

**Request for Scrutiny review of an Officer Delegated Decision:
Demolition of Former Public Conveniences on Bath Road, Chippenham**

Purpose of report

1. A request that the above officer decision taken under delegated powers be scrutinised by the appropriate scrutiny committee was received by the Designated Scrutiny Officer from Cllr Chris Caswill, Chippenham Monkton Division, on 3 December 2016.
2. This report sets out the:
 - Constitutional basis of this provision
 - Officer decision and policy context
 - Councillor's rationale for requesting scrutiny of the decision
 - Initial officer response
 - Suggested process for the Committee's consideration of the request.
3. The report asks the committee consider whether, on the basis of the information presented, the relevant delegated officer decision should be subject to scrutiny.

Background

4. Under paragraph 1.8 of Part 3D(1) ([Scheme of Delegation to Officers](#)) of the Constitution (**Appendix 1**), "*any member of the Council may request that decisions taken under delegated powers are scrutinised by the appropriate overview and scrutiny committee*".
5. The Designated Scrutiny Officer received such a request from Cllr Chris Caswill on 3 December 2016 with the request relating to the officer delegated decision to demolish a block of former public conveniences (PCs) situated on Bath Road, Chippenham. At the time of writing the demolition has not been carried out. As the public conveniences sit within Cllr Caswill's division he is the local member.

Process

6. This is the first member request for scrutiny of a Wiltshire Council officer delegated decision. The process for its consideration has been formed by the Designated Scrutiny Officer and Monitoring Officer in consultation with the Chairman and Vice-Chairman of the Management Committee. The process aims to strike a balance between:
 - facilitating councillors' Constitutional right to request scrutiny of such decisions;
 - upholding the principles of openness and transparency;
 - protecting the council's ability to take decisions in an efficient and effective manner; and
 - ensuring that Overview and Scrutiny retains a manageable and effective forward work programme.

7. In keeping with the process followed when Overview and Scrutiny committees consider requests to scrutinise matters at the request of committee members (as provided for under [Part 8 of the Constitution - Overview and Scrutiny Procedure Rules](#)), there are two stages to determining such a request:
 - a) The Management Committee initially considers whether or not there is a case to scrutinise the matter.
 - b) If, following debate, the Committee resolves to support the request, the appropriate committee undertakes scrutiny in a manner agreed by its members.
8. The Committee is therefore asked to consider whether the relevant delegated officer decision should be scrutinised.
9. It should be noted that that the constitutional provision for a member to request scrutiny of an officer delegated decision does not halt implementation of that decision. This is unlike the 'call-in' process, in which a valid request to 'call in' an executive decision **does** prevent that decision's implementation until the matter has been resolved within a prescribed timescale.
10. In considering whether the decision outlined should be scrutinised, the Management Committee may wish to consider the following:
 - a) Accordance with agreed council policy;
 - b) The principles of decision making as set out in [Article 13.2 of Part 2](#) of the Constitution (excerpt at **Appendix 2**);
 - c) The [Protocol 1 - Councillor-Officer Relations](#) (**Appendix 3**) and [Part 3D \(Scheme of Delegation to Officers\)](#) (**Appendix 1**)

Policy context

11. On 24 February 2015 Full Council agreed the [Financial Plan 2015/2016](#), which included the transfer of the cleaning and securing of unmanned / attended public conveniences to town and parish councils (see page 49 of the linked PDF).
12. On 15 March 2016, under an agenda item titled, [Future of Wiltshire Council Provided Public Conveniences](#), the Cabinet resolved:
 - i. *To note the outcome of the public consultation and transfer any public conveniences that the towns and parishes wish to manage and undertake a 'cost benefit' analysis on any remaining facilities to decide their future.*
 - ii. *To delegate powers to the Associate Director, Highways and Transport following consultation with the Cabinet Member for Highways and Transport with regard to the cost benefit analysis decision on each remaining public conveniences.*
 - iii. *Introduce a Community Toilet Scheme in Wiltshire and enabling where possible the opening of resources in Wiltshire public buildings.*
 - iv. *Authorise the Associate Director for People and Business to enter into appropriate formal arrangements for the transfer or lease of the assets on such terms as to be determined by the Associate Director for People and Business following consultation with the Associate Director for Highways and Transport, Associate*

Director for and Law and Governance and the Cabinet member for Highways and Transport.

13. For information, at Full Council on 18 October 2016 Cllr Caswill submitted a written question to the Leader on this matter and received a written response (see page 16 [here](#)).

Councillor request for scrutiny and officer response

14. In supporting his contentions listed in the table below outlining why he is requesting scrutiny of the decision, Cllr Caswill has commented that:
- He has submitted a critique of the cost benefit analysis used for the officer’s decision to demolish the former PC block.
 - Although Chippenham Town Council initially resolved not to take on the running of the PC, it subsequently advised Wiltshire Council that it wished to re-enter negotiations on this.
 - A move to demolition seems to favour a desire of Cabinet for redevelopment of the larger site within which the PC block is situated.
15. These matters have been brought to the attention of officers by Cllr Caswill who feels that he has not had satisfactory responses. He has also raised the matter of the planning application for the PC block’s demolition in his request, but has been advised that this is a regulatory matter with its own process for consultation and representation and therefore sits outside of the overview and scrutiny function. Cllr Caswill has also indicated that he does not object to the original policy decision to devolve the running of PCs to town and parish councils.

	Cllr Caswill’s reasons for seeking scrutiny of the decision	Officer responses
	The cost benefit analysis undertaken on the future of the Bath Road PC block was inadequate.	<p>On 15 March 2016 Cabinet resolved to undertake a ‘cost benefit’ analysis on any remaining PC facilities to decide their future. The analysis of the Bath Road PC block considered:</p> <ul style="list-style-type: none"> • Usage levels • Availability of alternative PCs locally • Age and condition of the facility • On-going cost of provision. • Alternative provider options • Value of the asset and alternative uses. <p>The analysis concluded that there was no viable future use for the building as a PC given that,</p> <ul style="list-style-type: none"> • There are other facilities available in the area that offer an alternative provision. • The facility is old and outdated, in need of refurbishment.

		<ul style="list-style-type: none"> The cost of the provision outweighed the benefit. <p>Officers reviewed Cllr Caswill's critique of the analysis and responded in writing (on 30 September and 11 November 2016), but stand by their analysis.</p>
	There was a predetermined, unpublished decision to demolish the PC block, which was taken informally by Cabinet.	<p>The resolution of Cabinet on 15 March 2016 delegated powers to the Associate Director to consult with the Cabinet Member with regard to the cost benefit analysis decision on each remaining PC.</p> <p>Having concluded that there was no viable future use for the building as a PC, the value of the building fell beneath that required for a key decision and fell within the Associate Director's remit.</p> <p>Officers notified Cllr Caswill of the decision to demolish on 15 July 2016 and confirmed this on 22 November 2016.</p>
	Improper weight has been given by officers to informal discussions with Cabinet Members.	The resolution of Cabinet on 15 March 2016 delegated powers to the Associate Director to consult with the Cabinet Member with regard to the cost benefit analysis decision on each remaining PC.
	He was not properly consulted as the local elected member with regards to the decision.	<p>Officers met with Cllr Caswill to discuss his concerns on 19 October 2016 and corresponded with him through July to December 2016. More details of this correspondence are included in paragraph 16.</p> <p>Planning consultation is a separate matter. Cllr Caswill, as with all members, receives a weekly parish list of all applications received</p>
	Chippenham Town Council has reconsidered its position and wants to hold further discussions with Wiltshire Council regarding the future of the PC block. When Cabinet took its policy decision on 15 March 2016 no time limit was put on the delegation of PCs to town or parish councils.	<p>Officers held discussions with Chippenham Town Council regarding the future of the PC as part of the CBA. The Town Council declined to pursue running the PC.</p> <p>The Town Council later reviewed this decision, but then on 30 November 2016 resolved to amend the terms of reference of its Town Centre Toilet Review Working Party to "delete reference to the pursuance of the reopening of the existing toilet block in the Bath Road Care Park" and to "focus on</p>

		<p>improving signage to existing facilities.”</p> <p>The minutes of the meeting can be viewed here (see page 5-6).</p> <p>The Town Council informed Wiltshire Council of its decision not to take over the running of the Bath Road toilets in writing on 16 December 2016.</p>
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16. Cllr Caswill and officers have provided a record of written correspondence on this matter. The correspondence includes telephone calls, a meeting and approximately 25 emails from officers running from July to December 2016.
17. The details above represent only a summary position to enable the Management Committee to take an initial view regarding whether the officer deleted decision should be scrutinised. Cllr Caswill and relevant officers will attend the meeting and can respond to questions from Committee members. Both have supplied further information that would form part of a scrutiny review should the Management Committee consider that appropriate.

Proposal

18. That the Committee considers whether to support or decline the request that the officer delegated decision in question be scrutinised by the appropriate select committee.

Paul Kelly, Head of Corporate Support (Democracy and Performance) and Designated Scrutiny Officer

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Appendices

1. [Scheme of Delegation to Officers](#) (Part 3 Section D)
2. [Principles of Decision Making](#) (Part 2 – Article 13.2)
3. [Councillor-Officer Relations](#) (Protocol 1) (see paragraphs 5.5 and 10.6)

Appendix 1 – Protocol 1 – Councillor-Officer Relations

1. Introduction

Context

1.1 Mutual trust and respect between councillors and officers is at the heart of the council's governance arrangements. An effective partnership between councillors, and officers is a key element of a successful and high performing council.

Purpose of Protocol

1.2 The purpose of this protocol is to:

- outline the essential elements of the relationship between councillors and officers;
- promote the highest standards of conduct;
- clarify roles and responsibilities;
- ensure consistency with the law, codes of conduct and the council's values and practices; and
- identify ways of dealing with concerns by councillors or officers.

1.3 This protocol is for the guidance and assistance of councillors and officers. Any queries about its content or application should be referred to the monitoring officer.

2. Principles

2.1 Councillors (including co-opted members) and officers shall observe this protocol at all times.

2.2 There shall be mutual courtesy and respect between councillors and officers with regard to their respective roles as set out below.

2.3 Councillors and officers shall each carry out their respective responsibilities in the best interests of the council.

2.4 The roles and responsibilities of councillors and officers are distinct yet complementary. Councillors are accountable to the electorate for the performance of the council's statutory functions. Officers are accountable to the council as a whole. Their job is to give advice to councillors (individually and collectively) and to carry out the council's work under the direction of the council.

2.5 This protocol supports the council's codes of conduct for councillors and officers. The council's Code of Conduct for Members of Wiltshire Council is set out in Part 13 of the constitution. The Human Resources Code of Conduct for Officers is set out in Part 16 of the constitution and forms part of an officer's contract of employment.

2.6 Breach of this protocol may result:

- in the case of a councillor / co-opted member, in a complaint under the Code of Conduct for Members;
- in disciplinary action in the case of an officer.

3. The role of councillors

3.1 Councillors have a number of specific roles, which are set out in detail in Part 12 of the constitution - Roles and Responsibilities of Councillors

3.2 Collectively, councillors are the ultimate policy-makers, determining the core values of the council and approving the council's policy framework, strategic plans and budget.

3.3 Councillors represent the community and its constituents, act as community leaders and as the link between them and the council. This includes performing a key role as a member of their local area board.

3.4 Some councillors will have additional roles specific to their position as members of the cabinet, or overview and scrutiny or other committees of the council.

3.5 Some councillors may be appointed to represent the council on local, regional or national bodies- see further at section 13 below.

3.6 Councillors must respect the impartiality of officers.

3.7 Councillors must promote the highest standards of conduct and will have regard to the council's Behaviours Framework in carrying out their role.

3.8 Councillors act collectively as the employer of officers.

3.9 Councillors must seek the advice of the monitoring officer and the chief finance officer if they have any concerns about whether the council is acting outside its statutory powers, maladministration, financial impropriety and probity, or whether any decision is or is likely to be contrary to the budget and policy framework.

4. The role of officers

4.1 Officers are employed by the council. They are therefore accountable to the council as a whole - not to individual councillors. There will, however, need to be special relationships between individual councillors and individual officers and these are dealt with specifically under section 6 of this protocol.

4.2 Officers are responsible for giving professional advice to members and for implementing lawful decisions of the council.

4.3 Officers must act impartially at all times and must not allow their professional judgement and advice to be influenced by their own personal views.

4.4 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for councillors, the media or other sections of the public.

4.5 Officers must act in accordance with the Human Resources Code of Conduct and the Council's Behaviours Framework.

5. Relationship between councillors and officers - general

5.1 The relationship between councillors and officers should be characterised by mutual trust and respect.

5.2 Close personal familiarity between individual members and officers can harm professional relationships and prove embarrassing to other councillors and officers. Situations should be avoided that could give rise to suspicion and any appearance of improper conduct, or the perception that a councillor and officer treat each other differently from others due to the nature of the personal relationship between them.

5.3 Councillors should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings held in public or in the press. Officers have no means of responding to criticism like this in public. If councillors feel that they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an officer they should raise the matter with the relevant director concerned if they are unable to resolve it through direct discussion with the officer – see further at section 15 below.

5.4 Councillors will not publish any material which is derogatory of officers generally, or specific individuals, whether directly or through their agents or political groups.

5.5 What can councillors expect from officers?

- a commitment to the council as a whole and not to individual political groups;
- a working partnership;
- a timely response to enquiries and complaints – see Appendix 1
- objective, professional advice not influenced by political views or preference;
- integrity, support and confidentiality appropriate to the situation;
- **being kept up to date on local issues;**
- compliance with the Human Resources Code of Conduct.

5.6 What can officers expect from councillors?

- political leadership and direction;
- a working partnership;
- compliance with the Code of Conduct for Members;
- distance from day to day management of the council;
- no improper influence or pressure to gain special treatment for themselves or others;
- recognition of the duty to promote the health, safety and well-being of officers.

6. Relationship between councillors and officers - specific

6.1 Special relationships will exist between certain councillors and officers because of their specific roles. These relationships nevertheless remain subject to the obligations set down in this protocol.

6.2 Members of the cabinet and the corporate leadership team will have a distinct and special relationship. In particular the relationship between the leader and the corporate directors will be key to the success and culture of the council.

6.3 Officers and councillors must ensure that appropriate consultations are undertaken before reports are prepared for decision, either by cabinet or by individual cabinet members under delegated powers.

6.4 Within overview and scrutiny there are two aspects of relationship between councillors and officers:

- the relationship between councillors and officers who support the overview and scrutiny function. Councillors lead the scrutiny function. Officers brief scrutiny members, but the decision to pursue any particular issue rests with councillors.
- officers who are asked to attend scrutiny committees or task groups as a witness or special adviser should be treated with respect. They may be expected to answer questions on the professional advice given to the full council or cabinet in relation to policies and decisions but must not be expected to give a political view. The arrangements for attendance of cabinet members and senior officers at overview and scrutiny meetings to give account are contained in the overview and scrutiny procedure rules in Part 8 of the constitution.

6.5 Officers may also be asked to speak at a meeting of an area board. Partner organisations such as the police, health and , fire, are also likely to be asked about the provision of local services. In the spirit of partnership working it is important that both officers and the representatives o partner organisations are treated with respect, and from a community perspective it is important that the relationship between councillors, officers and partners is seen to be constructive, with everybody working together and in the same direction.

7. General support to councillors

7.1 Appendix 1 summarises the support and facilities provided for councillors at Wiltshire Council and in their constituencies.

8. Support to specific councillors

8.1 To recognise the full-time nature of the role of leader and cabinet members, PA support will be provided, to include diary management and research support in connection with cabinet business.

8.2 PA support will also be provided to the chairman and vice-chairman of the council in recognition of their civic responsibilities.

9. Support to political groups

9.1 Political groups may request private and confidential briefings on matters of policy and factual evidence which are or may become the subject of discussions by the full council or cabinet or any committee.

9.2 The request should be submitted to the corporate director designated as the liaison officer for the political groups, who will discuss it with the appropriate officer. Attendance must be authorised by a corporate director.

9.3 The briefing should not extend beyond providing information and advice.

9.4 For the avoidance of doubt group meetings cannot make decisions on behalf of the council and it is essential that they are not acted upon as such. Nor does such a briefing negate the need to ensure that all necessary advice and information is provided to the decision-making body when the matter is formally considered.

9.5 Requests for briefings may be declined where these are to take place in premises which are not owned or controlled by the council or where persons who are not members of the council will be present.

9.6 Accommodation for use by political groups will be provided together with reasonable photocopying, postage and ICT facilities. Such use must be in connection with council business.

10. Members' access to information

10.1 This part of the protocol should be read in conjunction with the access to information procedure rules in Part 5 of the constitution and any guidance issued by the monitoring officer.

10.2 Councillors are entitled to see copies of any agenda for meetings of the cabinet, and of committees of which they are not appointed members. Councillors' rights to information are subject to legal rules and, if members have a legitimate interest in a matter in their role as a member of the council, officers should provide the relevant information (including confidential information) to them.

10.3 Councillors should seek advice from the monitoring officer in circumstances where they wish to inspect any document or have access to information about a matter:

- in which they may have an interest; or
- where to do so would be in breach of the Data Protection Act 1998;

10.4 If councillors are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled to carry out their duties as councillors they should contact the monitoring officer for advice.

10.5 Information given to a councillor must only be used for the purpose for which it was requested. Councillors and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. A councillor must seek the advice of the monitoring officer before disclosing information given in confidence.

10.6 When councillors are kept informed on local issues, they are far better equipped to be proactive in handling local issues and in responding to individuals or interest groups on a particular matter. It is the responsibility of each head of service to ensure that all relevant staff are aware of the requirement to keep local councillors informed and that the timing of such information allows members to respond appropriately and contribute to relevant decisions. Local members must also be kept informed about matters affecting their division during the formative stages of policy development, about matters considered by committees of the Council and about any significant operational matters within local Divisions as soon as realistically practical.

10.7 All officers will have regard to the area boards and delegated decisions checklist to ensure local councillors and area boards are involved in decisions on local services. The cabinet paper checklist also includes consultation with local councillors. In ensuring councillors are kept appropriately informed officers should also be mindful of Part 3 of the constitution which covers the scheme of delegation; Part 5 which covers the access to

information procedure rules and the Media Relations Protocol. Awareness of this requirement will be supported through relevant training and guidance for officers

Appendix 2 provides a guide on the information that should be provided to councilors and how this information will be communicated.

11. Media relations

11.1 Councillors are referred to the Wiltshire Council Media Relations Protocol at Protocol 7 of the constitution.

12. Use of council resources

12.1 Councillors and officers must comply with the council's policies and requirements concerning the use of its resources, including in particular its E-mail, Internet and Computer Use Policy.

12.2 Councillors must not use the council's resources improperly for political purposes (including party political purposes) and shall have regard to the local authority code of recommended practice on publicity annexed to the Media Relations Protocol . Councillors should seek advice from the monitoring officer where clarification is necessary.

13. Representation on external organisations

13.1 Councillors are referred to Protocol 3 – Guidance to Councillors on Outside Bodies.

13.2 A councillor appointed to represent the council on an external organisation shall take care to establish the legal status of the appointment and the potential liabilities that may be involved before confirming acceptance. Councillors should seek the advice of the monitoring officer if they have any concerns or are unclear about the nature of such appointments.

13.2 Councillors appointed to represent the council on external organisations shall establish relevant council policy on issues arising in those bodies and shall act in accordance with that policy when engaged in discussions and decision-making.

13.3 Where a councillor acts as a representative of the council on another body, the councillor must comply with the council's Code of Conduct for Members.,

14. Access to premises

14.1 If councillors wish to visit council establishments, other than the main area hub offices, they should contact the relevant director or head of the establishment in advance to make the necessary arrangements.

15. How to resolve issues

15.1 Councillors and officers are encouraged to work together and seek to resolve any differences informally, by discussing any concerns at the earliest opportunity.

- 15.2 If a councillor feels that they have not been treated with proper respect, courtesy or they have any concern about the conduct or capability of an officer, or that an officer has acted in breach of this protocol, they may raise the matter with the individual's relevant director. If the matter cannot be resolved informally, any such referral will be processed in accordance with the council's employment procedures and policies. The councillor and the officer will be kept informed of progress with the complaint and the action to be taken. An individual councillor does not have the power to discipline any officer.
- 15.3 If an officer feels that a councillor has acted in breach of this protocol, they should raise the matter with their relevant director. The relevant director should discuss the matter informally with the councillor. If the matter is not resolved the officer may refer the issue to the monitoring officer and the corporate director designated as the liaison officer for political groups for consideration and discussion with the appropriate group leader. The officer and councillor will be kept informed throughout.
- 15.4 In relation to the process in paragraph 15.3 above regard should be had to paragraph 3.1 of the council's arrangements for dealing with complaints under the code of conduct, which requires any complaint to be made within 20 working days of the date on which the complainant became aware of the matter giving rise to the complaint.
- 15.4 The use of mediation may be considered at any stage as a means of resolving the matter informally.
- 15.5 If the matter cannot be resolved informally the officer may bring a complaint against the councillor under the Members' Code of Conduct.

Appendix 2 – Extract from Part 2 of the Constitution

13.2 Principles of decision making

All decisions of the council will be made in accordance with the following principles:

- to produce action that is proportionate to the desired outcome
- to ensure open, fair and honest administration
- to be clear over desired outcomes and aims
- to record the options considered and discarded
- to state the reasons for the action
- to consult interested parties where appropriate and practicable
- to consult appropriate officers and to seek their professional advice
- to show due respect for human rights, and to provide equality of opportunity
- to obtain best value and operate efficiently, effectively and economically
- to serve Wiltshire communities and to work in partnership with other agencies having the same aim
- to promote the economic, social, and environmental well-being of the county
- to determine issues at the lowest level commensurate with their importance
- to keep and sustain what is useful in the traditions of the authority and to reject any practices or services retained purely out of sentiment.

Appendix 3 - Part 3 Section D1 of the Constitution

SCHEME OF DELEGATION

1. Scheme of Delegation to Directors

- 1.1 This Scheme of Delegation authorises the Directors to exercise the functions of Wiltshire Council as set out in this document. It repeals and replaces all previous schemes of delegation.
- 1.2 This scheme is without prejudice to the exercise of the council's functions by the Council, the Cabinet, and the Council's Committees, Sub-Committees and Panels.
- 1.3 Full Council, its Committees and the Cabinet will make decisions on matters of significant policy. The Directors have express authority to take all necessary actions to implement Council, Committee and Cabinet decisions that commit resources, within agreed budgets in the case of financial resources, as necessary and appropriate.
- 1.4 In relation to all delegated authority conferred on the Directors by this scheme, the Corporate Directors may allocate or re-allocate responsibility for exercising particular powers to any officer of the council in the interests of effective corporate management as he or she thinks fit.
- 1.5 Where a Director is absent from the workplace for a period of time that requires others to exercise delegated authority in that officer's absence, another officer should be nominated by the Corporate Directors. This nomination should be formally recorded in writing.
- 1.6 The Monitoring Officer will maintain a central record of all delegations under this scheme and make this available for public inspection pursuant to section 100G Local Government Act 1972.
- 1.7 Without prejudice to the generality of the foregoing, the Directors shall have the power:
 - a. To take all lawful action consistent with overall council policy to deliver agreed strategy, plans and policy and to comply with statutory obligations within their areas of responsibility and within approved budget. This shall include, but not exhaustively:
 - Invitation and acceptance of tenders
 - Submission of bids for funding
 - Write-off of irrecoverable debts
 - Virement (within the budget framework)
 - Disposal and acquisition of assets
 - Service and placing of any necessary statutory or other notices

(other than those expressly reserved to Full Council, Committee or Cabinet)

- After consultation with the Solicitor to the Council, authorising the institution, defence, settlement or participation in criminal or civil proceedings in relation to any legislation which they are responsible for monitoring, enforcing or otherwise implementing on behalf of the Council;
- b. To put in place management arrangements, which define the area of responsibility of all officers under their service area.
- c. To determine staffing arrangements within approved budgets, subject to agreement on grading with the Head of Paid Service after consultation with the other Corporate Directors and conformance with Council policies and the Finance Regulations and Procedure Rules (Part 9).
- d. To take all action to recruit, appoint, develop, manage and reward employees within approved Council policies and procedures (including operation of policies for voluntary severance, early retirement, redundancy and redeployment) and relevant conditions of service.

1.8 Any member of the Council may request that decisions taken by officers under delegated powers are scrutinised by the appropriate overview and scrutiny committee.

1.9 For the avoidance of doubt anything which is not covered by this scheme, including the appointment of a proper officer for the purpose of any statutory function, will be determined by the Corporate Directors after consultation with the Monitoring Officer.

1.10 The council has given a general indemnity to any officer acting in the purported discharge of any authority delegated to him for any action, costs, claim or liability incurred by him or her as set out in Schedule 1.

2. Decision Making

2.1 In exercising these delegated powers the officers concerned shall have broad discretion, subject to complying with paragraph 2.2 below, to use the most efficient and effective means available (including the deployment of staffing and other resources within their control and the procurement of other resources necessary) whether within or outside the Council.

2.2 In taking any decision, the officer concerned must be satisfied that the following issues have been properly considered and completed where appropriate. All of these issues should be considered at the earliest possible stage:

- a. A key decision should be taken in accordance with the relevant requirements as set out in this Constitution (Parts 1 and 2) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012;

- b. The views of the relevant Cabinet Member(s), Committee Chairman, Area Board(s) following the application of the consultation criteria set out in paragraph (c) below;
- c. Consideration of the Area Boards and delegated decision checklist for officers on the issue in deciding when and how to involve local councillors and Area Boards in decisions about local services;
- d. The implication of any Council policy, initiative, strategy or procedure. Officers need to be aware of any potential impact of a delegated decision on other services. In such cases, consultation with officers, relevant Cabinet Members(s) or Committee Chairman from any affected portfolio and local members, where the issue relates to a specific area, should take place;
- e. Consultation in accordance with the Council's consultation strategy and the views emanating from that process;
- f. The range of available options;
- g. The staffing, financial and legal implications;
- h. The assessment of any associated risks in accordance with the Council's risk management strategy;
- i. The involvement of appropriate statutory officers and/or other Directors;
- j. The relevance of any regional or national guidance from other bodies;
- k. The Council's Constitution, including the Procurement and Contract Rules (Part 10) and the Financial Regulations and Procedure Rules (Part 9), all relevant guidance, legislation, codes of practice and protocols.

3. Record Keeping

- 3.1 In taking any Executive decision, the officer concerned must prepare a record of officer decision report setting out the following:
- a. A record of the decision including the date it was made;
 - b. A record of reasons for the decision;
 - c. Details of any alternative options considered and rejected by the officer when making the decision;
 - d. A record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision;
 - e. In respect of any declared conflict of interest, a note of dispensation

The record of officer decision must be made available, as soon as reasonably practicable, at the Council main hub offices and on its website unless it contains confidential information or exempt information as defined in the Regulations and set out in Part 5.

- 3.2 In taking any Incidental decision, the officer concerned must consider whether a record of officer decision report is required having regard to guidance from

the Monitoring Officer.

4. Emergency Powers

- 4.1 The Directors are empowered to take all necessary decisions in cases of emergency;
- 4.2 For the purposes of this scheme, emergency shall mean any situation in which the relevant officer believes that there is a risk of damage to property, a threat to the health or well being of an individual or that the interests of the Council may be compromised.

5. Solicitor to the Council

- 5.1 The Solicitor to the Council is authorised:
 - a. To take any action to implement any decision taken by or on behalf of the Council, including the signature and service of statutory and other notices and any document;
 - b. To institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Solicitor to the Council considers that such action is necessary to protect the Council's interests;
 - c. To instruct counsel, solicitors and other experts in relation to legal proceedings, public inquiries, and other matters involving the Council;
 - d. To enter objections to any proposal affecting the county, the Council or the inhabitants of the county.

SECTION D2 SCHEME OF SUB DELEGATION

1. The Directors may authorise officers in their service areas to exercise, on their behalf, powers delegated under this Part 3 and Part 3 Section D1 by way of a Scheme of Sub Delegation.
2. Any decision pursuant to a Scheme of Sub Delegation must be taken in the officer's name for and on behalf of the Director.
3. The Directors are responsible for recording all delegations under this part, in writing, in such form as the Monitoring Officer may prescribe.
4. The Directors shall be responsible for ensuring that their Schemes of Sub Delegation are valid and up to date in line with guidance from the Monitoring Officer.
5. All Schemes of Sub Delegation must be recorded on the Register maintained by the Monitoring Officer. The Directors shall send updated Schemes of Sub Delegation to the Monitoring Officer as he/she directs.
6. Any decision taken by an Officer under a Scheme of Sub Delegation must be made in accordance with paragraph 2 of Part 3 Section D1 and recorded in as required in paragraph 3 of Part 3 Section D1.

Part 3 Section D3
SCHEME OF DELEGATION SPECIFIC TO PLANNING

1. The Associate Director, Economic Development and Planning Services (and any officers designated by that officer under a Scheme of Sub Delegation) is authorised to:
- - determine any planning application and discharge conditions under delegated powers (including tree/hedgerow work applications);
 - deal with all enforcement matters (including deciding on the expediency of taking/not taking action and issuing enforcement notices, including listed building enforcement and urgent works notices and taking any further action, including prosecution and direct action in respect of any breach of control);
 - deal with all types of appeal and their format;
 - where an appeal has been lodged against a planning decision and Counsel advises that specific refusal reasons are unreasonable and/or likely to undermine or weaken the Council's case and time constraints prevent the matter being brought back to Committee, officers, in consultation with the Committee Chairman and Local Division Member are authorised to inform the appellant and the Planning Inspectorate that the Council will not seek to defend such reason(s) at appeal, provided any such action does not overturn the substantive decision of the Planning Committee;
 - make and confirm Tree Preservation Orders; Tree Replacement Notices and serve notices requiring action in relation to dangerous trees, and to initiate any associated direct action required to deal with dangerous trees; deciding whether to prosecute for breaches of the Planning Acts in relation to tree and hedgerow matters;
 - determining any applications made under the high hedges provisions of the anti-social behaviour legislation; including any necessary enforcement action;
 - deal with decisions, correspondence and consultations under relevant local government, social, planning, listed building, conservation, building and environmental and other legislation. This includes proposals to change legislation or national guidance and consultation by other planning authorities;
 - determine the requirements for, and amend when necessary the local validation list for planning applications;
 - make and confirm Article 4 directions restricting or removing permitted development rights;
 - nominate officers to represent the council on forums and working parties;
 - authorise officers to enter land and buildings in the course of their duties in accordance with the provisions of the Town & Country Planning Acts;
 - enter into, modify or discharge planning or legal agreements securing controls over development (e.g. Section 106 of the Town & Country Planning Act 1990);
 - make changes to conditions approved at Committee (in the light of changing circumstances between the meeting and the issue of the decision) provided this is in line with the principles of the Committee's decision. Any such changes will be reported back to a subsequent Committee for members' information;
 - annually recommend to the budget process all planning fees and charges
 - refuse applications following a resolution to grant permission or consent if the required legal agreements are not completed by the applicant within the timeframe

set out in the officer's report and present an information report for acceptance by the relevant Planning Committee on a quarterly basis ;

- institute and defend judicial reviews and statutory challenges in consultation with the Associate Director, Legal and Governance.
- Make and serve Building Preservation Notices.
- determine whether an application falls within the remit of Strategic Planning Committee or the relevant area planning committee, after consultation with the relevant cabinet member.

With the following exceptions:

- 1.1 Applications submitted by Wiltshire Council will not be dealt with under delegated powers where an objection has been received raising material planning considerations.
- 1.2 Reference to Committee by Wiltshire Council Division Member

Division Members can request in writing/email that a planning application within their Division proceed to determination by way of an Area Planning Committee. (Any request must be received within 21 days of the circulation of the weekly list of 'applications received' in which it appears, and set out the material planning consideration(s) which warrant the application going before committee). Officers will confirm what action is being taken following receipt of the request.

Where it has not been possible or appropriate to call an application in within this time, officers will accept call in requests in the following circumstances:

1. An application has not been determined and it can still go to Committee and be determined within the target date.
2. The application is already going to go out of time (because of negotiations/amended plans etc.) and taking it to Committee will make no difference to performance.

Where neither of the above apply, and the Division Member thinks there is a strong case to delay the determination of the application and take it to committee, they can discuss the case with the relevant Area Development Manager who will then make an informed decision whether or not to exercise delegated powers.

- a. It is perfectly acceptable for members to nominate a substitute(s) to undertake their planning responsibilities, including application 'call in', if they have a conflict of interest or during periods of absence such as holidays or illness.
- b. Applications for tree work, prior approvals, Certificates of Lawfulness; notifications and variations/discharge of legal agreements - where the latter would bring them in line with a planning decision already made by the Council, will not be eligible for call-in and will be dealt with under delegated powers.
- c. If private applications are made by
 - a member or their close relations;
 - a Director of the Council or their close relations; or
 - a planning officerand objections are received raising material planning considerations the application will be determined by a committee.

There will be occasions where it would be possible to deal with certain applications under delegated powers but where the Associate Director, Economic Development and Planning Services considers it inappropriate to do so, having considered any public representation and consultee responses. In these cases the applications will be determined by an appropriate planning committee.

- 1.3 The following applications shall be dealt with by the Strategic Planning Committee:
- Large-scale major developments which, by their nature (e.g. scale, location etc.) have wider strategic implications and raise issues of more than local importance. This will include applications of a similar nature by Wiltshire Council to develop any land of Wiltshire Council, or for development of any land by Wiltshire Council or by Wiltshire Council jointly with any other person which have similar implications or raise similar issues.
 - Planning applications for mineral extraction or waste disposal, other than small scale works which are ancillary to an existing mineral working or waste disposal facility;
 - Applications, which if approved, would represent a significant departure from the policies of the statutory development plan, where they are recommended for approval;
 - Applications called in by a Division Member that cross the boundary of two Area Planning Committees;
 - Any application that the Associate Director, Economic Development and Planning Services deems raises issues that should be considered by the Strategic Planning Committee.

Definitions

Planning application means any application submitted to the Council for determination and included within the Governments' PS1 and PS2 returns. (This is a statistical questionnaire dealing with performance which local authorities have to submit regularly to the government and which divides planning application into distinct categories; householder, minor, major etc.)

'Large scale major development' means any application for 200 or more houses; residential development of 4ha or more or other development of more than 10,000 square metres or more than 2 ha, as defined by the Government in the PS1/2 return.

Householder development and the other descriptions of development referred to above shall have the meaning ascribed to them in the Government's PS1/2 return.

Enforcement notices includes all other formal notices under the Planning Acts used to investigate and remedy alleged breaches of planning control or improve the appearance of an area, including Breach of condition notices and Section 215 notices.

A private application is one which has no connection with a member or officer's council duties. For example, if an officer submitted a Regulation 3 application on behalf of Wiltshire Council it would not be a private application.

A close relation is defined as spouse, partner, sibling, parent or offspring.