration by Cabinet on 13 March 2013.

### Background

2. In accordance with the Local Government Act 2000, the County Council adopted the new constitution for the Unitary Authority from 1 April 2009. Although legislation has been amended by the Localism Act 2011, a constitution is still required. An annual review of the constitution is carried out each year by the Monitoring Officer.
3. Amendments to the Constitution which have been approved by full Council since last year's annual review have been incorporated into the constitution which is kept updated and maintained on the Council's website and the intranet. Amendments made since the last annual review are shown below:-
  - i. Changes have been made to the constitution following the restructure of the Corporate Management Team and the merger of Children and Young Peoples Services and Adults Wellbeing and Health into one integrated service grouping of Children and Adults Services from 1 August 2012 (Part 2 – Article 11, Part 3C- all tables).
  - ii. There has been a revision to the terms of reference for the Standards Committee and Audit Committee, and changes throughout the constitution for Standards Committee following the changes introduced by the Localism Act 2011 (Part 2 – Article 9, and Part 3A).
  - iii. The new Code of Conduct for Councillors was adopted on 25 July 2012 and is incorporated in the constitution (Part 5).
  - iv. The joint committee of the Police and Crime Panel has been established following the new arrangements for policing and police accountability introduced by the Police Reform and Social Responsibility Act 2011 (Part 3D).
  - v. The Constitution has been amended to reflect the changes introduced by The Local Authorities (Executive Arrangements) (Meetings and

Access to Information) (England) Regulations 2012. This included officer delegation scheme, Access to Information Procedure Rules, Executive Procedure Rules, and Overview and Scrutiny Procedure Rules (Part 2- Article 12, Part 3C, and Part 4).

- vi. Amendments have been made to the delegations to the Corporate Director, Resources in order to provide greater clarity over a number of issues relating to the Revenues and Benefits Service and to factor in changes under the Welfare Reform Act 2012 and Local Government Finance Act 2012, and under the responsibilities of the Head of Human Resources and Organisational Development to include a delegation to cover decisions made under the Local Government Pension Scheme in relation to ill health retirement. (Part 3C Table 6).
  - vii. A revised Local Code of Corporate Governance (Part 5).
  - viii. Rationalisation of committee functions in dealing with planning applications for wind turbines (Part 3A)
  - ix. A revised Code of Practice for Members and Officers dealing with Planning Matters (Part 5)
4. The Monitoring Officer has now carried out her annual review of the constitution which includes the review of the delegations to the Chief Officers who have been consulted and asked to submit any amendments. The proposed revisions are attached as schedules to Appendix 2.

### **Proposed Revisions**

- i. Changes to the delegations of the Assistant Chief Executive which have been amended to reflect the changes in the Councils terminology (Part 3C, Table 2) (Schedule 1)
- ii. The inclusion of delegations for the Director of Public Health to reflect new legislation, and the addition of the designated statutory post to article 11 (Part 2- Article; 11, and Part 3C, Table 3) (Schedules 2 and 3)
- iii. An amendment to the officer employment procedure rules to reflect the post of Director of Public Health, which is subject to the responsibility of the Chief Officer Appointments Committee acting as Advisory Appointments Committee (subject to the approval of the appointment by the Secretary of State for Health) (Part 4) (Schedule 4)
- iv. Changes to the delegations of the Corporate Director, Resources to reflect the changes in the Council's terminology (Part 3C, Table 6) (Schedule 5)
- v. Changes to the delegations of the Corporate Director, Regeneration and Economic Development to incorporate further detail in relation to network management, to add legislation to allow the Council to carry

out enforcement in relation to the abuse or misuse of blue badges, to reflect the duties arising from the establishment of the Business Improvement Districts; to carry out character appraisals and amend conservation areas boundaries; to approve the principle of acquiring property at a price not exceeding £60k; and to amend the functions and areas of responsibility to accurately reflect those areas relating to car parking enforcement, and parking control (Part 3C, Table 4, and (Part 2- Article; 11) (Schedules 3 and 6)

- vi. Amendment to the delegations of the Corporate Director, Neighbourhood Services by the addition of a delegation to agree terms of conditions and licenses in accordance with published best practice and/ or guidance, and to amend the functions and areas of responsibility to accurately reflect those areas relating to car parking enforcement and parking control which are the responsibility of the Corporate Director, Regeneration and Economic Development, and by the deletion of scientific services which is no longer a function of the Authority (Part 3C, Table 5) and Part 2- Article; 11) (Schedules 3 and 7)
- vii. To amend the Council's Code of Conduct of Members to reflect the changes made by the Committee on Standards in Public Life, to the descriptions of the Seven Principles of Public Life to bring these up to date (Part 5) (The revised descriptions are attached in Schedule 8)

### **Other Amendments**

- 5. There are other reports that will be presented to Council at the same time as the annual review report. These relate to Contract Procedure Rules; the establishment of Health and Wellbeing Board; and amendments to the terms of reference of the Adults, Wellbeing and Health Scrutiny Committee to reflect new legislation. Providing Council was minded to agree to the recommendations in the reports, the Council will be asked to amend the Constitution accordingly.

### **Recommendations**

- 6. The Council is asked to:
  - (i) Agree the proposed revisions to the Constitution as set out above.
  - (ii) Approve the scheme of delegations as set out in Part 3 of the Constitution.
  - (iii) Authorise the Head of Legal and Democratic Services, following consultation with the Constitution Working Group, to make future changes to the Constitution to reflect decisions of the Council or a Council body or to comply with legal requirements.
  - (iv) As the delegations in relation to the Director of Public Health are still the subject of regulations, only some of which have been laid before Parliament, authorise the Head of Legal and Democratic

Services, in consultation with the Leader of the Council, to amend the delegations as appropriate.

- (v) Authorise the Head of Legal and Democratic Services to present the revised Constitution to the new Council in May 2013.

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**Contact: Colette Longbottom**

**Telephone: 03000 269732**

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## **Appendix 1: Implications**

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**Finance:** None specific within this report.

**Staffing:** None specific within this report.

**Risk:** None specific within this report.

**Equality and Diversity/Public Sector Equality Duty:** Provision will be made for the constitution to be made available on a variety of formats and languages.

**Accommodation:** None specific within this report.

**Crime and Disorder:** None specific within this report.

**Human Rights:** None specific within this report.

**Consultation:** Consultation with Chief Officers has taken place in relation to the proposed provisions.

**Procurement:** None specific within this report.

**Disability Issues:** None specific within this report.

**Legal Implications:** To comply with recent changes in legislation.

**Table 2****Delegations to the Chief Executive**

1. To act as Head of the Paid Service under Section 4 of the Local Government and Housing Act 1989.
2. To guide and, where appropriate, direct chief officers in the exercise of their delegated functions in order to achieve the overall corporate aims and objectives of the Council.
3.
  - (a) To carry out any executive function which is delegated to a particular chief officer in consultation with the relevant Cabinet Portfolio Member
  - (b) To carry out any executive function of a corporate nature in consultation where appropriate with the Leader and Deputy Leader.
4. To grant exemptions on the political restriction of officer posts under the Localism Act 2011.

The following matters are, in addition, delegated to the Assistant Chief Executive:

5. In consultation where appropriate with the relevant Cabinet Portfolio Member, to discharge executive functions in relation to:
  - Communications
  - Corporate Policy, Planning and Improvement
  - Community Engagement/Area Action Partnerships
  - Community Development
  - Emergency Planning and Civil Contingencies
  - Equalities, Diversity and Cohesion
  - Performance Management and Research
  - Partnership Co-ordination and support for the County Durham Partnership
  - The county record office and the county archives
6. To oversee the management of the Council's Overview and Scrutiny functions.
7. To authorise the expenditure of Neighbourhood and Area budgets approved by the Council in consultation with the relevant Area Action Partnership Board and the appropriate local Member(s).
8. To designate suitably qualified officers as Authorising Officers for the purpose of granting authorisations to exercise the powers made available to the Council by the Regulation of Investigatory Powers Act, 2000.

Table 3

**Delegations to the Corporate Director, Children and Adults Services****1. Executive Functions**

Subject to the requirement set out below and in compliance with the provisions of Table 1 above, the Corporate Director, Children and Adult's Services, is authorised to discharge any function of the Executive in relation to:

- 1.1 The Council's role as Children's Services Authority.
- 1.2 Social Services so far as those functions relate to:-
  - Children, or;
  - Children and young people leaving care.
  - Adults
- 1.3 Functions exercisable on behalf of a NHS body so far as it relates to adults, children and young people.
- 1.4 The Council's role as Local Education Authority and its role in commissioning 14-19 education as determined by the Education and Skills Act 2008 and any subsequent legislation relating to education and training for young people.
- 1.5 The effective and lawful operation of a secure unit in accordance with the licence requirements set by the Office for Standards in Education, Children's Services and Skills (Ofsted).
- 1.6 The provision of assessment and treatment services for children and young people in accordance with the Mental Health Act 2007.
- 1.7 To exercise the powers set out in Table 7 relating to the Building Schools for the Future programme.
- 1.8 Implementing or determining, subject to any right of review or appeal which may apply, all matters concerning the provision of mental health services including the acceptance and exercise of guardianships and receivership under the Mental Health Act 2007
- 1.9 Implementing or determining, subject to any right of review or appeal which may apply, all matters concerning the statutory complaints procedure.

- 1.10 Implementing or determining, subject to any right of review or appeal which may apply, all matters concerning the provision of services provided under the Mental Capacity Act 2005.
- 1.11 To formally approve and authorise Mental Health Professionals who are eligible and qualified to be considered as Approved Mental Health Practitioners.
- 1.12 Setting and varying rates for providers of all forms of social care and housing support in consultation with the Corporate Director, Resources.
- 1.13 Setting and varying fees and charges for delivery of services.
- 1.14 Undertaking joint collaborative action as appropriate with the National Health Service and other partner organisations for the planning and provision of jointly operated services within the County, including the development of Cooperation Agreements and Partnerships Agreements for joint working arrangements.
- 1.15 Protection and promotion of the welfare of vulnerable adults including vulnerable young people moving into adulthood.
- 1.16 To meet the requirements as set down by regulatory bodies in relation to the operation of services within Adult's Services and Children's Services.
- 1.17 Provision, operation and commissioning of a Welfare Rights Advisory Service.
- 1.18 Provision, operation, commissioning and variation of payments to external providers in respect of services arranged by the Corporate Director of Children and Adult's Services.
- 1.19 Provision, operation and commissioning of services in relation to Gypsies and travellers.
- 1.20 The provision, operation and commissioning of services in relation to Adult Learning.
- 1.21 The provision, operation and commissioning of vocational training and allied services for persons over compulsory school age and promotion of arrangements to assist persons to obtain employment and employers to obtain employees.
- 1.22 To coordinate the transition of service provision for children who will require services into adulthood.
- 1.23 Provision, operation and commissioning of a Community Safety service.

In carrying out these delegated functions, the Corporate Director will agree arrangements for consultation with the relevant Cabinet Portfolio Member(s) and will refer to the Executive for consideration and decision those matters directed by the said Member(s).

## **2. Specific Delegations**

- 2.1 To coordinate the Council's response to Section 17 of the Crime and Disorder Act 1998 and ensure the crime and disorder implications of the Council's decisions are properly considered.
- 2.2 To provide advice on community safety issues to all council services and to provide support and advice to statutory partnerships in community safety/crime and disorder.
- 2.3 In consultation with the Head of Legal and Democratic Services and Corporate Director, Neighbourhood Services, take enforcement action under Sections 77, 78 and 79 of the Criminal Justice and Public Order Act 1994 in respect of the removal of unauthorised encampments and Section 1 of the Crime and Disorder Act 1998 and Section 85 of the Anti Social Behaviour Act 2003.
- 2.4 To meet the requirements as set down by regulatory bodies in relation to the employment, registration and training of all registerable staff.
- 2.5 To make applications procedures under the Forced Marriage (Civil Protection) Act 2007.
- 2.6 To advise and contribute to the preparation of the Joint Strategic Needs Assessment and Joint Health & Wellbeing Strategy in conjunction with the Director of Public Health.
- 2.7 In work with collaboration with partners in the development of the Safe Durham Partnership Strategic Assessment on behalf of the Safe Durham Partnership and to chair the Safe Durham Partnership.
- 2.8 To license the employment of children under Part II of the Children and Young Person Act 1933 Bylaws made under that part, and Part II of the Children and Young Person Act 1963.
- 2.9 To lead and coordinate the local Safeguarding Adults Board and the Local Safeguarding Children's Board in accordance with legislation and guidance.

## **3 The matters set out below are, in addition, delegated to the Director of Public Health;**

- 3.1 To take responsibility for the management of the Council's Public Health Services, with professional responsibility and accountability for their effectiveness, availability and value for money.

- 3.2 To contribute to and influence the work of the NHS Commissioners, ensuring a whole system approach across the public sector and ensuring NHS commissioners receive the public health advice they need.
- 3.3 To provide leadership, expertise and advice to Senior Officers and Elected Members on a range of issues from outbreaks of disease and emergency preparedness through to improving local people's health concerns around access to health services.
- 3.4 To provide the public with expert, objective advice on health matters.
- 3.5 To promote action across the life course, working together with council colleagues such as the Director of Children and Adults Services and with NHS colleagues.
- 3.6 To work with local Criminal Justice Partners and Police and Crime Commissioners to promote safer communities, including cooperating with the police, the probation service and the prison service to assess the risk posed by violent or sexual offenders.
- 3.7 Under the NHS Act 2006 and the Health & Social Care Act 2012, to discharge any functions in relation to the corporate public health duties of the Council including responsibility for writing the annual report on the health of the local population. (The Council has a duty to Publish this report under section 73B (5) & (6) of the 2006 Act and Section 31 of the 2012 Act).
- 3.8 Under Section 73A(1) of the 2006 Act inserted by section 30 of the 2012 Act;
- To undertake duties to take steps to improve public health
  - To undertake such other public health protection or health improvement functions that the Secretary of State delegates to Local Authorities either by arrangement or under regulations- these include services mandated by regulations under Section 6C of the 2006 Act Inserted by section 18 of the 2012 Act
  - To respond as a responsible authority under the Licensing Act 2003, such as making representations about licensing applications
  - To provide Healthy Start Vitamins (under the Healthy Start and Welfare Food Regulations 2005 ) for maternity or child health clinics
  - To consult and make decisions on Fluoridation Schemes
- 3.9 Under section 6C of the NHS Act 2006;
- To ensure appropriate access to sexual health services

- To take responsibility for the National Child Measurement Programme
- To take responsibility for the NHS Health Check Assessment

- 3.10 To act as either as lead or supporting Director of Public Health chairing or co- chairing the Local Health Resilience Partnership (LHRP) for County Durham, Darlington and Tees Valley.
- 3.11 To oversee the NHS screening programmes, both cancer and non-cancer, ante-natal and children's screening programmes, ensuring the health of the population is adequately protected and raising issues and concerns appropriately.
- 3.12 To oversee the NHS immunisation programmes including children 0-5 years, HPV and seasonal flu and any other that the Secretary of State instructs, including catch up programmes, raising issues and concerns appropriately.
- 3.13 To discharge the Council's responsibilities in relation to communicable and infectious diseases, including healthcare acquired infections.
- 3.14 Implementing or determining, subject to any rights of review or appeal which may apply, all matters concerning the Statutory Public Health complaints procedure.
- 3.15 Setting, varying and recovering charges in respect of certain steps taken in the exercise of health improvement duties.

**Article 11 – Officers**

**11.01 Management Structure**

- (a) **General.** The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Council will engage persons for the following posts, who will be designated Chief Officers:

Post	Main Functions and areas of responsibility
Chief Executive	<ul style="list-style-type: none"> <li>• Overall corporate management and operational responsibility (including overall management responsibility for all officers)</li> <li>• Principal adviser to the Council on general policy</li> <li>• Overall responsibility for delivering the Council’s policies and programmes</li> <li>• Provision of professional advice to all parties in the decision-making process</li> </ul>
Assistant Chief Executive	<ul style="list-style-type: none"> <li>• Communications</li> <li>• Corporate Policy, Planning and Improvement</li> <li>• Community Engagement, Community Development and Area Action Partnerships</li> <li>• Equalities, Diversity and Cohesion</li> <li>• Performance Management and Research Information</li> <li>• Partnership Co-ordination and support for the County Local Strategic Partnership</li> <li>• Overview and Scrutiny</li> <li>• Civil Contingencies</li> <li>• Archives and Records</li> </ul>
Corporate Director Children and Adults Services	<p>Adult Care Services including:</p> <ul style="list-style-type: none"> <li>• In-House Care Provision</li> <li>• Integrated Social Work/Health Teams</li> <li>• Adult Protection</li> <li>• Carers</li> </ul> <p>Commissioning Adult Care Services including:</p> <ul style="list-style-type: none"> <li>• Supporting People</li> <li>• Commissioning and Contracts: Older People, Mental Health, Learning Disability, People with a Disability</li> <li>• Sensory Support</li> <li>• Personalisation</li> </ul> <p>Social Inclusion Services including:</p> <ul style="list-style-type: none"> <li>• Health Improvement</li> </ul>

Post	Main Functions and areas of responsibility
Corporate Director Children and Adults Services (Cont.)	<ul style="list-style-type: none"> <li>• Prevention</li> <li>• Community Safety</li> <li>• Gypsy and Travellers</li> <li>• Welfare Rights</li> <li>• Specialist Service User Involvement</li> <li>• Substance Misuse</li> <li>• Partnership Boards</li> <li>• Client Related Financial Services</li> <li>• Strategic Needs Assessment</li> </ul> <p>Access and Inclusion Services including:</p> <ul style="list-style-type: none"> <li>• Learning Support Services</li> <li>• School Attendance</li> <li>• School Admissions</li> </ul> <p>Achievement Services including:</p> <ul style="list-style-type: none"> <li>• Education Development Services</li> <li>• School and Governor Support</li> <li>• Building Schools for the Future</li> <li>• School Place Planning</li> <li>• Schools Capital</li> </ul> <p>Extended Services including:</p> <ul style="list-style-type: none"> <li>• SureStart/Early Years</li> <li>• Youth Services</li> <li>• Connexions</li> <li>• Youth Offending Services</li> </ul> <p>Safeguarding and Specialist Services including:</p> <ul style="list-style-type: none"> <li>• Local Safeguarding Children's Board</li> <li>• Corporate Parenting</li> <li>• Disability Services</li> <li>• Secure Services</li> <li>• Children in Need</li> </ul> <p>Strategic Commissioning including:</p> <ul style="list-style-type: none"> <li>• Performance Management</li> <li>• Children and Families Trust</li> <li>• Health and Safety</li> <li>• Workforce Planning</li> </ul> <p>Public Health</p>
Corporate Director Regeneration & Economic Development	<p>Strategic Planning Policy  Planning Applications and Appeals  Building Control  Mineral and Waste Applications  Conservation, Archaeology &amp; Ecology  Environment Policy  Sustainability &amp; Climate Change  Economic Policy &amp; Programmes</p>

Post	Main Functions and areas of responsibility
Corporate Director Regeneration & Economic Development (Cont.)	<p>Economic Development Economic Regeneration Employability Business Services County Durham Development Company Housing Strategy &amp; Policy Durham City Homes Housing Renewal and Improvement Prevention &amp; Resolution of Homelessness Strategic Traffic Management Local Transport Planning Network Management Parking Policy Integrated Transport Unit Policy, Planning &amp; Performance Management Countryside &amp; Rights of Way Estates and Property Parking Control Car Parking Enforcement</p>
Corporate Director Neighbourhood Services	<p>Access &amp; Customer Services Strategy</p> <p>Business Regulation including:</p> <ul style="list-style-type: none"> <li>• Trading Standards</li> <li>• Environmental Health</li> <li>• Licensing</li> </ul> <p>Leisure – Sports, Leisure &amp; Recreation including Leisure Centres</p> <p>Neighbourhood Services including:</p> <ul style="list-style-type: none"> <li>• Highway Maintenance</li> <li>• Street Lighting</li> <li>• Street Cleansing</li> <li>• Public Realm/Open Space Maintenance</li> <li>• Bereavement Services</li> <li>• Building Services</li> <li>• Housing Maintenance</li> <li>• Neighbourhood Wardens</li> <li>• Operational Community Safety</li> <li>• Waste Collection &amp; Recycling</li> <li>• Fleet Management</li> </ul>

<b>Post</b>	<b>Main Functions and areas of responsibility</b>
Corporate Director Neighbourhood Services (Cont.)	Local Traffic Management/Road Safety Waste Management Policy, Planning & Performance Management  Libraries, Learning Culture Services including: <ul style="list-style-type: none"> <li>• Adult and Family Learning</li> <li>• Museums</li> <li>• Culture and Arts, Theatres, Galleries</li> <li>• Events Management</li> </ul>
Corporate Director Resources	Financial Management  Council Tax Collection & Housing Benefits (Revs & Bens)  Legal Services  Corporate Procurement  Human Resources & Organisational Development  Information & Communication Technology  Democratic Services  Electoral Services  Members' Services  Land Charges  Registration of Births, Deaths & Marriages  Coroners

(c) **Head of Paid Service, Monitoring Officer, Chief Finance Officer and Scrutiny Officer.** The Council will designate the following posts as shown:

<b>Post</b>	<b>Designation</b>
Chief Executive	Head of Paid Service
Corporate Director, Resources	Chief Finance Officer
Head of Legal & Democratic Services	Monitoring Officer
Overview and Scrutiny Manager	Scrutiny Officer
Director of Public Health	Director of Public Health

Such posts will have the functions described in Article 11.02 – 11.05 below.

#### 11.02 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

#### 11.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Executive in relation to an executive function if he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports.** The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The Monitoring Officer will oversee investigations into complaints made under the Code of Conduct and, where appropriate, make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper Officer for access to information.** The Monitoring Officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

- (g) **Advising whether executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework, and whether any particular decision or proposed decision constitutes a key decision.
- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.
- (j) **Protocol.** In carrying out his functions the Monitoring Officer will observe such protocols as shall from time to time be approved by the Standards Committee.

#### 11.04 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Executive in relation to an executive function and the Council's external auditor if he considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.
- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

## 11.05 Functions of the Scrutiny Officer

- (a) **Promotion of the role of the Overview and Scrutiny Management Board and its Committees** – The Scrutiny Officer will promote the role of the Overview and Scrutiny Management Board and its Committees.
- (b) **Support to Committees** – The Scrutiny Officer will provide support to the Overview and Scrutiny Management Board and its Committees, and to the Members of the Board and its Committees.
- (c) **Support and Guidance** – The Scrutiny Officer will provide support to members of the Authority, members of the Executive, and Officers of the Authority, in relation to the functions of the Overview and Scrutiny Management Board and its Committees.
- (d) **Restrictions on Posts** – The Scrutiny Officer cannot be Head of Paid Service, Monitoring Officer, or Chief Financial Officer.

## 11.06 Functions of the Director of Public Health

- (a) **Contributing to the Health and Wellbeing Board.** The DPH will advise on and contribute to the development of the joint strategic needs assessments and joint health and wellbeing strategies and commission appropriate services accordingly.
- (b) **Management of the Council's Public Health Services.** The DPH will have professional responsibility and accountability for the effectiveness and value for money of the Council's Public Health Services.
- (c) **Production of the annual report on the health of the local population.** The DPH will write the annual report on the health of the local population which the Council has a duty to publish.
- (d) **Responding as a responsible authority under the Licensing Act 2003.** The DPH will make representations about licensing applications.
- (e) **Management of the Council's ring-fenced public health grant.** The DPH will ensure that commissioned services meet the health needs of the population, are cost effective and that monitoring returns are accurate and timely.
- (f) **Providing Leadership, Expertise and Advice.** The DPH will provide leadership, expertise and advice to Senior Officers and Elected Members on a range of public health issues, from outbreaks of disease and emergency preparedness through to improving local people's health and concerns around access to health services.

#### **11.07 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### **11.08 Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

#### **11.09 Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

**Officer Employment Procedure Rules****1. Recruitment and appointment****(a) Declarations**

- (i) The Council has drawn up procedures which include a requirement that any candidate for an appointment as an officer must state in writing whether they have **any** relationship with any Councillor or officer of the Council;
- (ii) No candidate so related to a Councillor or a senior officer will be appointed without the authority of the relevant Chief Officer or an officer nominated by him.

**(b) Seeking support for appointment**

- (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) No Councillor will seek support for any person for any appointment with the Council.

**2. Recruitment of Chief Executive and Chief Officers**

Where the Council proposes to appoint a Chief Executive or a chief officer and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:

- (a) draw up a statement including the following:
  - (i) the duties of the Officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the procedures mentioned in paragraph (1) to be sent to any person on request.

**3. Appointments and Dismissals****1. Chief Officers**

In this paragraph –

“the Committee” means the Chief Officer Appointments Committee.

“the proper officer” means the Head of Legal and Democratic Services

- (a) The appointment and dismissal of the Chief Executive, Chief Officers and any assistant for political groups (appointed in pursuance of Section 9 of the Local Government Housing Act 1989) is the responsibility of the Committee.
- (b) At least one member of the Executive must be a member of the Committee.
- (c) Where the Committee is proposing to appoint or dismiss the Chief Executive, the County Council must approve that appointment before the offer of appointment is made or must approve that dismissal before notice of dismissal is given.
- (d) The Committee shall not make an offer of appointment in relation to any of the officers named in (a) above (apart from an assistant for political groups) until;
  - (1) The Committee has notified the proper officer of the name of the person to whom the Committee wishes to make the offer and any other particulars which the Committee considers are relevant to the appointment;
  - (2) The proper officer has notified every member of the Executive of the authority of:
    - (i) The name of the person to whom the Committee wishes to make the offer;
    - (ii) Any other particulars relevant to the appointment which the Committee has notified to the proper officer; and
    - (iii) The period within which any objection to the making of the offer is to be made by the Executive Leader on behalf of the Executive to the proper officer; and
  - (3) Either:
    - (i) The Executive Leader has, within the period specified, notified the Committee that neither he nor any other member of the Executive has any objection to the making of the offer;
    - (ii) The proper officer has notified the Committee that no objection was received by him within that period from the Executive Leader; or
    - (iii) The Committee is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.

- (e) Notice of the dismissal of an officer named in (a) above must not be given by the Committee until –
- (1) The Committee has notified the proper officer of the name of the person who the Committee wishes to dismiss and any other particulars which the Committee considers are relevant to the dismissal;
  - (2) The proper officer has notified every member of the Executive of the Authority of:
    - (i) The name of the person who the Committee wishes to dismiss;
    - (ii) Any other particulars relevant to the dismissal which the Committee has notified to the proper officer; and
    - (iii) The period within which any objection to the dismissal is to be made by the Executive Leader on behalf of the Executive to the proper officer; and
  - (3) Either –
    - (i) The Executive Leader has, within the period specified, notified the Committee that neither he nor any other member of the Executive has any objection to the dismissal;
    - (ii) The proper officer has notified the Committee that no objection was received by him within that period from the Executive Leader; or
    - (iii) The Committee is satisfied that any objection received from the Executive Leader within that period is not material or is not well-founded.
- (f) Where a member of the Executive attends the Committee set up to deal with a particular appointment or dismissal then such attendance shall constitute notice of and compliance with the requirements of (d) and (e) above.

## **2. Director of Public Health**

- a) The appointment of the Director of Public Health who is appointed in pursuance of Section 73A(7) of the National Health Service Act 2006 (inserted

by section 30 of the Health and Social Care Act 2012) is the responsibility of the Chief Officer Appointments Committee acting as the Advisory Appointments Committee, subject to the approval of the appointment by the Secretary of State for Health.

- b) The Committee will be chaired by the cabinet member of the Health and Wellbeing Board and also include the following
  - (i) An external professional assessor appointed after consultation with the Faculty of Public Health and agreed by Public Health England
  - (ii) The chief executive of the Council or his/her nominated deputy
  - (iii) Senior NHS representation
  - (iv) The Public Health England Regional Director, or another senior professionally qualified member of Public Health England acting on his/her behalf
  - (v) And in the case of appointments to posts which have either teaching or research commitments, or both, the committee should also include a professional member nominated after consultation with the relevant university
- c) Under the current Faculty of Public Health guidance, the overall balance on the Committee is required to have a local and a professional majority.
- d) The Council is required to seek advice and recommendations from Public Health England on the membership of the Committee, including the assessor. It is for the council to decide whether both a medical assessor and non-medical assessor are required.
- e) Assessors must be geographically distant and will normally be from outside the area of the Public Health England Unit where the post is being advertised to maximise objective assessment.
- f) The Council will advise the Secretary of State for Health of their preferred candidate and confirmation of their professional competence, compliance with statutory regulation and necessary registration to undertake the role.
- g) The Advisory Appointments Committee may terminate the appointment of the Director of Public Health following prior consultation with the Secretary of State for Health.

### 3. Other Officers

- (a) Appointment and dismissal of officers below Chief Officer is the responsibility of the Chief Executive or his nominee, and may not be undertaken by councillors.
- (b) Councillors will not be involved in disciplinary action against any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct or where the Council's disciplinary, capability and related procedures, as adopted from time to time, allow a right of appeal to Members.

#### **4. Disciplinary Action**

In this paragraph –

“disciplinary action” includes proposed dismissal for any reason other than redundancy, permanent ill-health or failure to renew a fixed term contract, planned retirement and early retirement and unsatisfactory probationary periods.

##### **(a) Written Procedures**

- (i) Disciplinary action against the officers referred to in 3(a) above and against the Monitoring Officer will be taken in accordance with the County Council’s Chief Officer Procedures.
- (ii) Disciplinary action against all other officers will be taken in accordance with the County Council’s Local Disciplinary Policy Procedure and Toolkit.

##### **(b) Independent Person**

No disciplinary action may be taken under 4(a)(i) above except in accordance with a recommendation in a report made by a designated independent person.

##### **(c) Suspension**

An officer named in 3(a) above and the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. The suspension will be on full pay.

#### **5. Appeals**

None of the above shall prevent a Councillor serving as a member of an appeals committee or body established to consider an appeal by:

- (i) any person against any decision relating to the appointment of that person as a member of staff of the authority; or
- (ii) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff unless the dismissal relates to a capability issue, misconduct, some other substantial reason, some other statutory enactment or planned retirement where the member of staff has less than six months notice – in these instances the appeal shall be conducted by a senior officer.

#### **6. Appointment of Political Assistants**

For the purposes of Section 9(2)(d) of the Local Government and Housing Act 1989 (the 1989 Act):

- (a) no appointment shall be made to any post allocated to a political group until the Council has allocated a post to each of the groups which qualify for one;
- (b) no political group shall be allocated a post unless it qualifies for one under the 1989 Act; and
- (c) no political group shall be allocated more than one post.

## Table 6

**Delegations to the Corporate Director, Resources****Executive Functions**

Subject to the requirement set out below and in compliance with the provisions of Table 1 above the Corporate Director, Resources is authorised to discharge any function of the Executive in relation to:-

- The proper administration of the Council's financial affairs
- The provision of Legal and Democratic Services to the Council
- Human Resources and Organisational Development Services
- ICT Services
- Coroners
- Land charges
- The Registration of Births, Deaths and Marriages

In carrying out these delegated functions the Corporate Director will agree arrangements for consultation with the relevant Cabinet Portfolio Member(s) and will refer to the Executive for consideration and decision those matters directed by the said Member(s)

**Specific and Non-Executive Delegations****Finance and Corporate Services**

1. To establish an appropriate Debt Management Strategy and Policy and to implement appropriate action to ensure the collection of revenue, council tax and national non-domestic rates.
2. The administration of housing benefits, including Discretionary Housing Payments and the administration of the Local Council Tax Support Scheme (from 1 April 2013).
3. To exercise the budgetary control functions referred to the Corporate Director under the Council's Financial Procedure Rules.
4. To arrange all borrowings, financing and investment in line with the Council's Treasury Management Policy Statement.
5. To maintain an effective internal audit service.
6. To act as lead officer for the Audit Committee.
7. To act as the Risk Management Officer Champion and ensure appropriate risk management arrangements are in place across the Council.
8. To act as lead officer for maintaining effective corporate governance arrangements and the preparation of the Annual Governance Statement.
9. To make appropriate banking arrangements on behalf of the Council.

10. To insure against risks where he considers this appropriate.
11. The operation of the Council's accounting systems and payroll.
12. In consultation with the Leader and Deputy Leader, to authorise the release of funds from contingencies as set out in the Revenue Budget and to forecast and manage the Council's Collection Fund, making adjustments to payments to principal perception authorities as appropriate.
13. To act as Proper Officer for the purposes of the following provisions of the Local Government Act 1972:
  - (a) Section 115(2) (Accountability of Officers);
  - (b) Section 146 (Transfer of Securities on Alteration of Area Etc.)
14. In relation to the Pension Fund:
  - (a) To exercise the County Council's function as administering authority relating to the Local Government Pension Scheme.
  - (b) To exercise those discretions under the Local Government Pension Scheme Regulations as appear from time to time in Pension Fund Statements of Policy;
  - (c) To authorise, in cases of urgency, the taking of any action by a Manager of the Pension Fund this is necessary in order to protect the interests of the Fund.
  - (d) To take any decision relating to the investment or management of the Pension Fund that cannot reasonably await the next meeting of the Pension Fund Committee.
  - (e) To maintain all necessary accounts and records in relation to the Pension Fund, including the calculation of and payment of benefits, reconciliation and investment of contributions, preparation of the Annual Accounts and preparation of membership data for actuarial valuation purposes.
  - (f) To maintain the system of internal control.
  - (g) To manage the triennial valuation of the Pension Fund.
  - (h) To accept for admission into the Pension Fund employees of authorities and bodies as prescribed in Regulations including transferee and community Admissions which are considered as 'exceptional circumstances', subject to an approved Admission Agreement, and subject to any necessary indemnities as appropriate
  - (i) To be the local referee for disputes under the Local Government Pension Scheme

- (j) To set the appropriate funding target for the Fund under the rules of the Local Government Pension Scheme.
- (k) To carry out, in consultation with the Pension Fund Committee, the requirement to monitor and review the investments made by the Fund Managers and report to each meeting of the Pension Fund Committee on the exercise of this delegation.
- (l) To manage cash flow, allocate funds between investment managers in order to ensure that the Fund's asset allocation is maintained and invest the residual cash balances.
- (m) To arrange and authorise the provision of appropriate Member training, including the attendance at conferences and other similar pension fund related events by Members of the Pension Fund Committee.
- (n) To prepare and submit the necessary Policy Statements to Pension Fund Committee and to arrange for the implementation and review of those statements, strategies, policies and procedures, as required. These include the Funding Strategy Statement
- (o) To prepare and submit the necessary plans and principles to the Pension Fund Committee and to arrange for the implementation and review of those plans and principles, as required. These include the Pension Fund Annual Report and the Statement of Investment Principles.
- (p) To produce as part of the Funding Strategy Statement, an assessment of all the specific risks that can be identified in relation to the management of the Pension Fund.

15. To administer the Council's car leasing scheme.

16. To write off debts.

17. To deal with the payment of Coroner's remuneration and expenses.

18. To ensure appropriate financial arrangements across the Council.

19. To approve premises for the solemnization of marriages and the registration of civil partnerships.

20. To appoint Coroners.

21. To authorise expenditure within the approved budget for civic hospitality.

22. The Corporate Director, Resources also has the powers set out in Table 7 relating to the Building Schools for the Future Programme and the Waste Solution Programme.

23. To agree the terms of loans permitted under law.

24. To make a statutory declaration of local authority mortgage interest.

25. To respond to notices in relation to EU financial sanctions.
26. To receive and respond to expressions of interest under Community Right to Challenge, under Part 5, Chapter 2 of the Localism Act 2011.
27. To forecast yield from Business rates and complete and submit to Government the NNDR 1 return, factoring the implications of the Business Rate Retention Scheme (from 1 April 2013) into the Medium Term Financial Plan.
28. To establish a Council Tax Discretionary Reduction Policy and Business Rates Hardship Relief Policy and administer applications for relief under Section 13A(1)(c) of the Local Government Finance Act 1988.

### **Human Resources and Organisational Development**

29. To implement the Council's decisions in relation to Single Status and Job Evaluation.
30. To approve the regrading of posts up to and including Head of Service level.
31. To offer alternative employment to any permanent employee who becomes surplus to the requirements of the Service or whose employment is at risk through reasons of ill health or other incapacity.
32. To determine applications for the extension of sick pay.
33. To approve applications for leave of absence in cases not covered by the Council's policies.
34. To agree variations to the Council's scheme for payments towards removal expenses, lodging allowances and legal fees for new employees.
35. To approve overtime payments for employees above spinal column point 28.
36. To authorise redundancy payments to school staff after consultation with the Head of Corporate Finance.
37. To coordinate the Member Training and Development Programme including:
  - (a) management of the approved Member Training and Development Budget and
  - (b) authorisation of Member attendance at conferences, seminars and other training and development events in consultation with the Leader and the Head of Legal and Democratic Services.
38. To decide, taking into account the opinion of an independent registered medical practitioner, whether under the Local Government Pension Scheme Regulations, a member is eligible for an ill health pension and if eligible, what level of ill health pension the scheme member should be awarded.

## Legal and Democratic Services

The following matters are delegated to the Head of Legal and Democratic Services:

39. To act as Proper Officer for the purposes of the Local Government Acts 1972 and 2000 and all Regulations made there under other than those Proper Officer functions delegated to the Corporate Director, Resources in connection with the administration of the Council's financial affairs. This delegation shall not derogate from the general delegation under Table 1 paragraph 8.
40.
  - (a) To act as Returning Officer for County Council Elections in accordance with Section 35 of the Representation of the People Act 1983 (the 1983 Act).
  - (b) To act as Electoral Registration Officer for the County in accordance with Section 8 of the 1983 Act.
41. To carry out the Proper Officer functions relating to the freedom of the City under the Durham City Council Act, 1985.
42. To act as Proper Officer for the Registration of Births, Deaths and Marriages Service pursuant to Schedule 29 paragraph 41 of the Local Government Act 1972 including administration of the arrangements for the licensing of premises under the Marriage Act and the appointment of staff.
43. To amend the Constitution where necessary to reflect changes in the law or decisions of council bodies or to correct inaccuracies.
44.
  - (a) To prepare all contracts for the sale or purchase of Council Land and property and all leases, tenancy agreements or other agreements affecting Council land or property including easements or any interest in land.
  - (b) To settle legal documents other than those mentioned above relating to or affecting the functions of the Council.
  - (c) To sign the documents referred to in sub-paragraph (a) above and all other formal documents intended to give effect to decisions of a council body.
45. To sign any notice, demand or other document on behalf of the Council in connection with any actual or contemplated legal or enforcement proceedings.
46.
  - (a) Generally, to institute, defend and conduct any legal proceedings relating to the Council's functions or affecting the property, rights or interests of the Council.
  - (b) To authorise named officers to appear on behalf of the Council in legal proceedings in the Magistrates' Court pursuant to Section 223 Local Government Act 1972.

47. To settle any action in any court or tribunal in which the Council is a party or where legal proceedings are indicated providing that any settlement exceeding £50,000 will be subject to prior consultation with the Leader or Deputy Leader of the Council except in cases of urgency where the settlement is made on the advice of Counsel.
48. To settle claims from staff for damage to personal property in accordance with the Council's policies.
49. In consultation with the Chairman of the Standards Committee, to make payments or provide other benefits in cases of maladministration in accordance with Section 92 of the Local Government Act 2000 (as amended).
50. To:
  - (a) appoint Members as proxies to attend and vote at shareholders meetings of any company of which the Council is a shareholder and
  - (b) give consent to written resolutions of any company of which the Council is a shareholder.
51. In consultation with the Chief Executive, to make appointments of Members to local and other outside bodies which are not the subject of report to the Council or the Executive, in consultation with the respective political group leaders.
52. To appoint Review Boards under Regulations under Section 34(4) (Determination of Claims and Reviews) of the Social Security Act 1998.
53. To make arrangements in relation to appeals against the exclusion of pupils from maintained schools.
54. To make arrangements pursuant to Sections 94(1), (1A) and (4) of the Schools Standards and Framework Act 1998 (Admission Appeals).
55. To make arrangements pursuant to Section 95(2) of the Schools Standards and Framework Act 1998 (Children to whom Section 87 applies; Appeals by Governing Bodies).
56. In consultation with the Corporate Director, Neighbourhood Services and the Chairman and Vice-Chairman of the Statutory Licensing Committee or General Licensing and Registration Committee as appropriate, to determine that a particular application shall be considered by the Statutory Licensing Committee or the General Licensing and Registration Committee rather than a Sub-Committee.
57. To consider and respond to representations made by members of the public in relation to a decision to hold a meeting or part of that meeting in private.

Table 4

### Delegations to the Corporate Director, Regeneration and Economic Development

#### Executive Functions

Subject to the requirement set out below and in compliance with the provisions of Table 1 above, the Corporate Director, Regeneration and Economic Development is authorised to discharge any function of the Executive in relation to:-

- Spatial Planning
- Economic Policy and Programmes
- Regeneration
- Housing
- Transport Strategy
- Highways and Local Transport Planning
- Traffic Management, in consultation, where required with the Highways Committee, in relation to functions under the Road Traffic Regulation Act 1984 and 1988
- Network Management and Street Works in relation to the New Roads and Street Works Act 1991 and the Traffic Management Act 2004 including enforcement
- Strategic Tourism
- Conservation and Archaeology
- Town Twinning
- Countryside and rights of way, including enforcement
- Common Land and Town and Village Greens
- Management of the Council's Land and Property Assets

In carrying out these delegated functions the Corporate Director will agree arrangements for consultation with the relevant Cabinet Portfolio Member(s) and will refer to the Executive for consideration and decision those matters directed by the said Member(s)

#### Specific and non-executive delegations

1. To give consent on behalf of the Council to the County Durham Development Company Limited incurring expenditure of money provided by the Council.
2. To exercise all of the Council's functions relating to public rights of way as set out in Part 1 of Section I of Schedule 1 to the 2000 Regulations except matters reserved to the Highways Committee.
3. To exercise the Council's powers under the Durham City Council Act 1985 in relation to the temporary closure of footpaths.

4. (a) To grant street-works licences under Section 50 of the New Roads and Streetworks Act 1991 (the 1991 Act)
- (b) To issue fixed penalty notices to statutory undertakers who fail to serve correct notices under the New Roads and Street Works Act 1991 to carry out works on the road network.
5. To cancel penalty charge notices in respect of parking contraventions under the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.
6. To exercise the Council's powers under the Traffic Management Act 2004 and Transport Act 2000 to issue a penalty charge notice in connection with parking offences and part of the civil parking regime.
7. To deal with the provision and maintenance of bus stop infrastructure in highways and, if necessary, land abutting highways.
8. To undertake non-statutory consultations before implementing proposals to locate bus stop infrastructure, subject to consultation with Highways Committee before exercising this delegated power if there are unresolved representations to such proposals.
9. Provision and operation of closed circuit television in accordance with the Criminal Justice and Public Order Act 1994 and the Private Security Industry Act 2001.
10. To discharge the regulatory and enforcement functions of the Council under the legislation set out in the Appendix to this Table.
11. To enter into Section 38 of the Highways Act 1980 agreements to adopt and thereafter maintain highways at the public expense.
12. To review decisions made by the Head of Spatial Policy, Planning, Assets and Environment, relating to the list of assets of community value.

The following matters are, in addition, delegated to the Head of Spatial Policy, Planning, Assets and Environment:

13. Determine all forms of planning and other applications and all notifications submitted under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 or under any related principal or secondary legislation, except the following –
  - (a) those applications or notifications that any Member of the Council requests be determined by the Planning Committee. (such must be made in writing to the Head of Spatial Policy, Planning, Assets and Environment specifying material planning grounds on which the request is made and received by the Head of Spatial Policy, Planning, Assets and Environment within 21 days of publication on the weekly list);

(b) those applications or notifications where a Member of the Council or an officer of the Regeneration and Economic Development Service has an interest in the property or land which is the subject of the application or notification;

(c) those applications where despite a Town or Parish Council having expressed objection or support on material planning grounds the officer is minded to recommend the application contrary to the Town or Parish Council wishes and the local council have made a specific request in writing for the application to go before a planning committee which is received by the Head of Spatial Policy, Planning, Assets and Environment within 21 days of publication on the weekly list.;

(d) Major developments (but not including Reserved Matters, applications for extension of time or applications for a material minor amendment) comprising –

(i) ten or more dwellings (detailed and outline applications) except where the application is for a substitution of house types on a scheme already benefiting from an extant planning permission;

(ii) industrial floor space of 5000 m<sup>2</sup> or more comprised in Use Class B1 (Business) and/or Use Class B2 (General Industrial) and/or Use Class B8 (Storage or Distribution); or

(iii) all other developments where the floor space is 1000 m<sup>2</sup> (gross) or more or the site area is 1 hectare or more except applications where the use or building would be for agriculture or personal equestrian use;

(e) those applications for planning permission or notifications likely to have, in the opinion of the Head of Spatial Policy, Planning, Assets and Environment, a significant impact on the environment or are by their nature particularly controversial;

(f) those applications or notifications recommended for refusal which involve the creation of 10 or more full time or equivalent jobs;

(g) those applications or notifications where there is a significant departure from Development Plan policy and which would be required to be the subject of a notification to the Secretary of State;

14. To take all necessary steps in connection with the defence of appeals against any refusal or failure to determine any of the applications and notifications mentioned at paragraph 13 above.

15. To respond to any pre-application or other consultation on nationally significant infrastructure projects submitted or to be submitted to the Major Infrastructure Planning Unit under the Planning Act 2008.

16. To authorise the making of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995.
17. To authorise the drafting, negotiation and completion of Section 106 Planning Obligations, S106A Variations to Planning Obligations and Release of Section 52 Planning Agreements.
18. Authorise, sign and serve all enforcement and other notices under the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 on behalf of the Council.
19. Authorise the taking of prosecution action applications for injunctions and to instruct the Head of Legal and Democratic Services, as necessary, to instigate legal proceedings in respect of the enforcement of legislation relating to town and country planning.
20. Authorise the taking of default action under Sections 178 & 219 of the Town and Country Planning Act 1990.
21. To exercise powers of revocation/modification of planning permissions (Section 97), discontinuance of a use/alteration or removal of a building (Section 102 & Schedule 9) and the making of Prohibition or Suspension Orders (Schedule 9) of the Town and Country Planning Act 1990.
22. Authorise the making, confirmation, revocation and variations of Tree Preservations Order (including emergency orders).
23. In connection with any proposed development under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, determine whether an Environmental Impact Assessment is required (screening) and the information required (scoping).
24. Authorise individual named officers to exercise powers of entry contained in the following:
  - Town and Country Planning Act 1990
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Planning (Hazardous Substances) Act 1990
  - Building Act 1984
  - Fire Safety and Safety of Places of Sport Act 1987
  - Safety of Sport Grounds Act 1975
  - Local Government (Miscellaneous Provisions) Act 1982
  - Party Wall Act 1996
  - Planning & Compensation Act 2004 (so far as is relevant)
  - or such other Acts of Parliament as relate to the relevant statutory functions of the planning authority;
25. Act under and in respect of –
  - (a) Sections 16, 18 to 21, 23 to 25, 32, 35 and 36, Building Act 1984;
  - (b) Sections 71 to 73 and 77 to 83, Building Act 1984;

- (c) Building Regulation 14 with regard to giving of notices and requiring the laying open, cutting into, and pulling down the building, works or fittings Issue 1 65 12 May 2010
  - (d) Sections 29-32, Local Government (Miscellaneous Provisions) Act 1982;
  - (e) Party Wall Act 1996;
26. Accept and reject notices, certificates and certificates of compliance from Approved Inspectors and Public Bodies under Sections 47 to 54, Building Act 1984 and to issue safety certificates in accordance with Part III, Fire Safety and Safety of Places of Sport Act 1987;
  27. To authorise, sign and serve all notices and deal with all applications, licences, revocations and suspensions and take all necessary enforcement action on behalf of the Council in respect of its responsibilities for matters of building control.
  28. To administer and determine complaints about high hedges under the Anti-Social Behaviour Act 2003.
  29. The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land.
  30. In consultation with the Local Members and the relevant Cabinet Portfolio Member, to sell or lease any property which is surplus to the requirements of the Service for which it is held and where after enquiries no other Service has expressed an interest in the property.
  31. To approve the principle of acquiring property at a price not exceeding £60,000.
  32. To settle the terms of the purchase or lease of property the acquisition of which has been approved in principle by the Council.
  33. To negotiate the acquisition of wayleaves, licences etc. required to facilitate the discharge of the Council's functions.
  34. To deal with applications for easements, rights of way, wayleaves, licences, covenants and consents affecting council land and property not materially affecting the use to which it is or might be put.
  35. In consultation with the appropriate Service representative to grant leases for up to 21 years on any council owned property, whether or not it has been declared surplus.
  36. In respect of leases, to carry out rent reviews and to grant renewals, variations, assignments, sub-lettings, surrenders and other landlords' consents.

37. To agree the appropriation of land from one use to another where this is necessary to facilitate schemes to be carried out by or on behalf of the Council.
38. To settle compensation claims not exceeding £50,000 either under the provisions of Part 1 of the Land Compensation Act 1973 or as a result of the Council taking entry to property for borehole samples, surveys or other site investigations.
39. To negotiate and agree the rating assessment and valuation of all council owned property, in consultation with the Head of Corporate Finance.
40. To require information as to interests in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
41. To negotiate abortive costs in the event of a transaction not proceeding in circumstances where the Council has a liability to pay costs.
42. Where required as part of the appropriate management of the Council's assets, to authorise the demolition of Council buildings.
43. To refer all unresolved objections to disposals and appropriations of Open Space and Public Walks and Pleasure Grounds as set out in Section 10 of the Open Spaces Act 1906 and Section 164 of the Public Health Act 1875 to the General Licensing and Registration Committee for determination.
44. To authorise and maintain a list of assets of community value and to make adjudications and decisions in relation thereto, as defined in Part 5, Chapter 3 of the Localism Act 2011.
45. All duties arising out of the establishment of the Business Improvement Districts.
46. To designate any areas to be of special architectural or historical interest as conservation areas; to review and amend the boundaries, and conclude Character appraisals; and to formulate and prepare proposals for the preservation and enhancement of those areas.
47. To exercise the Council's function in relation to housing including:-
  - (a) determining the conditions to be included in tenancy agreements;
  - (b) making any decisions necessary to comply with the Council's obligations to secure tenants in compliance with the legislation referred to in the Appendix to Table 4;
  - (c) the determination of any applications for grant assistance pursuant to the legislation listed in the Appendix at Table 4;
  - (d) the allocation of tenancies in accordance with policies approved by the Council;
  - (e) to determine all requests for consents required by the terms of tenancy agreements;
  - (f) to authorise action to enforce a breach of condition in tenancy agreements, including in consultation with the Head of Legal and

Democratic Services where necessary, the institution of legal proceedings;

- (g) the exercise of the Council's enforcement powers under the legislation listed in the Appendix to Table 4 in relation to private sector housing;
- (h) to authorise the implementation of any action necessary to recover monies due to the Council as a result of its exercise of the powers contained in legislation listed in the Appendix at Table 4;
- (i) to investigate and determine all applications made to the Council under its powers and duties to deal with homelessness in the legislation described in the Appendix at Table 4:
- (j) to authorise any expenditure required in the exercise of the Council's functions to assist the homeless.
- (k) To amend agreements entered with Arms length Management organisations;
- (l) To respond on the Council's behalf to requests for consent to alterations to the Articles of Association of Large Scale Voluntary Transfer companies.

## Appendix to Table 4

Acquisition of Land Act 1981  
Building Act 1984  
Commons Act 1876  
Commons Act 2006  
Commons Registration Act 1965  
Countryside and Rights of Way Act 2000  
Electricity at Work Act 1989  
Environmental Protection Act 1990  
Environment Act 1995  
Fraud Act 2006  
Gas Safety(Installation and use) Regulations 1998  
Highways Act 1980  
Home Energy Conservation Act 1997  
Homelessness Act 2002  
Housing Act 1985  
Housing Act 1988  
Housing Act 1996  
Housing Act 2004  
Housing and Regeneration Act 2008  
Housing Grants Construction and Regeneration Act 1996  
Inclosure Act 1857  
Landlord and Tenant Act 1985  
Leasehold Reform Housing and Urban Development Act 1993  
Local Democracy, Economic Development and Construction Act 2009  
Local Government ( Miscellaneous Provisions ) Act 1982  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government Act 1972  
Local Government Act 2003  
Local Government and Housing Act 1989  
Localism Act 2011  
Local Transport Act 2008  
New Roads and Street Works Act 1991  
Prevention of Damage by Pests Act 1949  
Protection from Eviction Act 1977  
Public Health Act 1936  
Public Health Act 1961  
Railway Clauses Consolidation Act 1985  
Regulatory Reform (Housing Assistance) (England and Wales) Order 2002  
Rights of Way Act 1991  
Road Traffic Regulation Act 1984 and 1988  
Town and Country Planning Act 1990  
Town Police Clauses Act 1847  
Traffic Management Act 2004  
Transport Act 1985  
Transport Act 2000  
Warm Homes and Energy Conservation Act 2003  
Wildlife and Countryside Act 1981

**Table 5**

**Delegations to the Corporate Director, Neighbourhood Services**

**Executive Functions**

Subject to the requirement set out below and in compliance with the provisions of Table 1 above the Corporate Director, Neighbourhood Services is authorised to discharge any function of the Executive in relation to:-

- Highway design and maintenance
- Clean Neighbourhoods and Environment
- Open Spaces
- Leisure and Recreation
- Public Health and Pest Control
- Waste Management and Recycling
- Street Cleansing
- Building and Technical Services
- Traffic Management, in consultation, where required, with the Highways Committee in relation to functions under the Road Traffic Regulation Act 1984.
- Community Safety
- The Waste Solution Programme as set out in Table 7
- Private Sector Housing Enforcement
- Animal Welfare/Infectious Disease Control
- Trading Standards and Consumer Protection
- Burial and Cremation
- Street Naming and Numbering
- Provision, operation and commissioning of public libraries, museums, art galleries, theatres, arts development, heritage facilities, with the exception of major changes in the pattern of the provision including permanent closure of these facilities.

In carrying out these delegated functions the Corporate Director will agree arrangements for consultation with the relevant Cabinet Portfolio Member(s) and will refer to the Executive for consideration and decision those matters directed by the said Member(s)

**Specific and Non-Executive Delegations**

1. To exercise all of the Council's functions including licensing, registration, making of orders, issue of notices and enforcement in respect of the following matters referred to in Schedule 1 to the 2000 Regulations:
  - (a) performances of hypnotism;

- (b) premises for acupuncture, tattooing, ear piercing and electrolysis;
- (c) pleasure boats and pleasure vessels;
- (d) night cafes and take-away food shops;
- (e) sale of non-medicinal poisons;
- (f) premises for the preparation of food including registration;
- (g) scrap yards;
- (h) pet shops and the breeding and boarding of dogs or other animals;
- (i) animal trainers;
- (j) knackers' yards;
- (k) charitable collections;
- (l) operation of loudspeakers;
- (m) street works licences;
- (n) movement and sale of cattle and pigs;
- (o) all the provisions of the Highways Act 1980:
- (p) storage of celluloid;
- (q) meat, fish, dairy and egg product establishments and butchers' shops;
- (r) motor salvage operations;
- (s) health and safety at work;
- (t) smoke-free premises;
- (u) caravan and camping sites and moveable dwellings.

2. To exercise the Council's functions in relation to:

- (a) the control of pollution and the management of air quality;
- (b) statutory nuisances, as referred to in Schedule 2 to the 2000 Regulations;
- (c) contaminated land;
- (d) port health;

- (e) the determination of applications for approval of drainage systems submitted pursuant to Schedule 3 of the Flood and Water Management Act 2010.

The matters set out in paragraphs 3 to 14 below are, in addition, delegated to the Head of Environment, Health and Consumer Protection:

3. To exercise, in consultation with the Head of the Legal and Democratic Services the Council's licensing, approval, registration and enforcement functions, including the institution of legal proceedings under legislation set out in Appendix 1 to this Table and all associated secondary legislation as amended from time to time.
4. In consultation with the Head of Legal and Democratic Services to review and update the list of relevant legislation contained within Appendix 1 to this Table to reflect new or modified statutory provisions.
5. Subject to Appendices 2, 3 and 4 to this Table to authorise, suspend, vary, transfer, extend or revoke permits, licences, certificates, registrations and approvals issued under the legislation set out in the Appendix 1 to this Table including all relevant statutory provisions.
6. To issue simple and conditional cautions to persons guilty of criminal offences under the legislation as referred to in paragraph 3 above and in accordance with PACE and the Home Office Guidance.
7. To authorise suitably qualified and competent staff within the Environment, Health and Consumer Protection Division and other persons acting on behalf of the Council, for the purposes of discharging duties and powers under the legislation referred to in paragraph 3 above.
8. To authorise another local authority to institute legal proceedings in respect of a contravention of the legislation set out in Appendix 1 to this Table where related contraventions are being investigated by that authority.
9. To grant authorisations in relation to illegal money lending and unfair trading practices.
10. Power to agree transfers and assignments under health and safety legislation to change Enforcing Authority responsibilities.
11. Power to appoint Proper Officers and alternate Proper Officers for the Authority for matters relating to Public Health, Port Health and the Control of Infectious Disease.
12. Power to appoint Public Analyst, Agricultural Analyst and Food Examiner for the Council.

13. To authorise Officers to institute and or defend on behalf of the Council any legal proceedings which the Council by itself, or by a duly empowered Committee, may decide to take. In this respect, nominated staff are hereby authorised to appear in Court in person, or to be represented by a duly appointed officer of the Council in accordance with Section 223 of the Local government Act 1972 or to be represented by a duly instructed solicitor.
14. To determine those applications and matters in relation to Licensing and Gambling as are referred to in Appendices 2, 3 and 4 to this Table.
15. To agree terms of conditions and licenses in accordance with published best practice and/ or guidance.

The matters set out in paragraphs 16 to 21 below are, in addition, delegated to the Head of Direct Services and Head of Technical Services:

16. To exercise, in consultation with the Head of Legal and Democratic Services the Council's enforcement functions, including the institution of legal proceedings, under legislation set out in Appendix 5 to this Table and all relevant statutory provisions, as amended from time to time.
17. To authorise suitably qualified and competent staff within Neighbourhood Services and other persons acting on behalf of the Council, for the purposes of discharging duties and powers under the legislation referred to in Appendix 5 to this Table.
18. In consultation with the Head of Legal and Democratic Services to review and update the list of relevant legislation contained within Appendix 5 to this Table to reflect new or modified statutory provisions.
19. To issue simple and conditional cautions to persons guilty of criminal offences under the legislation as referred to in Appendix 5 to this Table and in accordance with PACE and the Home Office Guidance.
20. To discharge the regulatory and enforcement functions of the Council under the legislation set out in Appendix 5 to the Table.
21. In consultation with the Head of Legal and Democratic Services to take enforcement action under bye-laws relating to arts, libraries and museums.

## Appendix 1 to Table 5

Administration of Justice Act 1970  
Agriculture Act 1970  
Agriculture (Miscellaneous Provisions) Act 1968  
Agricultural Produce (Grading and Marking) Acts 1928 and 1931  
Animal Boarding Act 1963  
Animal Health Act 1981  
Animal Welfare Act 2006  
Anti-Social Behaviour Act 2003  
Breeding of Dogs Act 1971  
Breeding of Dogs Act 1991  
Breeding and Sale of Dogs (Welfare) Act 1999  
Building Act 1984  
Business Names Act 1985  
Caravan Sites and Control of Development Act 1960  
Caravan Sites Act 1968  
Children and Young Persons (Protection from Tobacco) Acts 1933 and 1991  
Clean Air Act 1993  
Clean Neighbourhoods and Environment Act 2005  
Companies Act 1985  
Consumer Credit Act 1974  
Consumer Protection Act 1987  
Control of Pollution (Amendment) Act 1989  
Control of Pollution Act 1974  
Copyright, Design and Patents Act 1988  
Criminal Justice and Police Act 2001  
Criminal Justice and Public Order Act 1994  
Courts and Legal Services Act 1990  
Dangerous Wild Animals Act 1976  
Development of Tourism Act 1969  
Education Reform Act 1988  
Employment of Women, Young Persons and Children Act 1920  
Energy Act 1976  
Energy Conservation Act 1981  
Enterprise Act 2002  
Environmental Protection Act 1990  
Environment Act 1995  
Estate Agents Act 1979  
European Communities Act 1972  
Explosives Acts 1975 to 1976  
Fair Trading Act 1973  
Farm and Garden Chemicals Act 1967  
Food Act 1984  
Food Hygiene (England) Regulations 2006  
Food and Environment Protection Act 1985  
Food Safety Act 1990  
Gambling Act 2005  
Hallmarking Act 1973  
Health Act 2006  
Health and Safety at Work etc. Act 1974

House to House Collections Act 1939  
Housing Act 2004  
Insurance Brokers (Registration) Act 1977  
International Health Regulations 2005  
Intoxicating Substances (Supply) Act 1985  
Land Drainage Act 1976  
Land Drainage Act 1991  
Land Drainage Act 1994  
Licensing Act 2003  
Local Government Act 1972  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
Localism Act 2011  
Medicines Act 1968  
Mock Auctions Act 1961  
Motor Vehicle Salvage Operators Regulations 2002  
National Assistance Act 1948  
Noise Act 1996  
Noise and Statutory Nuisance Act 1993  
Performing Animals (Regulation) Act 1925  
Pesticides Act 1995  
Pesticides (Fees and Enforcement) Act 1989  
Pet Animals Act 1951 and Amendment Act 1983  
Poisons Act 1972  
Pollution Prevention and Control Act 1999  
Prevention of Damage of Pests Act 1949  
Prices Acts 1974 and 1975  
Property Misdemeanors Act 1991  
Protection of Animals Act 1911 (as amended)  
Public Health Act 1936  
Public Health Act 1961  
Public Health (Control of Diseases) Act 1984  
Public Health (Ships) Regulations 1979  
Public Health (Ships)(Amendment)(England) Regulations 2007  
Riding Establishments Acts 1964 and 1970  
Road Traffic (Foreign Vehicles) Act 1972  
Road Traffic Acts 1988 and 1991  
Road Traffic Offenders Act 1988  
Road Traffic (Consequential Provisions) Act 1988  
Scrap Metal Dealers Act 1964  
Shops (early Closing Day) Act 1995  
Slaughter of Poultry Act 1967  
Slaughterhouse Act 1974  
Solicitors Act 1974  
Sunbeds (Regulations) Act 2010  
Sunday Trading Act 1994  
Telecommunications Act 1984  
Theft Act 1968  
Timeshare Act 1992  
Tobacco Advertising and Promotions Act 2002  
Town and Country Planning Act 1990

Trade Descriptions Acts 1968 and 1972  
Trade Marks Act 1994  
Trading Representations (Disabled Persons) Act 1958 and 1972  
Trading Stamps Act 1964  
Traffic Management Act 2004  
Unsolicited Goods and Services Acts 1971 and 1975  
Video Recordings Acts 1984 and 1993  
Water Industries Act 1991  
Weights and Measures Act 1985  
Young Persons (Employment) Acts 1938 and 1964  
Zoo Licensing Act 1987

**Appendix 2 to Table 5 - Delegation of Licensing Act 2003 responsibilities**

<b>Matter to be dealt with</b>	<b>(1) Full Committee</b>	<b>(2) Sub-Committee</b>	<b>(3) Officers</b>
Application for Personal Licence		If a Police objection is made	If no objection made
Application for Personal Licence with unspent convictions		All cases	
Application for Premises Licence/Club Premises Certificate		If a relevant representation is made	If no relevant representation is made
Application for provisional statement		If a relevant representation is made	If no relevant representation is made
Application to vary Premises Licence/Club Premises Certificate		If a relevant representation is made	If no relevant representation is made
Application to vary designated Premises Supervisor		If a Police objection is made	All other cases
Request to be removed as designated Premises Supervisor			All cases
Application for transfer of Premises Licence		If a Police objection is made	All other cases
Application for interim authorities		If a Police objection is made	All other cases
Application to review Premises Licence/Club Premises Certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous or vexatious, etc.			All cases, in consultation with the Chair or Vice Chair of the Statutory Licensing Committee
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police representation to a temporary event notice		All cases	

### Appendix 3 to Table 5 - Gambling Act 2005 – Scheme of Delegations

<b>Gambling Act 2005</b>	<b>Functions</b>	<b>Delegation</b>
Section 163	Determination of application for Premises Licence in respect of which representations have been made (and not withdrawn) Determination of application for Premises Licence where no relevant representations received	Licensing Sub-Committee  Officers
Section 162	Attachment of condition to Premises Licence or exclusion of default condition	Licensing Sub-Committee
Section 162	Decision as to whether representation is vexatious, frivolous, or would certainly not influence the authority's determination of application	Officers in consultation with Chairman or Vice-Chairman at the Licensing Committee
Section 187	Determination of application to vary Premises Licence in respect of which representations have been made (and not withdrawn) Determination of application to vary Premises Licence in respect of which no representation received	Licensing Sub-Committee  Officers
Section 188	Determination of application for transfer of Premises Licence in respect of which representations have been made (not withdrawn) Determination of application for transfer of Premises Licence where no representations received	Licensing Sub-Committee  Officers
Section 193	Revocation of Premises Licence for failure to pay annual fee	Officers
Section 194	Determination that a Premises Licence has lapsed	Officers
Section 195	Reinstatement of lapsed Premises Licence in respect of which representations have been made (and not withdrawn) Reinstatement of lapsed Premises Licence where no representation is received	Licensing Sub-Committee  Officers
Section 198	Rejection of application for review of Premises Licence on various grounds	Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee
Section 200	Initiation of review of Premises Licence	Officers
Section 201	Determination that representation about review of Premises Licence is frivolous, vexatious or will certainly not influence a review of a Premises Licence	Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee
Section 202	Determination of action following review of Premises Licence	Licensing Sub-Committee

<b>Gambling Act 2005</b>	<b>Functions</b>	<b>Delegation</b>
Section 204	Determination of application for provisional statement in respect of Premises Licence where representations have been made (and not withdrawn) Determination of application for provisional statement in respect of which no representations received	Licensing Sub-Committee  Officers
Section 205	Decision to disregard representations made in respect of application for a Premises Licence after issue of provisional statement	Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee
Section 218	Issue of counter notice to Temporary Use Notice where number of permitted days are exceeded	Officers
Section 221	Objection to Temporary Use Notice	Officers
Section 222	Issue of counter notice in response to Temporary Use Notice	Licensing Sub-Committee
Section 284	Making of Order to remove exemptions from specified premises	Licensing Sub-Committee
Section 346	Institution of criminal proceedings in respect of an offence under the provisions of the Act	Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee
Schedule 10 Paragraph 8  Paragraphs 14 and 15	Determination of application for Family Entertainment Centre Gaming Machine Permit  Notification of lapse of Family Entertainment Centre Gaming Permit	Head of Administration (or in his absence the Central Services Manager) (Refusal to be exercised only in consultation with Chairman or Vice-Chairman of the Licensing Committee) Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee
Schedule 11 Paragraph 44 Paragraph 48  Paragraph 50  Paragraph 54	Registration of society for small society lottery Refusal of application for registration of society for small society lottery  Revocation of registration of society for small society lottery  Cancellation of registration of society for small society lottery for non-payment of annual fee	Officers  Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee Officers in consultation with the Chairman or Vice-Chairman of the Licensing Committee Officers

<b>Gambling Act 2005</b>	<b>Functions</b>	<b>Delegation</b>
<p>Schedule 12 Paragraphs 5 and 10 and 24</p> <p>Paragraph 15</p> <p>Paragraph 21</p> <p>Paragraph 22</p>	<p>Determination of application for Club Gaming Permit and Club Registration Permit and for renewal of permit in respect of which representations have been made (and not withdrawn)</p> <p>Determination of application for Club Gaming Permit and Club Registration Permit and for renewal of permit where no representations received</p> <p>Determination of application for variation of Club Gaming Permit and in respect of which Club Registration Permit and cancellation of permit representations have been made (and not withdrawn)</p> <p>Determination of application for variation of Club Gaming Permit and Club Registration Permit and cancellation of permit where no representations received</p> <p>Cancellation of Club Gaming Permit and Club Registration Permit</p> <p>Cancellation of Club Gaming Permit and Club Registration Permit for failure to pay annual fee</p>	<p>Licensing Sub-Committee</p> <p>Officers</p> <p>Licensing Sub-Committee</p> <p>Officers</p> <p>Licensing Sub-Committee</p> <p>Officers</p>
<p>Schedule 13 Paragraphs 4, 15 and 19</p> <p>Paragraph 16</p>	<p>Determination of application for grant, variation or transfer of Licensed Premises Gaming Machine Permit</p> <p>Cancellation of Licensed Premises Gaming Machine Permit or variation of number or category of machines in respect of which representations received (and not withdrawn)</p>	<p>Officers (Refusal and limitation on number of machines only in consultation with Chairman or Vice-Chairman of the Licensing Committee)</p> <p>Licensing Sub-Committee</p>
<p>Paragraph 17</p>	<p>Cancellation of Licensing Premises Gaming Machine Permit and variation of number or category of machine where no representations received</p> <p>Cancellation of Licensed Premises Gaming Machine Permit for failure to pay annual fee</p>	<p>Officers</p> <p>Officers</p>
<p>Schedule 14 Paragraphs 9 and 18</p> <p>Paragraph 15</p>	<p>Determination of application for Prize Gaming Permit and application for renewal of Permit</p> <p>Determination that Prize Gaming Permit has lapsed</p>	<p>Officers (Refusal only in consultation with Chairman or Vice-Chairman of Licensing Committee)</p> <p>Officers</p>

**Appendix 4 to Table 5 - Hackney Carriage and Private Hire Licensing**

<b>Matters to be dealt with</b>	<b>Full Committee</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for a Drivers Licence where there are no concerns over their fitness and propriety			<b>X</b>
Application for a Drivers Licence where doubts on fitness and propriety are minor traffic offences			<b>X</b>
Application for a Drivers Licence where there is a lapse of time or circumstances for convictions fall outside of the Policy		<b>X</b>	
Application for a Drivers Licence where there is any other doubt on suitability		<b>X</b>	
Revocation of Driver or Operator Licence		<b>X</b>	
Revocation of Vehicle Licence			<b>X</b>
Suspension of Licences			<b>X</b>

## Appendix 5 to Table 5

Animal Welfare Act 2006  
Anti-Social Behaviour Act 2003  
Burial Act 1853  
Burial Act 1857  
Civic Amenities Act 1967  
Clean Neighbourhoods and Environment Act 2005  
Control of Pollution Act 1974  
Control of Pollution (Amendment) Act 1989  
Criminal Justice and Public Order Act 1994  
Criminal Damage Act 1971  
Crime and Disorder Act 1998  
Dangerous Dogs Act 1991  
Directives and Regulations Dogs (Fouling of Land) Act 1996  
Dogs (Fouling of Land) Act 1996  
Environment Act 1995  
Environmental Protection Act 1990 (Part II, III and IV and all associated EU Directives and Regulations) (Part VIII)  
Highways Act 1980  
Household Waste and Recycling Act 2003  
Local Government Act 1972  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
Localism Act 2011  
Local Authorities Cemeteries Order 1977  
Local Transport Act 2008  
New Roads and Street Works Act 1991  
Open Spaces Act 1906  
Parochial Registers and Records Measure 1978  
Police Reform Act 2002  
Public Health Act 1925 - Street Naming and Numbering Functions  
Public Health Act 1936  
Public Health Act 1961  
Refuse Disposal (Amenity) Act 1978  
Registration of Burials Act 1864  
Road Traffic Regulation Act 1984  
Town and Country Planning Act 1990  
Town Improvement Clauses Act 1847 – Street Naming and Numbering Functions  
Town Police Clauses Act 1847  
Transport Act 2006  
Waste Minimisation Act 1998

Annex 1 to Code of Conduct

Nolan's Seven Principles of Public Life

**Selflessness**

Holders of public office should act solely in terms of the public interest.

**Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty**

Holders of public office should be truthful.

**Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

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County Council

20 March 2013



## Contract Procedure Rules Annual Review

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### Report of Don McLure, Corporate Director Resources Cllr Alan Napier, Cabinet Portfolio Holder for Resources

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#### Purpose of the Report

1. The purpose of this report is to advise members of the proposed changes to the Contract Procedure Rules following their annual review.

#### Background

2. The Contract Procedure Rules (CPRs) (issued in accordance with section 135 of the 1972 Local Government Act) are part of the Constitution of the Council. They are instrumental in ensuring a standardised approach to Commissioning and Procurement across the Council.
3. The CPRs are intended to promote good procurement practice, to ensure that contracts are let in accordance with EU and UK legislation, and to deter corruption. Compliance with the rules is the best defence against potential allegations that a contract has been let, or a purchase made, illegally, fraudulently, or unfairly. This is particularly important as the area of procurement has become increasingly litigious in recent years.
4. The CPRs are reviewed and updated annually as part of the review of the Constitution. During the 2011-12 review, it was decided to make no changes to the CPRs as they had been substantially updated in the previous year's review.
5. As part of this year's review, Procurement invited feedback from the Council's Strategic Procurement Network – feedback was received from a number of service groupings this has been incorporated where appropriate.
6. The proposed changes have also been reviewed by Legal and Democratic Services to ensure they are in keeping with relevant legislation and case law, and the Constitution Working Group have recommended that the changes be presented to Council for approval and adoption.

#### Key proposed changes

7. This section provides a summary of the most significant of the proposed changes to the CPRs, including an explanation, in each case, as to why the change or addition is being proposed.

## **Introduction (Rule 1)**

8. During the review consultation, it was highlighted that unlike the Financial Procedure Rules, the CPRs did not contain an introductory section explaining their purpose, and it was suggested that this would be a helpful addition. For consistency, the introductory section which has been drafted is based on that in the Financial Procedure Rules.
9. The introduction contains a definition of what is meant by the term “Procurement Officer”. This has previously been the source of considerable confusion to some officers and it is hoped that this definition will clarify the issue.

## **Variations to the Contract Procedure Rules (Rule 4)**

10. In the two years since the last update of the CPRs, concern has been expressed that too many contracts are awarded via Variations to the CPRs. Procurement has been encouraged to consider ways in which the volume of Variations can be reduced. The proposed update makes a number of changes to the circumstances in which a Variation can be permitted.
11. The wording of paragraph 4.2 has been slightly expanded to make it clear that the Variation process cannot be used if doing so would breach the Public Contracts Regulations. This has been added on the advice of Legal and Democratic Services.
12. It is proposed to delete clauses (a), (c) and (f) from the criteria under which Variations can be permitted, as it has been established that it is possible to award contracts which genuinely meet these criteria through the use of a Negotiated Procedure which is fully compliant with EU and UK procurement law, or for contracts below the OJEU threshold, a single-supplier negotiation based on the Negotiated Procedure. Variations in these circumstances are therefore not necessary and these clauses should be removed. (See also commentary on Section 9, below, which defines how a sub-OJEU negotiation should operate).
13. It is proposed to delete clause (b) as in practice it has been observed that this clause is never used.
14. It is also proposed to delete clause (d). Clause (d) permits Variations on the basis that a contract forms part of a “serial programme” – in other words, that the works or services in question are the later phases of a project for which at least the initial phase has been competitively procured. It is Procurement’s view that in practice, the availability of Variations on this basis encourages poor project planning and management, allows too much “slippage” of phased projects, and could leave the Council open to both criticism and legal challenge. The removal of clause (d) would mean that serial programmes would require to be procured in one of two ways – either a competitive procurement process covering all of the expected phases of the project, or through a separate competitive procurement for each phase. This would provide increased opportunities for suppliers to compete for business with the Council, as well as opportunities for the Council to secure value for money by opening up more work to competition.

15. The definition of “urgency” in clause (g) – renumbered to clause (b) in the updated rules – has been given greater clarity to remove the potential for this clause to be abused.
16. Finally, a clause is added to paragraph 4.6 to cover residential and nursing care situations in which the Council has a legal duty to ensure certain services are provided. In practice, in these cases, the Council is 100% dominant in the relevant markets, making a competitive procurement process redundant. The wording of this new clause is in keeping with the practice of many other English local authorities, and has been approved by Legal and Democratic Services.

### **Risk Assessment (Rule 7)**

17. An amendment to the wording of this rule clarifies that where a risk assessment is to be carried out, this should be led by the Service area in question. In practice it has in some cases been assumed that the Procurement Officer will carry out the risk assessment - which can cause problems when the Procurement Officer is largely facilitating the tendering process and may not be an expert on the subject matter of the contract, making them poorly placed to assess the risks involved, which may be highly technical in nature. The additional wording resolves this confusion.

### **Advertising (Rule 7 currently – proposed for deletion)**

18. This section is proposed for deletion as it duplicates the content covering competition requirements and advertising in Rule 9 and is therefore not required.

### **Competition Requirements (Rule 9)**

19. As explained in 12 above, it is proposed to delete several of the criteria for seeking a Variation to the CPRs, on the basis that either a Negotiated Procedure (above OJEU), or a negotiation process based on a Negotiated Procedure (below OJEU) can be used instead, therefore offering greater compliance with EU and UK procurement regulations.

### **Evaluation (Rule 11)**

20. During the review consultation, it was suggested that the section on “Evaluation” should be expanded to include the forming of an evaluation panel. This has been added as Rule 11.2.

### **Records (Rule 18)**

21. The section on records has been expanded to make clear (Rule 18.3) that a Procurement Acceptance Report must be completed and notifications issued by Procurement before a contract is awarded.
22. An addition (Rule 18.4) has also been made to require the signed contract particulars to be uploaded to the e-tendering system. This is for audit purposes.

## **Internal Providers (Rule 22)**

23. An additional paragraph (Rule 22.2) has been added here to prompt procurers to consult internal providers such as Direct Services before going out to procure a contract for a service which could be met by that internal provider.

## **Other changes**

24. There are a number of other changes in the proposed draft. These are largely minor clarifications to paragraph order, or to wording, such as the change from “Procurement Code of Practice” to “Advice Centre” to reflect the terminology used on the corporate intranet.
25. The full revised draft of the CPRs is attached at Appendix 2 with proposed additions in light shaded text, and proposed deletions struck through.

## **Recommendations and reasons**

26. The proposed update to the Contract Procedure Rules ensures that they will remain fit for purpose for the 2013-14 financial year, addressing a number of issues and underpinning a robust, fair and effective procurement process across the Council.
27. The Council are therefore asked to consider the proposed changes to Contract Procedure Rules, as set out in Appendix 2 and approve these for inclusion in the revised Constitution.

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**Contact: Darren Knowd, Corporate Procurement Manager – Tel 03000 265 416**

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**Appendix 1: Implications**

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**Finance**

The CPRs complement the Financial Procedure Rules and if properly followed help ensure value for money and proper financial control.

**Staffing**

None

**Risk**

None

**Equality and Diversity / Public Sector Equality Duty**

None

**Accommodation**

None

**Crime and disorder**

None

**Human rights**

None

**Consultation**

None

**Procurement**

The proposed updates are intended to ensure the Council's procurement procedures remain up to date and fit for purpose.

**Disability Issues**

None

**Legal Implications**

The proposed updates ensure that the Council's procurement procedures are in line with the latest legal position.

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## APPENDIX 2

# Contract Procedure Rules

## 1. INTRODUCTION

### 1.1 What are Contract Procedure Rules?

1.1.1 The Contract Procedure Rules (CPRs) provide the framework for procurement activity across the Council, setting out how contracts for goods, works, services and utilities should be put in place and managed, and detailing the record keeping and reporting requirements related to procurement activity. They apply to all Service Groupings across the Council.

1.1.2 To avoid the need for regular amendment due to changes in post titles generic terms are included for officers as follows:

- The term “Chief Officers” refers to the Council’s Chief Executive, the Corporate Directors and the Assistant Chief Executive.
- The term “Procurement Officer” refers to any officer of the Council responsible for carrying out a procurement exercise – not just to officers with “Procurement Officer” as their job title. Any Council officer undertaking a procurement exercise is a “Procurement Officer” for the purposes of these rules.
- In addition to the above definitions, the general term “officer” refers to any employee of the Council.

1.1.3 The Contract Procedure Rules should not be seen in isolation, but rather as part of the overall regulatory framework of the Council as set out in this Constitution.

1.1.4 The content of these CPRs is supported by additional guidance and documentation contained in the Advice Centre within the “Procurement and Purchasing” section of the Council intranet.

## 2. BASIC PRINCIPLES

2.1 All procurement procedures must:

- realise value for money by achieving the optimum combination of whole life costs, and quality of outcome,
- be consistent with the highest standards of integrity,
- operate in a transparent manner,
- ensure fairness in allocating public contracts,

- comply with all legal requirements including European Union (EU) treaty principles,
- support all relevant Council priorities and policies, including the Medium Term Financial Plan, and:
- comply with the Council's Corporate Strategy for Commissioning and Procurement, and the Sustainable Commissioning and Procurement Policy, and Procurement Code of Practice.

2.2 These Rules shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise.

### 3. OFFICER RESPONSIBILITIES

#### 3.1 Officers

3.1.1 Officers will comply with these Contract Procedure Rules (CPRs), the Council's Constitution and with all UK and EU legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

3.1.2 Officers will:

- have regard to the guidance in the ~~Procurement Code of Practice (PCoP)~~ [Advice Centre](#),
- keep the records required by Rule 18 of these CPRs,
- take all necessary procurement, legal, financial and professional advice, taking into account the requirements of these CPRs,
- prior to letting a contract on behalf of the Council, check whether:
  - the Council already has an appropriate contract in place in the Corporate Contracts Register, or:
  - an appropriate national, regional or other collaborative contract is already in place.

Where the Council already has an appropriate contract in place, then this must be used unless it can be established that the contract does not fully meet the Council's specific requirements in this particular case, and this is agreed following consultation with Corporate Procurement.

Where an appropriate national, regional or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money.

- ensure that when any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise.

3.1.3 Failure to comply with any of the provisions of these CPRs the Council's Constitution or UK or EU legal requirements may be brought to the attention of the Monitoring Officer, Head of Internal Audit, or relevant Corporate Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

## 3.2 Chief Officers

3.2.1 Chief Officers will:

- ensure their Service Grouping complies fully with the requirements of these CPRs,
- ensure contracts are recorded in the Corporate Contracts Register as held and maintained by Corporate Procurement, through the use of the Procurement Acceptance Report as detailed in Rule 18.
- ensure that their Service Grouping provides the requisite information to allow the Council to maintain the Procurement Work Programme, including the submission of a Procurement Initial Request Form at as early a stage as possible.

Copies of the Procurement Acceptance Report and Procurement Initial Request Form are available from the Advice Centre.

## 4. VARIATIONS AND EXEMPTIONS

4.1 Except where the Public Contracts Regulations (2006) apply, the Executive has the power to waive any requirements within these CPRs for specific projects.

4.2 Additionally, and where proceeding under a Variation does not breach the Public Contracts Regulations (2006), these Rules may be waived or varied where the circumstances are certified by the Corporate Director, Resources (advised as appropriate by the Corporate Procurement Manager) as meeting any of the following criteria:

~~(a) for works, supplies or services which are either patented or of such special character that it is not possible to obtain competitive prices;~~

~~(b) for supplies purchased or sold in a public market or auction;~~

~~(c) for the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills;~~

~~(d) with an organisation which has won a contract for an earlier phase of work via a competitive process and where the work forms part of a serial programme and has previously been identified as such;~~

(a) ~~(e)~~ with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement, without exposing the Council to unacceptable risk;

~~(f) for works, supplies or services which are only available from one organisation;~~

(b) ~~(g)~~ involving **such** cases of **genuine, unforeseen** urgency, ~~that where~~ it is not possible to comply with the CPRs;

(c) ~~(h)~~ for the purchase of a work of art or museum specimen, ~~or~~ to meet the specific requirements of an ~~arts or artistic~~, cultural, **or performing arts** event, **or otherwise for the protection of exclusive rights** which cannot be procured competitively due to the nature of the requirement;

(d) ~~(i)~~ in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this; or

(e) where relevant UK or EU legislation not otherwise referred to in these CPRs prevents the usual procurement process from being followed.

4.3 The appropriate Officer ~~will~~ **must** complete and submit a Variation form, as contained within the **PCeP Advice Centre**, for approval by the Corporate Director, Resources.

4.4 Every Variation form will be recorded on a master register to be maintained by Corporate Procurement.

4.5 Where a Variation is being applied for by Corporate Procurement, it must also be scrutinised by Internal Audit, to ensure the robustness of the procedure.

4.6 These CPRs do not apply to contracts:

- for the execution of mandatory works by statutory undertakers;
- with Ofsted for the inspection of a school;
- which have been procured on the Council's behalf:
  - through collaboration with other local authorities or other public bodies, where a competitive process which complies with the CPRs of the leading organisation has been carried out;

- by a National or Regional contracting authority where the process followed is in line with the Public Contracts Regulations (2006) (e.g. the North Eastern Purchasing-Procurement Organisation, Yorkshire Purchasing another Pro5 Organisation, or Government Procurement Service Buying Solutions); or:
- under the terms of a Strategic Partnership arrangement approved by the Executive.
- to cover urgent special educational needs, urgent social care contracts or urgent operational needs, if in the opinion of the relevant Corporate Director it is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this exemption by the relevant Corporate Director must be followed up with ~~a written report under Rule 3.2 using the Variation form, setting out the reason for such urgency, how it complies with relevant legislation and represents value for money: a Procurement Acceptance Report as detailed in Rule 18.~~
- to cover residential and nursing care which the Council has a duty to provide under S21 and S29(4) National Assistance Act 1948, S117 Mental Health Act 1983, S17 Children Act 1989 and S2 Local Government Act 2000, if in the opinion of the appropriate Corporate Director, it is considered to be in the Council's interests and demonstrates value for money.

4.7 The use of e-procurement does not negate the requirement to comply with all elements of these CPRs. The circumstances under which an exemption to the use of e-procurement can be requested are detailed in Rule 12.

## 5. RELEVANT CONTRACTS

5.1 All Relevant Contracts must comply with these CPRs. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, supplies or services. These include arrangements for:

- the supply or disposal of goods,
- the hire, rental or lease of goods or equipment,
- the delivery of services, including (but not limited to) those related to:
  - the recruitment of staff
  - land and property transactions
  - financial and consultancy services.

5.2 Relevant Contracts do not include:

- contracts of employment which make an individual a direct employee of the authority,

- agreements regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply), or:
- the payment of grants to third parties.

**NB** While grants are not covered by these CPRs, there are rules on the awarding of grants which do need to be observed. The Council cannot simply choose to treat a procurement as a grant in order to avoid conducting a competitive process. Officers should follow any guidance contained in the [PCoP Advice Centre](#).

## **7. RISK ASSESSMENT**

- 7.1 All procurements via Invitation to Tender, and Requests for Quotation where appropriate, must be supported by a risk assessment. This risk assessment must be carried out [by the Service Area requesting the procurement](#), at the start of the procurement process.
- 7.2 The risk assessment process will identify where further specialist advice should be sought.
- 7.3 Full details of the process to be followed, including the approved risk log and matrix, are available in the [PCoP Advice Centre](#).

## ~~7. ADVERTISING~~

~~The Procurement Officer will ensure that the minimum advertising requirements, in line with EU treaty principles and as outlined in the [PCoP Advice Centre](#), are met.~~

## **8. APPROVED LISTS AND FRAMEWORK AGREEMENTS**

### **8.1 Approved Lists**

- 8.1.1 Approved lists must not be used where they are prohibited under the Public Contracts Regulations (2006).
- 8.1.2 Approved lists should only be used in accordance with the guidance contained in the [PCoP Advice Centre](#).

### **8.2 Framework Agreements**

- 8.2.1 Framework Agreements are agreements between the Council and one, or three or more suppliers for the provision of goods, works or services on agreed terms for a specific period, for estimated quantities against which orders may be placed if and when required during the contract period.
- 8.2.2 The term of a Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

8.2.3 Where Frameworks are awarded to several organisations, contracts based on Framework Agreements may be awarded in one of two ways, as follows:

- where the terms of the agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the Framework Agreement without re-opening competition, or
- where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off, by holding a further competition in accordance with the following procedure:
  - inviting the organisations within the Framework Agreement, that are capable of executing the subject of the contract, to submit bids electronically via the Further Competition step on the e-tendering system, with an appropriate time limit for responses, taking into account factors such as the complexity of the subject of the contract,
  - awarding each contract to the bidding organisation who has submitted the best bid on the basis of the relevant Award Criteria set out in the Framework Agreement.

## 9. COMPETITION REQUIREMENTS ~~/ASSETS FOR DISPOSAL~~

### 9.1 Competition Requirements

9.1.1 The Procurement Officer must establish the total value of the procurement including whole life costs and incorporating any potential extension periods which may be awarded.

9.1.2 Based on this value, quotations or tenders must then be invited, [and appropriately advertised](#), in line with the financial thresholds detailed in the [PCoP Advice Centre](#).

9.1.3 Where the Public Contracts Regulations (2006) apply ([ie for any contracts likely to exceed the relevant OJEU threshold](#)), the Procurement Officer shall consult Corporate Procurement to determine the procedure for conducting the procurement exercise.

### 9.2 Negotiation with a Single Supplier (below OJEU)

9.2.1 In exceptional circumstances, a contract which will not exceed the relevant OJEU threshold may be awarded without a competitive procurement, via direct negotiation with a single supplier, following a similar process to the EU Negotiated Procedure.

9.2.2 Such an award may only be made in the following circumstances:

- (a) for the purchase of goods which are patented or have such special technical characteristics that they may be considered unique, and where these goods are only available from one supplier.

(Note that the presence of a patent alone does not permit the use of this procedure – many patented products are available from more than one supplier);

(b) for the execution of works or services involving unique, highly specialist knowledge or skills and where it can be demonstrated that only one organisation possesses the required knowledge or skills.

**NB** Note that when using Rule 9.2 above, no contract may be entered into until the relevant notification has been issued by Corporate Procurement, as set out in Rule 18.3.

## ~~9.2 Assets for Disposal~~

~~9.2.1 Assets for disposal must be dealt with in accordance with the Council's Financial Procedure Rules.~~

## **10. PRE-TENDER MARKET TESTING AND CONSULTATION**

10.1 The Council may consult potential suppliers, prior to the issue of the Invitation to Tender or Request for Quotation, in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential organisation,

10.2 When engaging with potential suppliers, the Council must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, and where this may prejudice the equal treatment of all potential bidding organisations or distort competition,

10.3 In undertaking any market testing activities, the Officer responsible should refer to any guidance contained in the [PCoP Advice Centre](#).

## **11. EVALUATION CRITERIA AND STANDARDS**

### **11.1 Evaluation Criteria**

11.1.1 In any procurement exercise the successful bid should be the one which either:

- offers the lowest price, or:
- offers the most economically advantageous balance between quality and price.

In the latter case, the Council will use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost

effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion.

11.1.2 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include, for example sustainability considerations, support for the local economy, or the use of sub-contractors. The bidding organisations' approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.

11.1.3 These criteria should be assessed through either:

- Essential Criteria – assessed on a pass / fail basis, or:
- Technical Questions – assessed on a scored basis.

11.1.3 The procurement documentation should clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

## 11.2 Evaluation Panel

11.2.1 The Procurement Officer should establish an evaluation panel for the assessment of any Technical Questions at shortlisting and/or Invitation To Tender stages. Each element of the evaluation may have its own panel, provided that all of the responses to each Technical Question are evaluated by the same panel members.

11.2.2 The panel should have at least two members.

## 11.2 Standards

11.2.1 Relevant British, EU and International standards which apply to the subject matter of the contract and which are necessary to properly describe the required quality must be included with the contract.

Officers should refer to any further guidance outlined in the [PCoP Advice Centre](#).

## 12. INVITATION TO TENDER / REQUEST FOR QUOTATION

12.1 Invitations to Tender, Requests for Quotation and Quick Quotes must be issued in accordance with the requirements of these CPRs, with particular attention to Rule 7, Rule 9 and Rule 17.

12.2 Above the single quotation threshold outlined in the [PCoP Advice Centre](#), all Invitations to Tender, ~~and~~ Requests for Quotation and Quick Quotes must be

issued via the Council's e-tendering system. Procurement documents must be issued via the e-tendering system.

- 12.3 In exceptional cases, where specific circumstances mean that a procurement process cannot be carried out electronically or, for example, where there is a failure of the electronic system, permission to conduct a procurement process by alternative means must be obtained from the Corporate Procurement Manager using the relevant exemption form. This can be found in the [PCoP Advice Centre](#).

## 13. SHORTLISTING

Any shortlisting (i.e. ~~supplier selection or~~ Pre-Qualification [Questionnaire \(PQQ\)](#)) must have regard to the economic, financial and technical standards relevant to the contract and the Evaluation Criteria. Special rules apply to contracts covered by the Public Contracts Regulations (2006). Officers should refer to any further guidance contained in the [PCoP Advice Centre](#).

## 14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

### 14.1 Tenders

- 14.1.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements. Where the Public Contract Regulations (2006 [and 2009](#)) apply, Part 3 of the Regulations lays down specific minimum time periods for tenders.

- 14.1.2 As in Rule 12 (above) tenders, except those which have been approved as exempt from electronic tendering, must be submitted electronically via the e-tendering system. Tenders submitted by any other means must not be accepted.

### 14.2 Quotations

- 14.2.1 As in Rule 12 (above), ~~competitive quotations~~ [responses to Requests for Quotation and Quick Quotes](#) must be submitted electronically via the e-tendering system, except where specifically exempt under Rule 12.3. Quotations submitted by any other means must not be accepted.

### 14.3 Electronic Arrangements

- 14.3.1 Quotations, Further Competition bids and Pre-Qualification Questionnaires which are received electronically via the e-tendering system will be opened by the Procurement Officer. The system will not allow any quotations to be opened until the allocated return date / time has passed.

- 14.3.2 Tenders which are received electronically via the e-tendering system will be opened by a representative from Legal & Democratic Services.

## **14.4 Hard Copy Arrangements**

- 14.4.1 In the event that 'hard copy' tenders are to be accepted (see Rule 12 and Rule 14.1.2 of these CPRs for guidance) these must be submitted, sealed, in the envelope provided with the procurement documents and addressed to the Head of Legal & Democratic Services without any mark revealing the bidding organisation's identity.
- 14.4.2 All hard copy tenders will be held by the Head of Legal & Democratic Services until the tender opening date/time has been reached.
- 14.4.3 All hard copy tenders for the same contract will be opened at the same time by a representative of the Chief Officer who invited the tenders and a representative from Legal & Democratic Services. A register of tenders received will be kept by Legal & Democratic Services and will be initialled on each occasion by the officers who are present at the opening of the tenders.
- 14.4.4 In the event that hard copy quotations are to be accepted (see Rule 12 and Rule 14.2.1 of these CPRs for guidance) these must be submitted in a plain envelope marked 'Quotation for....' followed by a description of the goods, works or services being procured.
- 14.4.5 Hard copy quotations will be received directly by Service staff. All quotations must be opened together once the official return date / time has been passed.

## **15. CLARIFICATION PROCEDURES**

- 15.1 The Council can ask bidding organisations for clarification of any details submitted as part of their bid. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission.
- 15.2 When requesting clarification, the Procurement Officer must follow any guidance contained in the [PCoP Advice Centre](#).

## **16. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS**

### **16.1 Evaluation**

- 16.1.2 The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to bidding organisations, and in line with any guidance detailed in the [PCoP Advice Centre](#).

### **16.2 Award of Contract**

- 16.2.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.

16.2.2 Where procurement has been subject to the Public Contract Regulations (2006 and 2009), the Alcatel Standstill (a 10 day standstill period before a contract can be awarded to allow an unsuccessful bidding organisation an opportunity to challenge the proposed contract award) will need to be included in the procurement timetable before the contract can be awarded. Full information regarding the Alcatel Standstill is contained within the [PCoP Advice Centre](#).

16.2.3 Decisions on award of contract must be made in accordance with the scheme of delegations in Part 3 of the Constitution.

### **16.3 Debriefing**

16.3.1 The debriefing of organisations must be carried out in line with any guidance detailed in the [PCoP Advice Centre](#).

## **17. CONTRACT DOCUMENTS**

### **17.1 Format of Contract Documents**

17.1.1 The Council's harmonised procurement documents or conditions issued by a relevant professional body will be used. Where there is any deviation from these, the documents to be used must be reviewed by Legal Services before being issued. These are available from Corporate Procurement or Service Area procurement staff detailed in the [PCoP Advice Centre](#).

### **17.2 Contract Signature**

17.2.1 Contract agreement must:

(a) Where the contract is in the form of a deed, be made under the Council's seal and attested as required by the Constitution, or:

(b) Where the contract is in the form of an agreement, either:

I. be signed by at least two officers of the Council authorised as required by the Constitution, or:

II. be formalised by the sending of an award letter **and** the subsequent issuing of a purchase order.

The Procurement Officer should also follow any guidance on the use of deeds and agreements to form contracts found in the [PCoP Advice Centre](#).

### **17.3 Legal Services Review of Tenders and Contracts**

17.3.1 To ensure the integrity of the procurement process:

- All proposed Invitations to Tender, [Requests for Quotation or Quick Quote](#) where they are not in compliance with the County Council's harmonised

contract documentation or standard terms and conditions issued by a relevant professional body, will be reviewed by Legal Services.

- Any proposed Invitations to Tender which are subject to the Public Contracts Regulations (2006), or which are deemed to be of high risk, must be reviewed by Legal Services.
- Any proposed contract where there is any deviation from the contract terms included in the invitation to tender must be reviewed by Legal Services.

## 18. RECORDS

18.1 The Public Contracts Regulations (2006) require contracting authorities to maintain the following comprehensive records of procurement activities:

- contract details including value
- selection decision
- justification for use of the selected procedure
- names of bidding organisations, both successful and unsuccessful
- reasons for selection
- reasons for abandoning a procedure

18.2 Prior to the contract being formally awarded, and prior to any bidding organisation(s) being notified, the **outcome** result of any competitive procurement process must be recorded in a Procurement Acceptance Report and submitted to Corporate Procurement. Corporate Procurement will maintain a register of all Procurement Acceptance Reports. Information from Procurement Acceptance Reports will also be used for the tracking of procurement savings, sustainability benefits, and other data.

18.3 Following receipt of the correctly completed Procurement Acceptance Report, Corporate Procurement will issue a notification to the Procurement Officer, and other relevant officers. Only once this notification has been issued should the contract be formally awarded.

18.4 Following the signature of the contract documents, the Procurement Officer shall ensure a copy of the signed contract particulars is retained on the electronic tendering system for future reference and audit purposes.

Additional records management advice is contained in the **PCoP Advice Centre**.

## 19. PREVENTION OF CORRUPTION

Rules and regulations pertaining to the prevention of corruption are outlined in the Council's Financial Procedure Rules and must be adhered to.

## 20. DECLARATION OF INTERESTS

Rules and regulations pertaining to the Declaration of Interests are outlined in the Code of Conduct for Employees within the Constitution and must be adhered to.

## 21. CONTRACT MANAGEMENT / MONITORING

- 21.1 All contracts must have an appointed Contract Manager for the entirety of the contract. The responsible Head of Service must ensure a Contract Manager is designated prior to award.
- 21.2 Contract management, monitoring, evaluation and review must be conducted in line with any guidance detailed in the [PCoP Advice Centre](#).

## 22. INTERNAL PROVIDERS

- 22.1 Where an in-house [provider Service](#) is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the in-house provider [Service](#) and external bidding organisations.
- 22.2 [Where it is proposed that a procurement process be undertaken for goods, services or works which could also potentially be delivered by an in-house provider, the commissioning Service Area shall consult with the in-house provider before proceeding issuing any Invitation to Tender, Request for Quotation, or Quick Quote.](#)

## 23. EXTERNAL BODY GRANT FUNDING

- 23.1 Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, the Procurement Officer must ensure that any rules or [grant](#) conditions imposed by the funding body are adhered to, in addition to the requirements of these CPRs.
- 23.2 Where there is any conflict between these CPRs and the rules or conditions imposed by the funding body, the stricter requirement should be followed. [Where there is any doubt over which requirement should be followed, the guidance should be sought from Legal & Democratic Services before proceeding.](#)
- 23.3 [Where a procurement process is funded, in whole or part, by grant funding, a Grant Authorisation Form must be completed as detailed in the \[PCoP Advice Centre\]\(#\).](#)

## 24. REVIEW AND AMENDMENT OF CPRS

These Contract Procedure Rules shall be reviewed and updated on an annual basis as part of the annual review of the Constitution.

## County Council

20 March 2013



**Request for Changes to the Boundary  
between Shincliffe Parish Council and  
Cassop-Cum-Quarrington Parish – Draft  
Terms of Reference**

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**Report of Colette Longbottom, Head of Legal and Democratic  
Services**

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**Purpose of the Report**

1. The Council is asked to agree to the terms of reference to further the request from Shincliffe and Cassop-Cum-Quarrington Parish Councils for the proposal to transfer the area of the former Cape Asbestos Site at Bowburn from Shincliffe Parish to Cassop-cum-Quarrington Parish. The report was considered by the Constitution Working Group on 4 March 2013, and is recommended to Council for approval.

**Background**

2. The Constitution Working Group originally considered the request in December 2012 when Officers were requested to complete the review in time for the May Election.
3. Further advice was sought from the Local Government Boundary Commission for England who advised as follows:
  - All residents of the affected area (Bell Ward) be consulted;
  - Details should be provided to the parishes and the residents of the affected area what the proposal would mean in terms of changes to precept;
  - Consideration should be given to the affect the movement of electors from one parish to another would have on Council size;
  - The consultation should be staged over 3-4 months.
4. It was not therefore possible to complete the review in time for the election, and the Constitution Working Group considered further the request on 4 March 2013 and agreed to recommend to Council a proposed timetable and terms of reference to take the matter forward into the next municipal year.

**Terms of reference**

5. A set of draft terms of reference are attached for consideration.

**Consultation**

6. The consultation process is set out in the terms of reference.

## Timetable for the review

<b>Action</b>	<b>Dates</b>
Agree and Publish Terms of Reference and Consultation	March 2013
Consultation on Draft Proposals	7 May – 6 August
Closing Date for Consultations	6 August 2013
Analysis/Evaluation of Responses and Preparation of Final Proposals	August 2013
Council – Final Recommendations	18 September 2013
Publication of Final Recommendations	September 2013
Preparation and Publication of any Reorganisation Order	October 2013

## Recommendations

7. The Council is asked to agree the Terms of Reference for the review.

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**Contact: Sharon Spence**

**Tel: 03000 269 731**

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## **Appendix 1: Implications**

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**Finance** - The main costs will be in respect of the necessary consultation and will be met from the budget identified for community governance reviews.

**Staffing** – The work will impact on staff time.

**Risk** – None specific in this report.

**Equality and Diversity** – None specific in this report.

**Accommodation** – None specific in this report.

**Crime and Disorder** – None specific in this report.

**Human Rights** – None specific in this report.

**Consultation** – Within the body of the report.

**Procurement** – None specific within this report.

**Disability Discrimination Act** – None specific within this report.

**Legal Implications** – The review will be undertaken in line with current legislation and Regulations.

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## **Appendix 2: TERMS OF REFERENCE**

### **SHINCLIFFE AND CASSOP-CUM-QUARRINGTON PARISH COUNCILS - COMMUNITY GOVERNANCE REVIEW**

#### **TERMS OF REFERENCE**

##### **Introduction**

On 20 March 2013, Durham County Council resolved to undertake a community governance review covering the parished areas of Shincliffe and Cassop-cum-Quarrington.

In undertaking the Review, the Council will be guided by Part 4 of the Local Government and Public Involvement in Health Act 2007, the relevant parts of the Local Government Act 1972, Guidance on Community Governance Reviews issued in accordance with section 100(4) of the Local Government and Public Involvement in Health Act 2007 by the Department of Communities and Local Government and the Local Government Boundary Commission for England in March 2010, and the following regulations which guide, in particular, consequential matters arising from the Review: Local Government (Parishes and Parish Councils) (England) Regulations 2008 (SI2008/625); Local Government Finance (New Parishes) Regulations 2008 (SI2008/626). (The 2007 Act has transferred powers to the principal councils which previously, under the Local Government Act 1997, had been shared with the Electoral Commission and the Boundary Committee for England).

The County Council has also given due consideration and carefully considered the Guidance on Community Governance Reviews issued by the Secretary of State for Communities and Local Government published in March 2010.

##### **What is a community governance review**

A Community Governance Review is a legal process whereby the Council will consult with electors and other interested parties on the most suitable ways of representing the people in Bell Ward of the Shincliffe Parish Council area.

This means making sure that electors and other interested groups have a say in how local services are delivered in their area. Electors will receive a letter informing them of the proposals and their feedback will be sought.

A community governance review can consider one or more of the following options:

- creating, merging, altering or abolishing parishes;

- the naming of parishes and the style of new parishes and the creation of town councils;
- the electoral arrangements for parishes (for instance, the ordinary year of election; council size; the number of councillors to be elected to the council, and parish warding);
- grouping parishes under a common parish council or de-grouping parishes;
- other types of local arrangements.

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

- will be reflective of the identities and interests of the community in that area;
- consider what community governance arrangement is effective and convenient to the community in that area;
- consider what other arrangements there could be for the purpose of community governance or engagement;
- consider the size, population and boundaries of the local community or parish.

### **Why is the council undertaking the review**

An Electoral Review of Durham County Council was carried out by the Local Government Boundary Commission for England (LGBCE), between 2008 and 2011. The final recommendations for the review were published in November 2011 and, following scrutiny by Parliament, a final order was made on 30 May 2012.

As part of the electoral review, the LGBCE were required to have regard to the statutory criteria set out in Schedule 2 to the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act).

The Schedule provides that if a parish is to be divided between different divisions or wards it must also be divided into parish wards, so that each parish ward lies wholly within a single Electoral Division.

The LGBCE were unable to recommend changes to the external boundaries of parishes as part of an electoral review but had jurisdiction to make changes to parish electoral arrangements arising out of a direct consequence of their recommendations. To ensure that they met their obligations under the Act, the LGBCE proposed consequential parish warding arrangements for a number of the parishes, including Shincliffe. They recommended that Shincliffe Parish Council should comprise seven councillors, as at present, representing two parish wards: Shincliffe parish ward (returning six parish councillors) and Bell parish ward (returning one parish councillor).

The proposed parish ward takes in the area of the Cape site, an area which currently consists of around 110 properties. There are currently 148 electors resident on this site and the County Council expects the development to

progress at a rate of 25-30 dwellings per annum. By 2016 there is expected to be around 160-200 homes, and some 250+ electors with no planned development expected to take place beyond the boundary of the Cape Site.

Local evidence has been provided, and is supported by both parishes suggesting that residents living in these properties along with future residents moving into the area will look to the village of Bowburn for their immediate local services (doctors, leisure, social activities and shopping). Bowburn sits within the parish boundary of Cassop-Cum-Quarrington.

Indeed, the recommendations of the LGBCE stated that they were persuaded that *“the development of the Cape Site would be an integral part of Bowburn village and adopted the Council’s proposed amendment to include the area within the revised Coxhoe Electoral Division as opposed to the Durham South Electoral Division”*.

Should the request be granted, it would mean that a small number of electors (somewhere between 148-250 electors) moving between the two parishes. It is suggested that the current boundary and warding arrangements provide a good basis for future administration of both parish councils.

This review will consider whether:

- the area referred to as the Bell Ward of Shincliffe Parish Council should remain in the current parish or be transferred to Cassop-Cum-Quarrington parish;
- and, if the request is granted to review the Council size of both parishes to ensure that it accords with relevant legislation.

### **Who is undertaking the review**

Durham County Council is responsible for undertaking any review within its electoral area. The full Council is responsible for agreeing the terms of reference for the review and agreeing the draft and final recommendations prior to any Community Governance Order being made.

The County Council has delegated a number of functions to a working group which will oversee the review process, propose terms of reference, initial options for consideration and produce recommendations for consideration by the full Council.

### **Consultation**

The Council has drawn up and now publishes these Terms of Reference. This document sets out the aims of the review, the legislation that guides it and some of the policies the Council considers important in the review. In coming to its recommendations in a review, the Council needs to take account of the view of the local people.

The Council recognises that the development of strong, sustainable communities depends on residents' active participation in decision making and making a positive contribution to improving the place where they live. The Council is therefore committed to engaging effectively with the diverse communities it serves and to enabling local people to participate meaningfully in decisions that affect their lives, where all people feel able to take an active part in influencing service delivery.

The Council intends to undertake consultation with electors in the affected Parish Ward (Bell Parish Ward) and other stakeholders in the area, including any community associations, local county councillors, Member of Parliament, residents associations, voluntary groups and societies, the local area action partnership and the County Durham Association of Local Council's.

The Council will also be pleased to receive comments from any other person or body that wishes to make representation during the review.

The Council intends to clearly publish all decisions taken during the review, give reasons for taking such decisions and conduct the process transparently so that local people and local stakeholders who may have an interest are made aware of the outcome of the decisions taken on them and the reason.

Representations should be sent via FREEPOST to:

**Freepost RSSZ-SYUS-ERXZ**

Democratic Services  
 Room 1/142  
 Durham County Council  
 County Hall  
 DURHAM  
 DH1 5UL

or alternatively, written representation can be submitted by email to [democraticservices@durham.gov.uk](mailto:democraticservices@durham.gov.uk)

**Timetable for the review**

<b>Action</b>	<b>Dates</b>
Agree and Publish Terms of Reference and Consultation	March 2013
Consultation on Draft Proposals	7 May – 6 August
Closing Date for Consultations	6 August 2013
Analysis/Evaluation of Responses and Preparation of Final Proposals	August 2013
Council – Final Recommendations	18 September 2013
Publication of Final	September 2013

Recommendations	
Preparation and Publication of any Reorganisation Order	October 2013

### **Order and commencement**

The Review will be completed when the Council publishes its final recommendations. The revised electoral arrangements for the existing parish councils will come into force at x.

### **Publication of terms of reference**

These Terms of Reference will be published on the Durham County Council website [www.durham.gov.uk/communitygovernance](http://www.durham.gov.uk/communitygovernance) and are available for inspection at the offices of the Council.

### **Date of publication**

20 March 2013.

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**County Council**

**20 March 2013**

**Co-opted Members to the Audit Committee**



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**Report of Edward Bell, Chairman of Audit Committee  
Don McLure, Corporate Director Resources**

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**Purpose of the Report**

1. This report seeks Council approval on the appointment of two co-opted Members to the Audit Committee.

**Background**

2. On 10 December 2007 the Audit Committee agreed to appoint two co-opted non-voting members to the Audit Committee for a three year fixed contract. The co-options accorded with CIPFA's "Audit Committees: practical guidance for local authorities".
3. Following an advert in the press inviting applications, prospective candidates were interviewed, and two co-opted Members were appointed.
4. Their appointments were due to expire on 28 February 2011, and the Audit Committee agreed on 6 January 2011 to make recommendations to Council to re-appoint the two existing co-opted members until May 2013. The Council agreed to the committee's recommendation.
5. The contracts of the two co-opted members are due to expire on 30 April 2013, and it is for the Council to determine whether to extend the fixed term contracts further, and if so for how long, or whether to place an advert in the local press and seek new applications. There is nothing in the Council's guidance to indicate that existing members could not be re-appointed.
6. The Audit Committee met on 21 February 2013, and agreed to recommend that Council extend the fixed term contracts for two co-opted members for a three year period, and following that period no further extension to contracts should be agreed; when a process of seeking two new co-opted members would be undertaken.
7. If the Council was minded to seek new applications it is suggested that an advert be placed in the local press, and that the Chairman and Vice-Chairman of the Audit Committee be authorised to draw up a short-list

in consultation with the Corporate Director, Resources, the Head of Internal Audit, and Head of Legal and Democratic Services; with selected applicants to be interviewed by the Audit Committee.

**Recommendation**

8. The Council either:-

(i) In line with the Audit Committee's recommendation, to extend the appointment of the two current co-opted members for a three year period from 1 May 2013, and following that period the process of seeking two new co-opted members would be undertaken.

Or:-

(ii) Agree to make two new appointments, advertise the posts, and delegate the appointments to the Audit Committee

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**Contact: Ros Layfield                      Tel: 03000 269 708**

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## **Appendix 1: Implications**

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### **Finance-**

Travelling and subsistence costs of the successful applicants in attending meetings/ training events of the Audit Committee, plus advertising and printing costs can be met from within existing budgets.

### **Staffing-**

None

### **Risk-**

None

### **Equality and Diversity/ Public Sector Equality Duty-**

A recruitment process would be carried out in accordance with the Council's recruitment procedure.

### **Accommodation-**

None

### **Crime and disorder-**

None

### **Human rights-**

None

### **Risk-**

None

### **Consultation- Risk-**

None

### **Procurement- Risk-**

None

### **Disability Issues-**

A recruitment process would be carried out in accordance with the Council's recruitment procedure.

### **Legal Implications-**

None

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**County Council**

**20 March 2013**



**Central Durham Crematorium  
Joint Committee – Changes to  
Constitution/Terms of Reference**

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**Report of Colette Longbottom, Head of Legal and Democratic  
Services**

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**Purpose of the Report**

- 1 The Council is asked to update/amend the Constitution of the Central Durham Crematorium Joint Committee. The report was considered by the Constitution Working Group on 4 March 2013, and is recommended to Council for approval.

**Background**

- 2 The Constitution of the Central Durham Crematorium Joint Committee was last reviewed and amended on 3 May 1983 to reflect the constituent authorities of the City of Durham Council and Spennymoor Town Council.
- 3 More recently, with effect from 1 April 2009, Local Government Re-organisation in County Durham transferred the responsibilities of City of Durham Council to Durham County Council.
- 4 Following audit reviews of the Joint Committee it was recommended that the Joint Committee undertake a review and update of its terms of reference.

**The Constitution**

- 5 The Constitution of the Central Durham Crematorium Joint Committee has been reviewed and brought up to date. The updated constitution fully reflects the revised constituent authority legal titles; expenditure and subsequent surplus distribution arrangements on an 80/20 basis; along with the policies regarding retained surplus transfer to reserves.
- 6 Members will note that the constituent authority membership appointments and asset ownership remains as per the original constitution. The Central Durham Crematorium will continue to operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council, who will continue to be responsible for the management of the facility and for supporting the Joint Committee.

### **Consideration**

- 7 The Joint Committee has considered the draft document and the suggested amendments from Spennymoor Town Council. Agreement on the wording of the draft document has been reached.
- 8 The updated constitution is attached at Appendix 2. For Members' information, a copy of the original Constitution (dated 3 May 1983) is attached at Appendix 3.

### **Recommendations and Reasons**

- 9 The proposals update the terms of reference of the Central Durham Crematorium Joint Committee and reflects the transferred responsibilities of City of Durham Council to Durham County Council.
- 10 The Council is asked to adopt the revised Constitution as presented.

### **Background papers**

- 11 Agreement dated 1983

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## **Appendix 1: Implications**

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**Finance:** The Constituent Authority income sharing (unchanged) and reserves protocols (in line with the strategy adopted in recent years) are disclosed within the revised constitution detailed within Appendix 2.

**Staffing:** There are no staffing implications associated with this report.

**Risk:** There are no risk implications associated with this report

**Equality and Diversity/Public Sector Duty:** There are no Equality and Diversity implications associated with this report.

**Accommodation:** The Constituent Authority asset ownership (unchanged) is highlighted within the revised constitution detailed within Appendix 2.

**Crime and Disorder:** There are no Crime and Disorder implications associated with this report.

**Human Rights:** There are no Human Rights implications associated with this report

**Consultation:** Legal officers of Spennymoor Town Council were provided with a copy of the constitution and given opportunity to comment / raise any detailed questions/ request amendments on its content in advance of circulation to members of the Central Durham Crematorium Joint Committee. Spennymoor Town Council have considered the document and submitted their comments.

**Procurement:** None specific within this report

**Disability Discrimination Act:** None specific within this report.

**Legal Implications:** The constitution has been updated by Legal services, Durham County Council, in line with relevant legislative requirements and taking into account the current constitution terms of reference, which remains substantially unchanged.



**Dated**

**2013**

**CENTRAL DURHAM  
CREMATORIUM JOINT COMMITTEE**

**AGREEMENT**

**for the constitution of the above named Joint Committee**

**Colette Longbottom  
Head of Legal and Democratic Services**

D1330/CDCJC Agreement



## **A G R E E M E N T**

**MEMORANDUM OF AGREEMENT** made the                      day of  
Two Thousand and Thirteen **BETWEEN THE COUNTY COUNCIL OF  
DURHAM** (hereinafter referred to as “the Durham County Council”) of the one  
part and **THE TOWN COUNCIL OF SPENNYMOOR** (hereinafter referred to as  
“the Town Council of Spennymoor”) of the other part.

### **WHEREAS:**

- (1) The Councils being parties hereto may by Section 4 of the Cremation Act 1902 as amended by the Cremation Act 1952 respectively provide and maintain crematoria.
- (2) The Authorities to this Agreement have by their respective Councils (Durham County Council and Spennymoor Town Council) and by virtue of Section 102(1) of the Local Government Act 1972, the Local Government Act 2000 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the Local Authorities and all and every power enabling them agreed and resolved to constitute a joint committee to exercise the powers which each of the Authorities hereto might respectively have exercised by virtue of the Cremation Acts 1902 and 1952 for the provision of running, maintenance and management of the existing Crematorium at Durham within the County of Durham.
- (3) The said Authorities now wish to constitute the said Joint Committee on the terms set out below and to the intent that this of Agreement between the said Authorities and dated the third day of May one thousand nine hundred and eighty three shall cease to have effect.
- (4) By Section 103 of the Local Government Act 1972 is it provided that the expenses of a Joint Committee appointed thereunder shall be defrayed by appointing authorities in such proportions as they may agree upon.
- (5) The said Councils have each of them passed a resolution to enter into an Agreement as hereinafter appearing.

### **Interpretation**

- (6) In this Agreement the following expressions have the meanings set out below, unless the contract otherwise requires.

“Authority”, either Durham County Council or Spennymoor Town Council and “Authorities” shall be construed accordingly.

“Annual meeting”, the annual meeting of the Joint Committee held each year in accordance with paragraph 6.1 of this Agreement.

“Chief Executive”, the head of an Authority’s paid service being the person designated as such under Section 4 of the Local Government and Housing Act 1980.

“Clerk”, the person appointed by virtue of paragraph 6.1 to carry out certain duties allocated by this Agreement.

“Council”, the Council of elected members of one or other of the Authorities to this Agreement.

“Crematorium”, the crematorium known as Central Durham Crematorium which includes all buildings, grounds, equipment and other property appurtenant there.

“Financial year”, the period running from 1 April in one calendar year until 31 March in the next calendar year (inclusive).

“Joint Committee”, the Central Durham Crematorium Joint Committee constituted by this Agreement.

“Member”, unless the context otherwise so requires, a member of the Joint Committee.

“Monitoring Officer”, Durham County Council’s Head of Legal and Democratic Services being the person designated under Section 5 of the Local Government and Housing Act 1989 or the Officer’s nominated deputy in the case of absence or illness.

“Ordinary Meeting”, any meeting of the Joint Committee that is not an Annual Meeting or a Special Meeting.

“Principal Office” in the case of Durham County Council, the Council Offices, County Hall, Durham and in the case of Spennymoor Town Council the Town Hall, Spennymoor.

“Special Meeting”, a meeting of the Joint Committee convened in accordance with paragraph of this Agreement.

The Crematorium site is now vested in Durham County Council by virtue of Section 120(4) of the Local Government Act 1972 and all and every power so enabling and registered at HM Land Registry with Title Absolute under Title Number.

## **The Agreement**

**NOW IT IS HEREBY AGREED** by and between the parties hereto in pursuance of the powers conferred upon them by virtue of the hereinbefore recited enactments and of every other power (if any) them respectively hereunto enabling as follows that is to say:-

- 1 There shall be constituted a Joint Committee (hereinafter referred to as the “Joint Committee” of both the Councils being parties hereto (hereinafter collectively referred to as the two Councils) consisting of members appointed under provisions hereof and having the functions, powers and duties upon and subject to the terms and conditions hereinafter mentioned.
- 2 The name of the Joint Committee shall be the Central Durham Crematorium Joint Committee.

### 3 **Membership of Joint Committee**

- 3.1 The Joint Committee shall consist of Members appointed by each of the two Councils from amongst their respective Members in the following manner that is to say:-

<u>Appointing Council</u>	<u>Number of Members to be Appointed</u>
Durham County Council	12
Spennymoor Town Council	3

- 3.2 The whole number of Members of the Joint Committee shall retire on the first Thursday in May 2013 and on the first Thursday in May of every fourth year thereafter.
- 3.3 Each of the two Councils shall in respect of Members to retire on the first Thursday of May 2013 appoint the said Members at the first convenient meeting of such Council held after the execution of this Agreement.
- 3.4 In the year 2013 and every fourth year thereafter being a year in which Members of the Joint Committee shall retire each of the two Councils shall appoint Members of the Joint Committee as herein provided to take office on the first Thursday in May that year.
- 3.5 The two Councils may revoke an appointment of any Member at any time.
- 3.6 If either Authority does not appoint the number of Members which it is entitled to appoint the other Members of the Joint Committee shall be competent to carry out the business pursuant to the Agreement.
- 3.7 Any person who is a member of the Council of both Authorities shall only represent the first Authority to appoint him or her as a Member and any subsequent appointment by the other Authority shall be void.
- 3.8 Without prejudice to the generality of sub-clause 5 of this clause if a Member fails to attend four consecutive meetings of the Joint Committee such fact shall be reported by the Clerk to the Joint Committee to the Council by whom that Member was appointed and the Council may thereupon terminate the Member's term of office notwithstanding any other provision in this Agreement contained and any such termination of appointment shall be reported to the Clerk to the Joint Committee by the Council concerned.
- 3.9 If by reason of the operation of statutory provisions failure to attend meetings as hereinbefore mentioned or otherwise there shall be a vacancy and the Members of the Joint Committee as herein provided the Council out of whose appointment the vacancy occurs may thereupon appoint another Member to fill such vacancy and the person so appointed shall remain a Member of the Joint Committee until and shall retire on the date of the normal retirement under the provisions of this Agreement of the member whose place he or she fills.

#### **4 Powers of the Joint Committee**

The two Councils hereby delegate to the Joint Committee upon and subject to the terms and conditions of this Agreement all powers of the two councils with respect to the provisions and maintenance of crematoria in the area of each of them other than powers of borrowing money, levying or issuing a precept for a rate of holding land and without prejudice to the generality of the foregoing the Joint Committee shall to the exclusion of the two Councils have all the powers of each of the two Councils under the Cremation Act 1902 and 1952 and under any Act of Parliament or statutory instruments with respect to the provision of maintenance of crematoria.

#### **5 Meetings of the Joint Committee**

- 5.1 The Joint Committee shall hold four meetings at least in every year for the transaction of general business and may hold such other meetings including a visit to the Crematorium premises at such intervals as it may find necessary or convenient.
- 5.2 The Joint Committee shall elect annually from amongst its Members a Vice Chairman and shall appoint the outgoing Vice Chairman as Chairman.
- 5.3 The Election of the Chairman and Vice Chairman shall be respectively the first and second business transacted at the first meeting of the Joint Committee after the First June in any year (hereinafter referred to as the Annual Meeting).
- 5.4 So far as it is practicable to do so the Chairmanship and Vice Chairmanship shall alternate each year between a Member of Spennymoor Town Council and a Member of Durham County Council.
- 5.5 The Chairman of the Joint Committee shall, unless he or she resigns or becomes disqualified continue in office until his or her successor becomes entitled to act as Chairman. The Vice Chairman of the Joint Committee shall unless he or she resigns or becomes disqualified hold office immediately after the election of the Chairman of the Joint Committee at the next meeting of the Joint Committee.
- 5.6 If there is equality of votes as the appointment of Chair and Vice Chair then the Chairman for the time being of that meeting shall have a second or casting vote.

#### **6 Notice of Meeting**

- 6.1 The Joint Committee must appoint a Clerk and may appoint and pay such officers and servants as it may deem necessary for the purpose of carrying out its duties under this Agreement.
- 6.2 Sections 114 to 119 of the Local Government Act 1972 shall apply to an officer of the Joint Committee in the same manner as the said sections

apply to an officer of a local authority with such modifications as are necessary to make them applicable to officers of the Joint Committee.

- 6.3 Ordinary meetings and Annual meetings of the Joint Committee shall be convened by the Clerk who shall deliver notice thereof to each Member at least five clear days before the date of the meeting. This notice will give the date, time and place of each meeting and specify the business to be transacted.
- 6.4 With reference to the Notice referred to in paragraph 6.3 the Clerk shall send a copy of the agenda for the meeting which shall include:-
- Provision for the declaration of interests by Members for the purposes of the Code of Conduct issued under Section 50 of the Local Government Act 2000;
  - All items of business which have been, or are deemed to have been, referred to the Joint Committee by a Council resolution of either Authority
  - All reports submitted by any officer of either Authority, and
  - Any items of business directed to be included by the person appointed to preside at the meeting.
- 6.5 The quorum of a meeting will be one quarter of the whole number of Members (4 Members). Provided that there is at least one Member present from each Authority. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date to be 'fixed' by the Chairman'. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.
- 6.6 The Joint Committee and every officer thereof who is by reason of his office entrusted with the custody or control of money shall keep accounts of all money received by the Joint Committee or any such officer and all expenditure thereof by it or him as may be required for the purpose of Part VIII of the Local Government Act 1972 and Part III of the Local Government Finance Act 1982.
- 6.7 No act or proceeding of the Joint Committee shall be questioned on account of any vacancy or on account of any defect in the appointment of any Member.
- 6.8 The Chair and two members of the Joint Committee may at any time by notice specifying the business to be transacted and sent to the Clerk require a Special Meeting of the Joint Committee to be convened and the Clerk shall accordingly convene a special meeting which shall be held within thirty clear days of receipt by the Clerk of the said notice.
- 6.9 The Clerk shall give Members of the Joint Committee at least five clear days notice of the Special Meeting and such notice shall specify the business proposed to be transacted.

- 6.10 No business shall be transacted at a Special Meeting other than that specified in the notice sent to the Clerk and referred to in sub-clause 6.9 above.
- 6.11 No substitute Members may be appointed from either Authority to this Joint Committee.

### **Chair at Meetings**

- 6.12 The Chair or in his absence the Vice Chair shall preside at every meeting provided that if both the Chair and the Vice Chair are absent the Members present shall elect another Member of the Joint Committee who shall preside at that meeting.

### **Voting**

#### **7 Majority**

- 7.1 Unless this Agreement provides otherwise, any matter will be decided by a simply majority of those Members voting and present in the room at the time the question was put.

#### **Chairman's Casting Vote**

- 7.2 If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

#### **Method of Voting**

- 7.3 Unless a recorded vote is demanded under sub-clause 7.4 the Chairman will take the vote by show of hands or if there is no dissent, by the affirmation of the meeting.

#### **Recorded Vote**

- 7.4 If 3 Members present at the meeting demand it the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

#### **8 Minutes**

- 8.1 The Clerk shall be responsible for keeping a record of attendance and a record of the business transacted at every meeting of the Joint Committee and the minute book shall be submitted to, and signed at the next following meeting.
- 8.2 The person presiding at the next following meeting referred to in paragraph 1 above shall put the questions that the minutes be approved as a correct record of the previous meeting.
- 8.3 No discussion shall take place upon the minutes, except upon their accuracy. If no question is raised as to accuracy or if it is raised then as soon as it is disposed of, the person presiding shall sign the minutes.

- 8.4 Copies of the minutes of every meeting of the Joint Committee and any sub-committee thereof shall as soon as possible after each meeting be sent by the Clerk to each Authority.

9 **Sub-Committee**

The Joint Committee shall have power to appoint sub-committees from amongst its Members with or without delegated powers for any purpose which in its opinion could more satisfactorily be dealt with by a sub-committee.

10 **Finance**

- 10.1 The Joint Committee shall as soon may be after the conclusion of every financial year (which shall for the purposes of this Agreement be taken to be a period of twelve months ending on the thirty first day of March in any year) send to each of the two Councils a report on the operations of the Joint Committee during such financial year and a copy of the statutory statements of the Joint Committee for such financial year.

- 10.2 If the Joint Committee shall at any time require to incur capital expenditure for the acquisition of property or the construction of works or for other capital purposes in connection with the provision of crematoria then (unless the Joint Committee shall in their discretion decide to defray such expenditure out of revenue) such expenditure shall be borne by the two Council's respectively in the proportions four parts by the Durham County Council and one part by the Spennymoor Town Council **PROVIDED THAT** the Clerk of the Joint Committee shall obtain approval from both of the two Councils before the Joint Committee shall incur such expenditure.

- 10.3 That where possible any necessary borrowing be effected by the Durham County Council and that any requests for transfers of borrowing authority or capital expenditure allocation between the two Councils be made to the appropriate Minister or other authority.

- 10.4 Where any sum is to be borrowed by the County Council in pursuance of sub-clauses (1) and (2) of this clause the loan may be effected at the discretion of the Corporate Director Resources and Chief Financial Officer for the time being of the Durham County Council through the Durham County Council's loans pool in which case the loan shall be chargeable at such rates of interest and expenses as shall be applicable to such loans as prescribed by the said Corporate Director Resources and Chief Financial Officer and the period of such loan shall be in accordance with any guidelines prescribed for the time being for loans by local authorities by the Secretary of State for the Environment or other authority.

- 10.5 Subject to any condition or conditions prescribed by either or both of the two Councils in giving consent to any capital expenditure under the proviso to sub-clause (2) of this clause the two Councils or either or them shall pay to the joint committee the amount of any sums borrowed in

pursuance of this clause in such sums and at such times as the Joint Committee shall direct.

- 10.6 Subject as is hereinafter provided the Joint Committee shall from time to time pay to the two Councils or either or them the amounts of all interest and all instalments of principal or as and when the same shall become due and the cost of taking up any loans raised for such purposes by the two Councils or either of them.
- 10.7 The legal estate in all land acquired and works constructed whether by means of capital or annual expenditure for the purpose of enabling the Joint Committee to exercise its functions under the provisions of this Agreement shall be vested in the Council in whose area the same shall situate and that Council shall hold such land or works as the case may be for the purpose of provision and maintenance of crematoria expressly for the same to be maintained, controlled and managed by the Joint Committee.
- 10.8 All expenses incurred by the Joint Committee in any financial year so far as they are not paid out of income other than contributions from the two Councils under this clause shall be borne by the two Councils respectively in the proportions four parts by Durham County Council and one part by Spennymoor Town Council and such Councils shall pay to the Joint Committee such sum as the Joint Committee may estimate will be the proportion to be borne by that Council of any estimated deficit for that financial year.
- 10.9 The Joint Committee may:-
- (a) use any part or all of any profits or surplus made in any financial year to finance capital expenditure or to redeem debt;
  - (b) carry forward part or all of such profits or surplus or reserves as is in the opinion of the Joint Committee required to meet contingencies or to defray any expenditure which may fall to be defrayed before the date on which moneys to be received by the Joint Committee whether from the two Councils in accordance with this Agreement or from the operation of the crematoria established by the Joint Committee will become available and the Joint Committee shall as soon as practicable return to the two Councils the amount of such profits or surplus or reserves not so applied by the Joint Committee in proportion to the total amounts respectively contributed by each of the two Councils towards previous deficits provided that if at any time both the two Councils shall have had the total amount of their contributions towards previous deficits returned to them the Joint Committee shall pay al such unapplied profits or surplus to the two Councils in the same proportions in which by virtue of sub-clause (1) hereof the two Councils would have borne a deficit in that financial year had one occurred.
- 11.1 Either of the two Councils may terminate this Agreement by giving the other not less than one year's notice in writing to that effect expiring on the thirty first day of March in any year.

- 11.2 The Council which shall have given notice under sub-clause (1) of this clause shall bear the expense of settling the adjustment required by clause (12) hereof.
- 12 In the event of either of the two Councils at any time hereafter terminating this Agreement under the provisions hereinbefore contained or otherwise there shall as on the date of such termination be an adjustment between the two Councils of all property income debts liabilities and expenses then existing and of any financial relations affected by such termination and on such adjustment there shall be an adjustment of capital assets and liabilities acquired or assumed by either of the two Councils on such termination including any outstanding loans borrowed by either or both of the two Councils under clause 13 hereof and provision may then be made for the payment to either or both of the two Councils of such sum as seems equitable.
- 13 When this agreement is silent the Central Durham Crematorium Joint Committee will operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council to ensure that the Central Durham Crematorium Joint Committee have effective and appropriate corporate governance arrangements and financial management arrangements in place, given the Committee's fiduciary duties in relation to the management of public resources, and Durham County Council will continue to be responsible for the management of the facility and for supporting the Joint Committee.
- 14 Subject to Section 103 (1) (b) of the Local Government Act 1972 all disputed between the two Councils or between either of them and the Joint Committee on the interpretation of this Agreement and all disputes or differences in any way or at any time arising hereon (including without prejudice to the generality of these words the adjustments required by clause 17 hereof) shall be referred to some competent arbitrator agreed on by the two Councils or in the absence of agreement to be named by the Secretary of State for the Environment or his successor and the Arbitration Act 1950 or any statutory modification thereof for the time being in force shall apply to any such arbitration.
- 15 This Agreement shall come into effect on the date of its sealing when it shall in all respects supersede and replace the provisions of the Memorandum of Agreement made on the third day of May one thousand nine hundred and eighty three between Council of the City of Durham and the Town Council of Spennymoor relating to the constitution of a Joint Committee of those Councils to perform the functions of those Councils under the Cremation Act 1902 as amended by the Cremation Act 1952 and the Cremation (England and Wales) Regulations 2008 provided 1) that any rights or liabilities arising under the said Memorandum of Agreement dated the third day of May one thousand nine hundred and eighty three prior to the coming into effect of this Memorandum of Agreement shall not be affected thereby
- 16 That the making of this Agreement shall not be deemed to be a withdrawal by any party from the joint committee constituted thereby

**IN WITNESS** whereof the Parties hereunto have caused their respective  
Common Seals to be affixed to this Deed the day and year first before written

**THE COMMON SEAL** of **THE** )  
**COUNTY COUNCIL OF** )  
**DURHAM** was hereunto affixed )  
**BY ORDER:** )

Chairman:

Head of Legal and Democratic Services:

**THE COMMON SEAL** of **THE** )  
**TOWN COUNCIL OF** )  
**SPENNYMOOR** was hereunto )  
affixed in the presence of: )

Town Clerk:

Mayor

DATED \_\_\_\_\_ 1983

CENTRAL DURHAM JOINT  
CREMATORIUM COMMITTEE

A G R E E M E N T

for the constitution of the  
above-named joint committee

\_\_\_\_\_  
\_\_\_\_\_

M E M O R A N D U M O F A G R E E M E N T made  
the \_\_\_\_\_ day of \_\_\_\_\_ One thousand  
nine hundred and eighty three B E T W E E N  
THE COUNCIL OF THE CITY OF DURHAM (hereinafter  
referred to as "the City Council") of the one  
part and THE TOWN COUNCIL OF SPENNYMOOR  
(hereinafter referred to as "the Spennymoor  
Council") of the other part \_\_\_\_\_

W H E R E A S :

(1) The Councils being parties hereto may by  
section 4 of the Cremation Act 1902 as amended by  
the Cremation Act 1952 respectively provide and  
maintain crematoria \_\_\_\_\_

(2) Both the said Councils are local  
authorities for the purposes of Local Government  
Act 1972 and are empowered by section 101 thereof  
(subject as therein provided) to arrange with one  
or more other local authorities for the discharge  
of their functions jointly and to arrange for the  
discharge of those functions by a joint committee  
of those authorities and are empowered by section  
102 thereof (subject as therein provided) to  
appoint a joint committee in pursuance of the  
arrangements for the discharge of functions  
hereinbefore mentioned \_\_\_\_\_

(3) By section 103 of the Local Government  
Act 1972 it is provided that the expenses of a  
joint committee appointed thereunder shall be  
defrayed by appointing authorities in such  
proportions as they may agree upon \_\_\_\_\_

(4) The said Councils have each of them  
passed a resolution to enter into an agreement as  
hereinafter appearing \_\_\_\_\_

NOW IT IS HEREBY AGREED by and between the parties hereto in pursuance of the powers conferred upon them by virtue of the hereinbefore recited enactments and of every other power (if any) them respectively hereunto enabling as follows that is to say:-

1. There shall be constituted a joint committee (hereinafter referred to as the "joint committee") of both the Councils being parties hereto (hereinafter collectively referred to as the two Councils) consisting of members appointed under provisions hereof and having the functions powers and duties upon and subject to the terms and conditions hereinafter mentioned \_\_\_\_\_

2. The name of the joint committee shall be the Central Durham Crematorium Joint Committee \_\_\_\_

3. (1). The joint committee shall consist of members appointed by each of the two Councils from amongst their respective members in the following manner that is to say:-

<u>Appointing Council</u>	<u>Number of members to be appointed</u>
The City Council	12
The Spennymoor Council	3

3. (2). The whole number of the members of the joint committee shall retire on the thirtieth day of May one thousand nine hundred and eighty three and on the thirtieth day of May in every fourth year thereafter \_\_\_\_\_

3. (3). Each of the two Councils shall in respect of members to retire on the thirtieth day of May in the year one thousand nine hundred and eighty seven appoint the said members at the first convenient meeting of such Council held after the execution of this agreement \_\_\_\_\_

3. (4). In the year one thousand nine hundred and eighty seven and in every fourth year thereafter being a year in which members of the joint committee shall retire each of the two Councils shall appoint members of the joint committee as herein provided to take office on the thirtieth day of May in that year \_\_\_\_\_

3. (5). The two Councils may revoke an appointment of any member at any time \_\_\_\_\_

3. (6). Without prejudice to the generality of sub-clause (5) of this clause if a member fails to attend four consecutive meetings of the joint committee such fact shall be reported by the Clerk to the joint committee to the Council by whom that member was appointed and the Council may thereupon terminate the member's term of office notwithstanding any other provision in this agreement contained and any such termination of appointment shall be reported to the Clerk to the joint committee by the Council concerned \_\_\_\_\_

3. (7). If by reason of the operation of statutory provisions failure to attend meetings as hereinbefore mentioned or otherwise there shall be a vacancy amongst the members of the joint committee as herein provided the Council out of whose appointment the vacancy occurs may

thereupon appoint another member to fill such vacancy and person so appointed shall remain a member of the joint committee until and shall retire on the date of the normal retirement under the provisions of this agreement of the member whose place he fills \_\_\_\_\_

4. The two Councils hereby delegate to the joint committee upon and subject to the terms and conditions of this agreement all the powers of the two councils with respect to the provisions and maintenance of crematoria in the area of each of them other than powers of borrowing money levying or issuing a precept for a rate of holding land and without prejudice to the generality of the foregoing the joint committee shall to the exclusion of the two Councils have all the powers of each of the two Councils under the Cremation Acts 1902 and 1952 and under any Act of Parliament or statutory instruments with respect to the provision of maintenance of crematoria \_\_\_\_\_

5. (1). The joint committee shall hold four meetings at least in every year for the transaction of general business and may hold such other meetings at such intervals as it may find necessary or convenient \_\_\_\_\_

5. (2). The joint committee shall elect annually from amongst its members a Chairman and a Vice-Chairman \_\_\_\_\_

5. (3). The election of the Chairman and the Vice-Chairman shall be respectively the first and the second business transacted at the first

meeting of the joint committee after the First June in any year (hereinafter referred to as "the annual meeting") \_\_\_\_\_

5. (4). The Chairman of the joint committee shall unless he resigns or becomes disqualified continue in office until his successor becomes entitled to act as Chairman \_\_\_\_\_

5. (5). The Vice-Chairman of the joint committee shall unless he resigns or becomes disqualified hold office until immediately after the election of the Chairman of the joint committee at the next annual meeting of the joint committee \_\_\_\_\_

5. (6). The joint committee shall have power to appoint sub-committees from amongst its members with or without delegated powers for any purpose which in its opinion could more satisfactorily be dealt with by a sub-committee \_\_\_\_\_

6. (1). The joint committee may appoint and pay such officers and servants as it may deem necessary for the purpose of carrying out its duties under this agreement \_\_\_\_\_

6. (2). Sections 114 to 119 of the Local Government Act 1972 shall apply to an officer of the joint committee in the same manner as the said sections apply to an officer of a local authority with such modifications as are necessary to make them applicable to officers of the joint committee \_\_\_\_\_

7. (1). The joint committee and every officer thereof who is by reason of his office entrusted with the custody or control of money

shall keep accounts of all money received by the joint committee or any such officer and all expenditure thereof by it or him as may be required for the purpose of Part VIII of the Local Government Act 1972 and Part III of the Local Government Finance Act 1982 \_\_\_\_\_

7. (2). The joint committee shall as soon may be after the conclusion of every financial year (which shall for the purposes of this agreement be taken to be a period of twelve months ending on the thirty first day of march in any year) send to each of the two Councils a report on the operations of the joint committee during such financial year and a copy of the final accounts of the joint committee for such financial year \_\_\_\_\_

8. (1). If the joint committee shall at any time require to incur capital expenditure for the acquisition of property or the construction of works or for other capital purposes in connection with the provision of crematoria then (unless the joint committee shall in their discretion decide to defray such expenditure out of revenue) such expenditure shall be borne by the two Councils respectively in the proportions four parts by the City Council and one part by the Spennymoor Council PROVIDED THAT the Clerk of the joint committee shall obtain approval from both of the two Councils before the joint committee shall incur such expenditure \_\_\_\_\_

8. (2). That where possible any necessary borrowing be effected by the City Council and

that any requests for transfers of borrowing authority or capital expenditure allocation between the two Councils be made to the appropriate Minister or other authority \_\_\_\_\_

8. (3). Where any sum is to be borrowed by the City Council in pursuance of sub-clauses (1) and (2) of this clause the loan may be effected at the discretion of the City Treasurer for the time being of the City Council through the City Council's loans pool in which case the loan shall be chargeable at such rates of interest and expenses as shall be applicable to such loans as prescribed by the said City Treasurer and the period of such loan shall be in accordance with any guidelines prescribed for the time being for loans by local authorities by the Secretary of State for the Environment or other authority \_\_\_\_\_

8. (4). Subject to any condition or conditions prescribed by either or both of the two Councils in giving consent to any capital expenditure under the proviso to sub-clause (1) of this clause the two Councils or either of them shall pay to the joint committee the amount of any sums borrowed in pursuance of this clause in such sums and at such times as the joint committee shall direct \_\_\_\_\_

8. (5). Subject as is hereinafter provided the joint committee shall from time to time pay to the two Councils or either of them the amounts of all interest and all instalments of principal or sinking fund contributions as and when the same shall become due and the cost of taking up

any loans raised for such purposes by the two Councils or either of them \_\_\_\_\_

9. The legal estate in all land acquired and works constructed whether by means of capital or annual expenditure for the purpose of enabling the joint committee to exercise its functions under the provisions of this agreement shall be vested in the Council in whose area the same shall situate and that Council shall hold such land or works as the case may be for the purpose of provision and maintenance of crematoria expressly for the same to be maintained controlled and managed by the joint committee \_\_\_\_\_

10. (1). All expenses incurred by the joint committee in any financial year so far as they are not paid out of income other than contributions from the two Councils under this clause shall be borne by the two Councils respectively in the proportions four parts by the City Council and one part by the Spennymoor Council and such Councils shall pay to the joint committee such sum as the joint committee may estimate will be the proportion to be borne by that Council of any estimated deficit for that financial year \_\_\_\_\_

10. (2). The joint committee may:-

(a) use any part or all of any profits or surplus made in any financial year to finance capital expenditure or to redeem debt \_\_\_\_\_

(b) carry forward part or all of such profits or surplus as is in the opinion

of the joint committee required to meet contingencies or to defray any expenditure which may fall to be defrayed before the date on which moneys to be received by the joint committee whether from the two Councils in accordance with this agreement or from the operation of the crematoria established by the joint committee will become available and the joint committee shall as soon as practicable return to the two Councils the amount of such profits or surplus not so applied by the joint committee in proportion to the total amounts respectively contributed by each of the two Councils towards previous deficits provided that if at any time both the two Councils shall have had the total amount of their contributions towards previous deficits returned to them the joint committee shall pay all such unapplied profits or surplus to the two Councils in the same proportions in which by virtue of sub-clause (1) hereof the two Councils would have borne a deficit in that financial year had one occurred \_\_\_\_\_

11. (1). Either of the two Councils may terminate this agreement by giving the other not less than one year's notice in writing to that effect expiring on the thirty-first day of March

in any year \_\_\_\_\_

11. (2). The Council which shall have given notice under sub-clause (1) of this clause shall bear the expense of settling the adjustment required by clause 12 hereof \_\_\_\_\_

12. In the event of either of the two Councils at any time hereafter terminating this agreement under the provisions hereinbefore contained or otherwise there shall as on the date of such termination be an adjustment between the two Councils of all property income debts liabilities and expenses then existing and of any financial relations affected by such termination and on such adjustment there shall be an adjustment of capital assets and liabilities acquired or assumed by either of the two Councils on such termination including any outstanding loans borrowed by either or both of the two Councils under clause 8 hereof and provision may then be made for the payment to either or both of the two Councils of such sum as seems equitable \_\_

13. Subject to section 103(1)(b) of the Local Government Act 1972 all disputes between the two Councils or between either of them and the joint committee on the interpretation of this agreement and all disputes or differences in any way or at any time arising hereon (including without prejudice to the generality of these words the adjustments required by clause 12 hereof) shall be referred to some competent arbitrator agreed on by the two Councils or in the absence of agreement to be named by the Secretary of State

for the Environment or his successor and the Arbitration Act 1950 or any statutory modification thereof for the time being in force shall apply to any such arbitration \_\_\_\_\_

14. (1) This agreement shall come into effect on the date of its sealing when it shall in all respects supersede and replace the provisions of the Memorandum of Agreement made the First day of October One thousand nine hundred and fifty five between the Mayor Aldermen and the Citizens of the City of Durham and Framwelgate of the first part the Rural District Council of Durham of the second part the Urban District Council of Brandon and Byshottles of the third part and the Urban District Council of Spennymoor of the fourth part relating to the constitution of a joint committee of those Councils to perform the functions of those Councils under the Cremation Act 1902 as amended by the Cremation Act 1952 Provided (1) that any rights or liabilities arising under the said Memorandum of Agreement dated the First day of October One thousand nine hundred and fifty five prior to the coming into effect of this Memorandum of Agreement shall not be affected thereby \_\_\_\_\_

14. (2). that the making of this agreement shall not be deemed to be a withdrawal by any party from the joint committee constituted thereby \_\_\_\_\_

I N W I T N E S S      whereof the parties hereto  
have unto caused their respective Common Seals to  
be hereunto affixed the day and year first before  
written \_\_\_\_\_

THE COMMON SEAL of  
THE COUNCIL OF THE  
CITY OF DURHAM was  
affixed in the  
presence of \_\_\_\_\_

Mayor

Chief Executive

THE COMMON SEAL of  
THE SPENNYMOOR TOWN  
COUNCIL was  
hereunto affixed in  
the presence of \_\_\_\_\_

Town Clerk

Town Mayor

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**County Council**

**20 March 2013**



**Mountsett Crematorium Joint  
Committee-Changes to  
Constitution/Terms of Reference**

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**Report of Colette Longbottom, Head of Legal and Democratic  
Services**

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**Purpose of the Report**

- 1 The Council is requested to update/amend the Constitution of Mountsett Crematorium Joint Committee. The report was considered by the Constitution Working Group on 4 March 2013, and is recommended to Council for approval.

**Background**

- 2 The Constitution of the Mountsett Crematorium Joint Committee was last reviewed and amended on 7<sup>th</sup> September 1976 to reflect the constituent authorities of the District Council of Derwentside and the Borough Council of Gateshead.
- 3 More recently, with effect from 1<sup>st</sup> April 2009, Local Government Re-organisation in County Durham transferred the responsibilities of Derwentside Council to Durham County Council.
- 4 Following audit reviews of the Joint Committee, it was recommended that the Joint Committee undertake a review and update of its terms of reference.

**Recommendations and reasons**

- 5 The Constitution of the Mountsett Crematorium Joint Committee has been reviewed and brought up to date. The updated constitution fully reflects the revised constituent authority legal titles, expenditure and subsequent surplus distribution arrangements on an 60/40 basis, along with the policies regarding retained surplus transfer to reserves
- 6 The Council will note that the constituent authority membership appointments and asset ownership remains as per the original constitution. The Mountsett Crematorium Joint Committee will continue to operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council, who will continue to be responsible for the management of the facility and for supporting the Joint Committee.
- 7 The Legal Departments of Durham County Council and Gateshead District Council have agreed the amended draft constitution.

- 8 The updated constitution is attached at Appendix 2. The original Constitution dated 7<sup>th</sup> September 1976, and Establishment of Joint Crematorium Committee of 26<sup>th</sup> May 1964 are listed as background papers to the report.

### **Recommendations and Reasons**

- 9 The proposals update the terms of reference of the Mountsett Crematorium Joint Committee and reflects the transferred responsibilities of Derwentside District Council to Durham County Council
- 10 The Council is asked to adopt the revised Constitution as presented.

### **Background Papers**

- 11 Agreement dated 7<sup>th</sup> September 1976
- 12 Agreement dated 26<sup>th</sup> May 1964

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**Contact: Sarah Grigor Tel 03000 269 676**

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## **Appendix 1: Implications**

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**Finance** – The Constituent Authority income sharing (unchanged) and reserves protocols (in line with the strategy adopted in recent years) are disclosed within the revised constitution detailed within Appendix 2

**Staffing** – There are no staffing implications associated with this report.

**Risk** – There are no risk implications associated with this report

**Equality and Diversity / Public Sector Equality Duty** – There are no Equality and Diversity implications associated with this report.

**Accommodation** – The Constituent Authority asset ownership (unchanged is highlighted within the revised constitution detailed within Appendix 2.

**Crime and Disorder** – There are no Crime and Disorder implications associated with this report.

**Human Rights** – There are no Human Rights implications associated with this report.

**Consultation** – Legal officers of Durham County Council and Gateshead District Council have been provided with a copy of the constitution and given opportunity to comment/raise any detailed questions/request amendments in advance of circulation to members of Mountsett Crematorium Joint committee.

**Procurement** – None specific within this report.

**Disability Discrimination Act**- None specific within this report

**Legal Implications** – The constitution has been updated by Legal Services, Durham County Council, in line with relevant legislative requirements and taking into account the current constitution terms of reference.

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## Appendix 2

Gateshead amendments DH/JM/PB: 23/07/12

This **DEED** of Agreement is made the .....day of .....2013

### **BETWEEN:-**

- 1) The County Council of Durham, Durham County Council, County Hall, Durham and
- 2) The Borough Council of Gateshead of the other part.

### **WHEREAS:-**

1. The Authorities to the Deed have by virtue of Section 102(1) of the Local Government Act 1972 the Local Government Act 2000 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the Local Authorities and all and every power enabling them agreed and resolved to constitute a joint committee to exercise the powers which each of the Authorities hereto might respectively have exercised by virtue of the Cremation Acts 1902 and 1952 for the provision running, maintenance and management of the existing Crematorium at Mountsett within the County of Durham which is more particularly described in paragraph 1 below.
2. The said Authorities now wish to constitute the said joint committee on the terms set out below and to the intent that the Deeds of Agreement between the said Authorities and dated 7<sup>th</sup> September 1976 and 8<sup>th</sup> September 1983 shall cease to have effect.

**NOW** in pursuance of the said agreement and the respective resolutions and in consideration of these presents **THIS DEED WITNESSES** as follows:-

#### **1. Definition and Interpretation**

- 1.1 In this agreement the following expressions have the meanings set out below, unless the context otherwise requires.

‘Authority’ either Durham or Gateshead and ‘Authorities’ shall be construed accordingly.

‘Annual meeting’ the annual meeting of the Joint Committee held each year in accordance with paragraph 7.2 of this agreement.

‘Chief Executive’ the head of an Authority’s paid service being the person designated as such under Section 4 of the Local Government and Housing Act 1989.

‘Clerk’, the person appointed by virtue of paragraph 16.1 to carry out certain duties allocated by this agreement.

‘Council’ the Council of elected members of one or other of the Authorities to this agreement.

‘Crematorium’ the crematorium known as Mountsett Crematorium which includes all buildings grounds equipment and other property appurtenant there.

‘Financial year’ the period running from 1<sup>st</sup> April in one calendar year until 31<sup>st</sup> March in the next calendar year (inclusive).

‘Joint committee’ the Mountsett Crematorium Joint Committee constituted by this agreement.

‘Member’ unless the context otherwise so requires, a member of the Joint Committee.

‘Monitoring officer’, Durham County Council’s Head of Legal and Democratic Services being the person designated under Section 5 of the Local Government and Housing Act 1989 or this officers nominated deputy in the case of absence or illness.

‘Ordinary meeting’, any meeting of the Joint Committee that is not an Annual Meeting or a Special Meeting.

‘Principal Office’ in the case of Durham County Council, the Council Offices, County Hall, Durham and the case of Gateshead Council the Civic Centre as referred to at the beginning of the agreement.

‘Special meeting’ a meeting of the Joint Committee convened in accordance with paragraph 7.6 of this Agreement.

## **2. Duration of Joint Committee**

The Authorities shall constitute the Joint Committee from the Commencement Date and the Joint Committee shall continue thereafter unless and until determined by either Authority or both of them under the provisions contained in this agreement.

## **3. Name of Joint Committee**

The Joint Committee shall be known as the Mountsett Crematorium Joint Committee.

## **4. Provision and Location of Crematorium**

- 4.1 The Crematorium is located on the Crematorium Site which was acquired by the Authorities prior to the date hereof.

4.2 The Crematorium site is vested 60% in Durham County Council and 40% Gateshead Council by virtue of Section 120(4) of the Local Government Act 1972 and all and every power so enabling and registered at HM Land Registry with Title Absolute Title Number.

## 5. **Membership**

5.1 The Joint Committee shall consist of Members appointed by the Authorities as follows:-

5.1.1 Each Authority shall appoint from its own membership nine Members from Durham County Council and seven Members from Gateshead Council which appointments shall reflect the political balance of each authority.

5.1.2 Subject to the provisions of this agreement each Member shall continue in office for a period of one year or until such time as he shall cease to be a members of the Council by whom he is appointed whichever is the sooner and any provision in the Procedure Rules of either Authority to the contrary is hereby waived. Each member shall be eligible for re- appointment until such time as he shall cease to be a member of the council by whom he is appointed.

5.1.3 If either Authority does not appoint the number of Members which it is entitled to appoint the other Members of the Joint Committee shall be competent to carry out the business thereof pursuant to this agreement.

5.1.4 Any person who is a member of the Councils of both Authorities shall only represent the first Authority to appoint him as a Member and any subsequent appointment by the other Authority shall be void.

5.1.5 The Chief Executive of each Authority shall notify the Chief Executive of the other Authority and the Clerk within fourteen days of any appointment of a member of his Council to the Joint Committee.

5.1.6 Any member may at any time resign his office as such Member by notice addressed to the Clerk who shall forthwith notify the respective Chief Executives of each of the Authorities.

5.1.7 Any member may be removed at any time by resolution by the Authority by whom he was appointed but such removal should only become effective upon receipt by the Clerk of notification thereof.

## 6. **Chair and Vice Chair**

6.1 At the first meeting of the Joint Committee and subsequently at its Annual Meeting in each successive year the Joint Committee shall select one of its Members as Chair and another as Vice Chair for the forthcoming year Provided that at no time shall the Chair and Vice Chair be members of the same Authority.

- 6.2 The Chair of the Committee shall alternate between both authorities on an annual basis unless otherwise agreed at the Annual meeting of the Committee.
- 6.3 The elected Chair and Vice Chair shall remain in office until the next Annual Meeting unless by reason of death resignation disqualification or any other cause before that time and upon a vacancy occurring during the term of office another Member from the same Authority shall be appointed by the Joint Committee to fill the vacancy until the next Annual Meeting.
- 6.4 If there is equality of votes as to the appointment of Chair or Vice Chair then the Chair for the time being of that meeting shall have a second or casting vote.

## 7. **Meetings of the Joint Committee**

- 7.1 The first meeting of the Joint Committee shall be convened by the Clerk.
- 7.2 The Joint Committee shall hold an Annual Meeting before the end of June in each year.
- 7.3 Other than the Annual Meeting, meetings shall be held at such places and on such dates and at such times as the Joint Committee may decide from time to time save that meetings shall be held not less than quarterly.
- 7.4 Ordinary meetings and Annual Meetings of the Joint Committee shall be convened by the Clerk who shall deliver notice thereof to each member at least five clear days before the date of the meeting.
- 7.5 With the notice referred to in paragraph 7.4 the Clerk shall send a copy of the agenda for the meeting which shall include:
- provision for the declaration of personal and prejudicial interests by Members for the purposes of the Code of Conduct issued under Section 50 Local Government Act 2000.
  - all items of business which have been, or are deemed to have been, referred to the Joint Committee by a Council resolution of either Authority.
  - all reports submitted by any officer of either Authority; and
  - any item of business directed to be included by the person appointed to preside at the meeting.
- 7.6 A quorum of four members must be present to constitute a meeting Provided that there is at least one member present from each Authority.
- 7.7 The Chair and two members of the Joint Committee may at any time by notice specifying the business to be transacted and sent to the Clerk require a Special Meeting of the Joint Committee to be convened and the Clerk shall

accordingly convene a special meeting which shall be held within thirty clear days of receipt by the Clerk of the said notice.

7.8 The Clerk shall give Members of the Joint Committee at least five clear days notice of the Special Meeting and such notice shall specify the business proposed to be transacted.

7.9 No business shall be transacted at a Special Meeting other than that specified in the notice sent to the Clerk and referred to in paragraph 7.7 above.

## 8. **Person Presiding at Meetings**

8.1 The Chair or in his absence the Vice Chair shall preside at every meeting provided that if both the Chair and the Vice Chair are absent the Members present shall elect another Member of the Joint Committee who shall preside at that meeting.

## 9. **Voting**

9.1 Every matter at a meeting of the Joint Committee shall be decided by a simple majority of those Members voting and present and in the venue, at the time the question is put. In the case of an equality of votes in relation to a particular item of business then consideration of that item shall be adjourned and shall be deferred for decision at a future meeting of the Joint Committee to allow informal discussion to take place between the parties

9.2 Except where a requisition is made under the next paragraph 9.3, the method of voting at meetings of the Joint Committee shall be by show of hands.

9.3 If a requisition for a recorded vote is made by any three Members present before a vote is taken on any question or motion, the voting shall be recorded so as to show whether each Member present voted for or against that question or motion or abstained from voting.

## 10. **Minutes**

10.1 The Clerk shall be responsible for keeping a record of attendance and a record of the business transacted at every meeting of the Joint committee and the minute book shall be submitted to, and signed at the next following meeting.

10.2 The person presiding at the next following meeting referred to in paragraph 10.1 shall put the question that the minutes be approved as a correct record of the previous meeting.

10.3 No discussion shall take place upon the minutes, except upon their accuracy. If no question is raised as to accuracy or if it is raised then as soon as it is disposed of, the person presiding shall sign the minutes.

10.4 Copies of the minutes of every meeting of the Joint Committee and any sub-committee thereof shall as soon as possible after each meeting be sent by the Clerk to the Chief Executive of each authority.

## 11. **Sub-Committees**

11.1 The Joint Committee may from time to time appoint sub-committees for any general or special purpose in connection with their powers and functions for the purposes of advising and reporting back to the Joint Committee. Any sub-committee so appointed shall consist of a minimum of three members and shall include at least one Member from each Authority.

11.2 Subject to clause 11.1 the Joint Committee shall at the time of appointing any sub-committee resolve what shall be the terms of reference of that sub-committee.

## 12. **Vacancies**

12.1 No act or proceeding of the Joint Committee shall be questioned on account of any vacancy or on account of any defect in the appointment of any Member.

## 13. **Capital Expenditure**

13.1 If the Joint Committee shall at any time require to incur capital expenditure for the:

13.1.1 The acquisition of property

13.1.2 The construction of works, or

13.1.3 Any other capital purposes in connection with its powers.

13.2 Then the use of part or all of any profits or surplus made in any financial year shall be used to finance capital expenditure or upon agreement of the Joint Committee may carry forward part or all such profits or surplus as required to finance known future capital expenditure.

## 14. **Revenue Expenditure**

14.1 All losses/deficits or profits/surpluses either incurred or generated as a result of the normal operational business of the Joint Committee in any financial year shall be borne or distributed in the following percentages 35% Gateshead and 65% Durham County Council. This arrangement shall be subject to review at least every five years with the first review taking place in March 2015.

14.2 Any losses identified during the financial year should be first met by any available reserves. In the absence of available reserves each Authority should make a relevant contribution in accordance with the % mentioned in paragraph 14.1

14.3 As soon as possible after the end of any financial year the Joint Committee shall calculate the exact net revenue expenditure for the preceding year and shall request or make payments to each Authority to be allocated in accordance with the % mentioned in paragraph 14.1 (total to the agreed distributable surplus amount).

14.4 The Joint Committee upon agreement may use or carry forward retained surplus made in any financial year for the purpose of:

14.4.2 Paying debts

14.4.3 Meeting contingencies

14.4.4 Meeting future expenses

14.5 But any amount of such profit or surplus not so applied (as agreed annually at the Annual General Meeting) shall be returned to the Authorities. Payable to each authority by the 1<sup>st</sup> October in each year.

## 15. **Interest on Sums Due**

15.1 Any sum properly payable by either of the Authorities to the Joint committee whether of a capital or revenue nature, which is not paid by the due date shall be liable to interest at the base lending rate of the Co-operative Bank plc until such time as the sum due is paid in full.

## 16. **Appointment of Officers**

16.1 (a) The Clerk shall be the Head of Legal and Democratic Services or their appointee of Durham County Council.

(b) The Treasurer shall be the Corporate Director Resources of Durham County Council or anyone appointed by him.

16.2 The Joint Committee shall appoint and pay such employees as it deems necessary to provide equip maintain and manage the Crematorium and all services and duties ancillary thereto and required to be provided by virtue of this agreement or by statute and such employees shall be enabled to join any pension scheme which employees of Durham County Council are entitled to join by virtue of their individual contracts of employment.

16.3 The functions of the Joint Committee shall be dealt with by Durham County Council officers (identified at clause 16 above). For the avoidance of doubt the identified officers shall include officers succeeding to the named officers responsibilities on any re-organisation.

## 17. **Accounts**

- 17.1 The Treasurer shall keep accounts of all monies received by and all expenditure of the Joint committee as may be required for the purposes of Part 8 of the Local Government Act 172.
- 17.2 As soon as practicable after the end of the Financial Year the Joint Committee shall send to each Authority a full report of the operations of the Joint Committee during the last financial year and a copy of the accounts thereof.
- 17.3 Durham County Council will carry out an annual audit of the accounts and the Joint Committee will provide a copy of the report thereof to each of the Authorities as soon as practicably possible after receipt of the same.
- 17.4 When this agreement is silent the Mountsett Crematorium will operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council, who will continue to be responsible for the management of the facility and for supporting the Joint Committee.

## 18. **Performance of Agreement**

- 18.1 The Authorities shall at all times take all or any action as may be necessary for giving full effect to this agreement and every provision and obligation contained herein and any decision made by the Joint Committee pursuant hereto. Each party shall be committed to mutual cooperation and assistance to give effect to the terms of this Agreement which shall include :
- a) the setting up of a joint officer meeting to discuss and formulate advice and reports to the Joint Committee and
  - b) not less than twenty business days before the date of any Joint Committee prior notification of agenda items only shall be given to officers of each Authority of items intended to be tabled as items of business for the Joint Committee in order to ensure that the same may be fully considered by officers of each Authority. An officer Neighbourhood services Director of Resources from each authority to be involved in a pre-meeting to the committee hearing
- 18.2 Each Authority shall bear its own costs for the negotiation preparation completion and stamping of this agreement.
- 18.2.1 If either Authority shall fail to carry out any necessary act required to be taken pursuant to paragraph 18.1 above, the other may implement any reasonable measures necessary to give effect to this agreement or any proper decision of the Joint Committee and the reasonable costs thereof shall be recoverable as a debt from the Authority which so failed to act.

19. **Termination**

- 19.1 If the Authorities or either of them shall wish to determine this agreement or make any alteration to the terms hereof then in default of agreement between the Authorities the matter shall be referred to arbitration in accordance with paragraph 20 below

20. **Arbitration**

Any dispute between the Authorities under or arising out of this agreement shall be referred to a single arbitrator to be agreed upon by the Authorities or in default of agreement to be nominated by the Secretary of State for Communities and Local Government or such other Government Minister as shall be appropriate in accordance with and subject to the provision of [ the Arbitration Acts 1950 and 1979] or any statutory modification or re-enactment of them for the time being in force.

21. **Complaints**

Any complaint received by the Joint Committee or either or both of the Authorities relating to the Crematorium or any officer employed thereat or to the performance of functions under this agreement shall be dealt with in the first instance in accordance with Durham County Council's formal complaints procedure and if the complaint is not resolved as a result of that process or if a complaint is received from the Local Government Ombudsman dealt with by the Monitoring Officer.