

Public Document Pack



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PUBLIC

To: Members of Improvement and Scrutiny Committee - People

Friday, 26 November 2021

Dear Councillor,

Please attend a meeting of the **Improvement and Scrutiny Committee - People** to be held at **11.00 am** on **Monday, 6 December 2021** in Council Chamber, County Hall, Matlock, DE4 3AG, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in black ink that reads 'Helen E. Barrington'.

Helen Barrington
Director of Legal and Democratic Services

AGENDA

PART I - NON-EXEMPT ITEMS

1. Apologies for absence
To receive apologies for absence (if any)
2. Declarations of Interest
To receive declarations of interest (if any)
3. Call-in: The Future of Care Homes for Older People (Pages 1 - 40)



**FOR PUBLICATION
DERBYSHIRE COUNTY COUNCIL**

IMPROVEMENT AND SCRUTINY COMMITTEE - PEOPLE

MONDAY, 6 DECEMBER 2021

Report of the Director - Legal and Democratic Services

Call-in: The Future of Direct Care Homes for Older People

1. Purpose

- 1.1 To consider a call-in in respect of a Cabinet decision to approve a programme of formal public consultation on the future provision of accommodation for older people in seven of the Council's residential care homes.

2. Information and Analysis

- 2.1 The Council's Constitution provides for decisions to be called-in where Members consider that the decision-making principles set out in Article 7 (Decision-Making), which are set out in Appendix 2, have been breached. The Improvement and Scrutiny Procedure Rules set out in the Constitution require a call in to be requested by at least 4 councillors, including 2 from 2 political groups.

- 2.2 At a meeting held on 18 November 2021, Cabinet considered a report of the Executive Director of Adult Social Care and Health and agreed:

(1) a programme of formal public consultation on the future of the homes listed below (one of which includes an integral day centre), including possible closure, for a period of 12 weeks, to be conducted as set out in the Cabinet report:

- Ladycross House (Sandiacre)
- Beechcroft (West Hallam)
- East Clune (Clowne)

- Holmlea (Tibshelf)
- The Spinney (Brimington)
- Goyt Valley House (New Mills)
- Gernon Manner (Bakewell)

and (2) that a further report will be received following the conclusion of the consultation and market engagement processes, including a full Equality Impact Analysis.

A copy of the report considered by Cabinet is attached as Appendix 3, together with the draft minute.

- 2.3 In accordance with the provisions of the County Council's Constitution, Councillors Ed Fordham, Ruth George, Anne Hayes, Joan Dixon, Nigel Gourlay, Paul Niblock, Sue Burfoot, Ron Mihaly, Anne Clarke, Gez Kinsella, Christine Dale, Mick Yates and Barry Bingham have asked that the decision be called-in and considered by this Committee.
- 2.4 The call in has been requested on the basis that the decision breaches Articles:
- 7.2 (e) respect for human rights and equalities;
 - 7.2 (f) a presumption in favour of openness;
 - 7.2 (g) clarity of aims and desired outcomes.
- 2.5 The principal objections were stated as follows:
- This does not significantly differ from the previous consultation
 - This will cause real stress, fear and worry to an already vulnerable group of residents
 - This report does not address the information contained in previous reports on the viability of the homes
 - Consultation with councillors, where the care homes has residents and associated relatives interested in the care homes, have been non-existent or cursory
 - We are yet to see the final Market Position Statement and to take account of the viability of the PVI sector following the impact of the pandemic and of the 2022/23 financial settlement on the sector (which will not include the additional Infection Control funding that has kept the sector going over the last 2 years)
- 2.6 The procedure to be adopted when a decision is called in is set out in the Call in procedure set out in the Improvement and Scrutiny Procedure Rules at Appendix 5 to the Constitution. This is attached at Appendix 4.

2.7 The Committee will need to determine whether or not the decision making principles set out in Article 7.2 (e), (f) and (g) have been breached in relation to the decision of Cabinet set out in paragraph 2.2 above.

2.8 If, having considered the matter, the Committee is satisfied that the principles have been followed, the decision of Cabinet can be implemented. If, however, the Committee concludes that the decision making principles have been breached, it may:

- refer the decision back to Cabinet for reconsideration; or
- refer the matter to Full Council.

The Committee must state in writing the nature of the concerns regarding the decision.

2.9 As with all Improvement and Scrutiny Committee meetings, the call-in process should be inquisitorial not adversarial.

3. Consultation

3.1 Not applicable.

4. Alternative Options Considered

4.1 To not consider the call-in request, however this would result in the Council failing to comply with the Constitution.

5. Implications

5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

6.1 None identified.

7. Appendices

7.1 Appendix 1 – Implications

7.2 Appendix 2 – Extract from Article 7 of the Constitution

7.3 Appendix 3 – Report to Cabinet dated 18 November 2021 together with the draft minute

7.4 Appendix 4 – Call in procedure set out in the Improvement and Scrutiny Procedure Rules

8. Recommendation

That the Committee consider the call-in of the decision made by Cabinet on 18 November 2021 and determine whether or not the decision making principles set out in Article 7.2 (e), (f) and (g) have been breached.

9. Reasons for Recommendation

9.1 To comply with the Council's Constitution.

Report Author: Roz Savage

Contact details: roz.savage@derbyshire.gov.uk

Implications

Financial

1.1 None directly arising from the report.

Legal

2.1 The Council's Constitution sets out the procedures for 'call in' which must be followed.

Human Resources

3.1 None directly arising from the report.

Information Technology

4.1 None directly arising from the report.

Equalities Impact

5.1 None directly arising from the report.

Corporate objectives and priorities for change

6.1 None directly arising from the report.

Other (for example, Health and Safety, Environmental, Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None directly arising from the report.

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7.2 Principles of decision-making

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

- (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- (b) where appropriate, the realistic evaluation of alternatives;
- (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- (d) due consultation and the taking of professional advice from officers;
- (e) respect for human rights and equalities;
- (f) a presumption in favour of openness;
- (g) clarity of aims and desired outcomes; and
- (h) reasons being given for the decision, as appropriate.

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FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

18 November 2021

Report of the Executive Director of Adult Social Care and Health

**The future of Direct Care Homes for Older People
(ADULT CARE)**

1. Divisions Affected

1.1 County-wide

2. Key Decision

2.1 This is a Key Decision because it is likely to:

- a) result in the Council incurring expenditure which is, or making savings which are, significant having regard to the budget for the service or function concerned; and
- b) be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

3. Purpose

3.1 Cabinet is asked to approve the undertaking of a public consultation, including consultation with the current residents and their families, on the future provision of accommodation for older people in a number of the Council's residential care homes.

4. Information and Analysis

Background and Context

- 4.1 The Council owns and runs 23 residential care homes for older people which makes it one of the largest local authority providers of residential care in the country. There are 11 other residential care homes run by local authorities across the East Midlands Region; 2 in Nottingham City, 1 in North Northamptonshire, 8 in West Northamptonshire and 0 in Leicester City Council, Rutland, Derby City, Leicestershire County Council, Lincolnshire County Council and Nottinghamshire County Council. Each service is individually registered with the Care Quality Commission and inspected by them to ensure the required standards are being met. In 2018, detailed property condition surveys were commissioned in relation to a number of these homes, focusing on general building condition and electrical systems in the older homes. These reports were commissioned in the context of concerns that the ageing buildings were no longer considered fit for purpose and a concern for the state of the buildings given their age and the ongoing need to ensure the safety and wellbeing of residents both now and in the future. The Director of Adult Social Services (DASS) advised Cabinet Members that an appropriate and rapid course of action was needed to mitigate the concerns raised and thereby ensure the ongoing safety of residents.
- 4.2 Significant maintenance, renovation and refurbishment needs were identified which included the requirement for arrangements to be made for the homes to be rewired by September 2022 in addition to significant refurbishment works, including the replacement of boilers and heating systems, the refitting of all bathrooms and kitchens and the installation of sprinkler systems throughout the buildings. To complete these major works Adult Care was advised that there would be significant disruption to residents including the potential requirement for people to move out of their home for up to 40 weeks whilst the work was undertaken.
- 4.3 In light of the advice received on the standard of the electrical wiring and the associated risk, consideration was given as to whether immediate vacation of the properties was the necessary course of action. However, to avoid taking this action it was determined that a programme of mitigation measures could be implemented to adequately manage the immediate and medium term risks.

As a result of the inspections and alongside implementing the urgent mitigation measures, a consultation exercise was undertaken in early 2020 on proposals for the future of ten of the homes.

Previous Consultation

4.5 A 12 week public consultation was undertaken early in 2020, following a report to Cabinet on 23 January 2020 regarding the proposed possible closure of the following 7 residential care homes; Ladycross House (Sandiacre), Beechcroft (West Hallam), East Clune (Clowne), Holmlea (Tibshelf), The Spinney (Brimington), Goyt Valley House (New Mills) and Gernon Manor (Bakewell), as well as the refurbishment of New Bassett House, Briar Close and Rowthorne. The consultation regarding the possible closure of the seven homes followed advice from the council's Corporate Property Department that these homes required a full electrical rewire by September 2022 to meet current safety standards.

On 4 June 2020, Cabinet agreed that;

- further to the consultation none of the homes proposed for closure would close unless a local care home or alternative provision was available to replace them and further consultation was undertaken as appropriate.
- a further report setting out a programme of repair and refurbishment for these seven homes, to include any works required immediately to ensure their soundness and safety, would be presented to Cabinet in due course.
- the plans to undertake a programme of work to refurbish New Bassett House, Briar Close and Rowthorne would continue, with a further report presented to Cabinet seeking a business case and procurement approval in due course.
- Scrutiny Committee – People would be invited to consider including within its work programme, oversight of the next steps (with particular reference to the need for and type of local provision required), to ensure transparency of decision making and to make any recommendations to Cabinet or elsewhere that may arise as a result of such scrutiny.
- a revised strategy and investment plan taking into account reviews of the Market Position Statement and of the strategic needs analysis would be presented to Cabinet by the end of 2020.

Actions taken following the Cabinet decision

The views of the Scrutiny Committee – People referred to in the fourth bullet point above, following the work they have undertaken, are set out

at Appendix 2 along with the refreshed data regarding the alternative local provision currently available, which is at Appendix 3.

The prior consultation considered the possible closure of the seven homes and the refurbishment of a further three homes. The outcome of that consultation was that the three homes proposed for refurbishment would continue to be refurbished and this work is now underway. The outcome in relation to the other seven homes was that they would not close until such time as a local care home or alternative provision was available to replace them, and further consultation had been undertaken.

- 4.6 On 10 December 2020, the Executive Director for Adult Social Care and Health, submitted a report to Cabinet providing an update on the actions agreed at 4 June 2020 Cabinet.

Cabinet was informed that the Council's Property Department had compiled a schedule of works, including the work required over the next 1-2 years, to refurbish the seven properties that were subject to the original consultation which included roof works, heating works/replacement of boilers, replacement of kitchen ventilation etc. In addition to this, it was reported that the buildings would require a full, comprehensive, invasive electrical rewire to bring them up to the current required standard. Whilst further feasibility studies would be required, it should be noted that the outline budgeting cost to refurbish the 10 homes subject to the initial consultation, (7 under consideration for possible closure and 3 for refurbishment), was reported to be approximately £30m.

Cabinet agreed the revised timeline below:

- December 2020 – January 2021: citizen engagement and engagement with care providers undertaken (including information from the virtual investment event 14 December 2020).
- February 2021: completion of an Interim Market Position Statement to respond to the impact of COVID-19, which will be reported to Cabinet in March 2021.
- Summer 2021 (estimated post pandemic): commencement of a full review of the care market to develop a refreshed Market Position Statement, review of the Health and Wellbeing Strategy and Joint Strategic Needs Analysis.
- Summer 2021: completion of feasibility work on the seven homes which require rewiring.

- Autumn 2021: consideration of a longer-term strategic plan taking account of the revised Market Position Statement, Health and Wellbeing Strategy and Joint Strategic Needs Analysis.

It should be noted that Cabinet was assured on 10 December 2020 that the Scrutiny Committee – People, were satisfied that the mitigations currently in place at the seven homes were sufficiently robust and durable to address the perceived increased risk at these properties, but that was on the understanding these mitigations remain in place on an interim basis only and do not represent a long term, sustainable, solution.

- 4.7 The detail required in order to commission the feasibility work that was recommended by Corporate Property in order to obtain an updated cost of the rewire and refurbishments at the 7 properties is completed. The property team have previously provided budgeting estimates of approximately £27m to fully refurbish all seven homes which would include a full reinstall of the boiler and heating system, removal of any asbestos, the fitting of sprinklers in the ceiling, replacement of all bathrooms, a kitchen refit, replacement of the flooring throughout and a full decoration throughout. It would be necessary for the current residents living in these homes to move to alternative accommodation on a temporary basis for a period of up to 40 weeks whilst the refurbishment work was undertaken. Whilst further feasibility work would be required in order to obtain additional updated cost estimates, we are not proposing to progress with commissioning further feasibility studies at this stage in light of the information contained within the Interim Market Position Statement, which has shown that the trend away from residential care and towards care being provided at home has accelerated in the intervening period between the previous consultation exercise and this report. The detail in relation to these aspects is contained within the remainder of this report.
- 4.8 Whilst it has been necessary to delay the development of a full Market Position Statement in light of the pandemic, and it is acknowledged that a further engagement exercise will be required to fully understand its impact upon the views of local people about their future care and support, we consider there is sufficient additional and updated information available to support the recommendation that people should now be further consulted on the future of the seven homes listed above. A consultation exercise at this stage in the process will also serve to further develop our understanding of the market in our locality and enable us to complete a comprehensive Market Position Statement.

Analysis of the current position

- 4.9 At present, we have an Interim Market Position Statement for Older People’s Nursing, Residential, Extra Care and Homecare Services 2021

– 2022 (“IMPS”), which was published in June 2021. The IMPS is based upon analysis of the current research and data and takes into account the feedback from the citizens engagement exercise carried out in January 2021. The IMPS highlights that people are continuing to choose to live at home for longer and that people are entering care homes later in life and with more acute needs, which has resulted in a reduction in the demand for long-term residential care and an increased demand for nursing care and homecare. Residential care home providers are reporting that they are now supporting people with more complex needs who would have previously had their needs met in a nursing home. This trend is reflected within the Council’s directly provided residential care homes and is also reflected in the national picture. As mentioned above, in February 2021 37% of the Council’s providers reported occupancy rates below 80%.

4.10 The following information contained within the IMPS is relied upon to support the recommendation to conduct a consultation exercise on the proposals regarding possible closure of the homes identified in the report.

4.10.1 Recent modelling conducted by Laing-Buisson in 2021 suggests that there will be a lower number of people accessing residential care in the future than the ONS figures suggest. This is because the ONS projections are based upon an assumption that entering a care home is inevitable in later years, but we know people are choosing alternative long-term care options.

4.10.2 Lower levels of demand are expected to continue for an extended period and recent research by the Institute for Public Policy Research found that there is a lower demand for residential care and that 1/3 of people are now less likely to seek residential care for an elderly relative, while 40% of over 65’s are less likely to consider it for themselves.

4.10.3 ONS data from the 2011 Census shows that from 2001 to 2011, the increase in the number of people in care homes (avg. 1.3%) did not rise in line with the general population (avg. 13%) and contrary to expectations, the 45% increase in the number of people aged 85+ since 2001 has not resulted in a corresponding increase in demand for residential care. There was in fact a reduction of 4.4% in the number of people aged 85+ in residential care between 2001 and 2017 and a 10.4% reduction between 1996 and 2017 (Laing-Buisson 2017).

4.10.4 Derbyshire’s long-term care admission rate per 100,000 of population was 730.7 in 2015-2016, this fell to 585.3 in 2019-2020, a drop of 25% despite an expanding population. This local picture follows national trends which show a period of decline in the number of long-term admissions to care homes prior to the pandemic and throughout the

pandemic. The figures available for 2020 – 2021 indicate there has been a further 20% reduction in admission rates compared with 2019 – 2020.

4.10.5 Conversely, demand for homecare services for people who live in their own homes and are aged 65 and over has been increasing at pace. An average of 4,504 people were supported by homecare services in Derbyshire every month during 2018. This increased by 3% to 4,656 during 2019 and the number of people supported during 2020 increased by a significant 12%, or 5,201 per month average, in spite of people withdrawing from care due to the perceived risk of COVID infection.

4.10.6 5,439 people were supported with a package of care in their home in January 2021 and the Council's area demand figures indicate that over the last 12 months on average there were 102 people waiting for a service. This figure includes people currently without support and others who may already receive support but need to change the type of support or provider, e.g. transferring from short-term to long-term services and hospital discharges. The data indicates that in Q3 of 2020-21 (Oct - Dec 2020), 129 or 87.7% of people referred to the Council after being discharged from hospital were supported to remain at home.

4.11 The Council is taking steps to respond to this increased demand and recognises the need to develop a much stronger emphasis on existing types of support which are community and housing based, as well as new and innovative forms of care for the future. The Better Lives work continues at pace to ensure there is sufficient capacity to support people who are being discharged from hospital with packages of support in their own home on a short-term basis, whilst the appropriate long-term support within the community is commissioned if it is required.

4.12 In quarter 1 of this year, the new reablement offer is on target to ensure that an additional 1,320 people are able to access the reablement service every year and performance in the first quarter shows that the service supported 885 against a target of 897. This work will continue to impact upon the number of people who can be supported in their own home.

4.13 The Commissioning Strategy for Derbyshire 2019–2035, (the “Commissioning Strategy”), details the joint ambition of Derbyshire County Council, Health, Housing and the District and Borough Councils, to support older people to live independently in their homes and communities for as long as possible. This strategy was based upon a strategic vision developed in 2018, which incorporated the wishes of older people who told us they wish to remain living in their own homes. In creating the vision in 2018, the Council worked with the Housing Learning and Improvement Network (“Housing LIN”), which is a national independent network that brings together health and social care professionals to encourage innovative housing solutions that meet

people's needs and expressed wishes. When asked, 69% of people in Derbyshire surveyed, expressed a wish to stay in their own home with care and support from a care provider in the hometown or village they are familiar with. The engagement exercise conducted in January 2021 reaffirmed the message given to us by people living in Derbyshire that residential care is not the preferred option for most people.

4.14 As described above, we know that when people do go into residential care, they often have more complex needs and it is therefore important that the structure and layout of our residential homes allow for these needs to be met. The Commissioning Strategy sets out that good quality residential care should include en-suite facilities for all residents, including level access showers and bedrooms that are no smaller than 12m square, with sufficient room within the bedrooms for visitors and carers to access both sides of the bed and with easy use of any equipment that is required for care. There should be sufficient disabled toilet facilities, accessible outdoor space for residents and they should be dementia friendly in design. When commissioning residential care, the focus needs to be on residential homes that meet the needs of older people with complex physical or medical care needs and where those with dementia can be supported.

4.15 **The homes requiring a rewire by September 2022**

In light of the advice received from the Council's Corporate Property Department that the seven homes subject to the original consultation require a rewire by September 2022, and taking into consideration the information contained within the analysis section above, it is necessary to review all possible options with the aim of seeking to ensure that residents live in residential homes which are safe, fit for purpose and meet the required standards, as well as delivering the Accommodation Strategy.

4.16 **Options available to the Council**

- One option is to do nothing and maintain the status quo. This is not recommended as viable option in light of the advice received from colleagues in corporate property that major rewiring and refurbishment work is required at the seven sites to bring the properties up to the required standard. It is not recommended that this option should be consulted upon.
- One option is to rewire the homes and carry out any other essential maintenance work but not carry out a full refurbishment. Any aesthetic damage done to the properties as a result of this work could be 'made good' following completion. Whilst this is likely to bring down the

immediate cost of the work it is not recommended as a viable option because this would not bring the properties up to the standard our residents expect and deserve. For example, the properties would still be left without modern sprinkler systems throughout having a significant impact upon the staffing requirement in these homes. It is not recommended that this option should be consulted upon.

- One option is to rewire and carry out major works to refurbish the homes including a full reinstall of the boiler and heating system, removal of any asbestos, the fitting of sprinklers in the ceiling, the replacement of all bathrooms, a kitchen refit and full decoration, as described in paragraph 4.7. This option would require current residents to move out for a period of up to 40 weeks.
- One option is to close the homes and support residents to move to 'local', 'reasonable' and 'suitable' alternative provision as recommended by the Improvement and Scrutiny Committee – People, the detail of which is set out in Appendix 2.
- One option is to close the homes and support residents to move to any suitable alternative provision.

It is proposed that the Council consults on the three viable options from the five listed above. The relevant factors to be considered as part of any consultation of the viable options are contained within the following paragraph.

- a) Cabinet has previously made a decision to only close the homes if a local care home or alternative provision was available to replace them.
- b) To ensure that all people requiring residential care can access high quality care in appropriate facilities a full rewire is required in the 7 homes to bring them up to standard.
- c) The homes require significant expenditure in the short and medium-term in order to address urgent maintenance and refurbishment issues. This includes rewiring as a priority, but also heating/boiler replacement, roof works, fire safety improvements and kitchen ventilation works, which cannot be delayed indefinitely. The Corporate Property Department has advised that arrangements to replace the current wiring must be completed by September 2022 to ensure the electrics are brought up to the required standard within a reasonable timeframe.
- d) The homes are no longer fit for the purpose they were originally designed for and do not meet the design requirements set out in the Commissioning Strategy. Even if they are refurbished, they do not have the space, facilities or capability to be adapted to meet the needs of

increasingly frail older people, which impacts upon the Council's ability to provide high quality care.

- e) As result of abridged timescales to complete this essential work any residents living in the homes in September 2022 would need to move out on a temporary basis for a period of up to 40 weeks whilst a full rewire or refurbishment is undertaken causing significant disruption and disturbance for residents and their families and for staff who would need to be redeployed during this period. Current residents could return to the homes to live there in the longer-term following completion of the work.
- f) There is currently an oversupply of residential care beds in Derbyshire and in February 2021, 37% of the Council's providers reported occupancy rates below 80%. Local demand is following national trends and shows a period of decline prior to the pandemic which appears to have been accelerated by the pandemic.
- g) There is sufficient capacity in the market to provide alternative provision for the current residents. Information about the current vacancies in the relevant areas is at Appendix 3.
- h) In accordance with the expressed wishes of the majority of people consulted in Derbyshire about their future care needs, the Council will be seeking to offer alternatives to residential care through increased community based services and via engaging with the market in relation to the identified undersupply of housing with care provision to 2035.
- i) Significant expenditure on those homes which there is diminishing strategic need for and, even if refurbished, will still not be fit for purpose, is not the best use of public money.

Preferred Course of Action

4.17 In light of the above factors, it is proposed that approval is sought to commence consultation; with the possible closure of the seven homes subject to securing local reasonable and suitable alternative provision for the current residents set out as the perceived most viable option within that consultation.

4.18 Whilst the Council considers this to be the likely most viable option at this stage and that suitable alternatives are currently available for residents within their local area, it is vital to the process that the views of the residents, their families and other stakeholders are sought prior to any decision being taken with regard to the future of these 7 homes. The Council will keep an open mind as to whether this option remains the most viable throughout any approved consultation exercise and will need

to evaluate any responses received to such a consultation in order to ascertain whether further viable alternative options have been put forward, or give the council reason to reconsider whether the other options above themselves represent a more viable future for each of the seven homes. Specific questions in this regard would form part of any approved consultation exercise.

- 4.19 Should a consultation exercise be approved and, subsequently, closure of any homes be approved following that consultation, families and residents would be supported in accordance with the Council's Major Change and Closure Guidance at appendix 4 and in accordance with the 'Pledges' at appendix 5. At that point in the process, it would also be necessary to seek approval to explore viable options in relation to disposal of the site of each of the seven homes. This would ensure that all possible avenues available to the Council may be identified and evaluated in line with the Council's priorities; for example, including but not limited to, opportunities for engaging developers to deliver additional housing where demand has been identified in the accommodation and support strategy, or disposing of the properties with a view to obtaining a capital receipt representing best value for the Council.

5. Consultation

If this report is approved, it is proposed that formal public consultation will commence on 22 November 2021 and last for 12 weeks ending on 14 February 2022. A single consultation exercise would be carried out covering all seven homes which are the subject of this report.

We also propose engaging informally with the staff members of each of the seven homes as part of the consultation exercise. Such engagement will encourage all staff to participate in the consultation and to share their experiences and views on the proposals. We will also offer support through the process, engaging more formally with the staff of any home which may eventually be closed and we would seek to support as many staff as possible to be redeployed into other available vacancies across both the department and the wider Council.

We will support individual residents and their families to understand and engage with the consultation process and the potential implications for them by offering face to face consultations, where requested, and creating an information pack for residents to ensure the relevant information is presented in an accessible and clear format.

Subject to this report being approved and the consultation exercise undertaken it is anticipated that, once the consultation responses have been considered and an Equality Impact Analysis completed, a further

report will be presented to Cabinet regarding the proposed next steps. Dependent upon the outcome of any decision at that time, an indicative timeline for events following this would be:

- 07 April 2022: Cabinet receives and considers a report on the outcome of the consultation.
- 11 April 2022: Dependent on the decision of Cabinet, the social work teams start work on individual patient care assessments in order to reassess the individual residents affected in terms of their suitability to move, and, as appropriate, to tailor individual planning for alternate accommodation. This work would be prioritised to ensure that the people impacted were provided with information about the available options in order to allow them and their families to make the best choice available to them. Cabinet should note that if the process reaches this stage, further focused consultation would need to be carried out with individual residents, taking into account the individual's personal circumstances in order to understand their appropriate individual needs, and to locate and provide the best suitable alternative provision that will meet those needs.

6. Alternative Options Considered

- 6.1 To determine the future provision of accommodation for older people in the seven residential care homes without conducting a further public consultation exercise. This is not recommended as a viable option because proposals to make significant changes in service provision require consultation with the public and those directly affected, including service users, staff and carers and relevant stakeholders. In addition it would not meet the previous Cabinet commitment in June 2020 that “none of the homes proposed for closure would close unless a local care home or alternative provision was available to replace and further consultation be undertaken as appropriate”.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

Older People's Housing, Accommodation and Support: a commissioning strategy for Derbyshire 2019 - 2035

Interim Market Position Statement for Older People's nursing, residential, extra care and homecare services 2021 – 2022.

Cabinet on 23 January 2020 – Report of the Executive Director for Adult Social Care and Health; Revised vision and future strategy for Direct Care homes for Older People 2020 – 2025

Cabinet 4 June 2020 – Report of the Executive Director for Adult Social Care and Health; Outcome of the consultation on the future of Direct Care Homes for Older People

Cabinet 10 December 2020 - Report of the Executive Director for Adult Social Care and Health; Direct Care homes for older people: update on actions

Cabinet 11 March 2021 – Report of the Chairman of the Improvement and Scrutiny Committee – People; Scrutiny of the next steps in relation to Direct Care Homes for Older People – update on progress

9. Appendices

9.1 Appendix 1 - Implications

9.2 Appendix 2 - Outcome of engagement of the Scrutiny Committee – People

9.3 Appendix 3 – Alternative local provision within 10 miles of each home

9.4 Appendix 4 - Adult Care – Major Change and Closure Guidance
<https://staff.derbyshire.gov.uk/site-elements/documents/working-here/adult-care/major-change-and-closure-guidance-accommodation-care-and-support-for-older-people.pdf>

9.5 Appendix 5 – Pledges to Residents

10. Recommendation(s)

That Cabinet approves:

- (a) The programme of formal public consultation on the future of the homes listed below (one of which includes an integral day centre), including possible closure, for a period of 12 weeks, to be conducted as set out in the report:

- Ladycross House (Sandiacre)
- Beechcroft (West Hallam)
- East Clune (Clowne)
- Holmlea (Tibshelf)
- The Spinney (Brimington)
- Goyt Valley House (New Mills)
- Gernon Manor (Bakewell)

- (b) That a further report will be received following the conclusion of the consultation and market engagement processes, including a full Equality Impact Analysis.

11. Reasons for Recommendation(s)

- 11.1 Proposals to make significant changes in service provision require consultation with the public and those directly affected, including service users, staff and carers and relevant stakeholders to ensure that their views can be taken into account when a final decision is made. Consultation for 12 weeks is proposed to ensure the Council complies with its legal obligations.
- 11.2 A further report following the conclusion of a consultation is recommended to ensure that Cabinet is fully informed of the outcome of the consultation, any market engagement processes and EIA when it makes a decision on the future of the seven homes.

12. Is it necessary to waive the call-in period?

- 12.1 No

Implications

Financial

- 1.1 The gross budget available as a result of the proposed closure programme for the seven homes would be in the region of £7.577m

However, there would be a requirement for up to 103 beds to be purchased from the independent sector for residents to move to (based on current occupancy of 42.6%). The ongoing costs of this would be an estimated £3.188 million based on an average weekly cost of £593 per placement.

This would result in a net surplus of £4.389m. Of this a proportion would need to be allocated against the Better Lives project following successful work undertaken on the pathway redesign for older people to remain within their own homes for as long as possible.

These figures don't include provision for potential redundancy costs, site clearance/security costs. Also, potential receipts from sale of land/property are not included.

In addition there is some urgent remedial work that needs to be undertaken within these homes at a cost of £2.400 million. The full refurbishment costs for these homes is estimated to be £27.000 million.

Legal

- 2.1 The Care Act 2014 imposes a general duty on local authorities to promote an individual's well-being (section 1 Care Act 2014).

'Well-being' is a broad concept but particular reference is made to an individual's control over day-to day life (including over care and support and the way in which it is provided) domestic, family and personal relationships and also the suitability of living accommodation (section 1(2)(d), (g) & (h) Care Act 2014). Local authorities are also required to have regard to particular matters regarding well-being, including the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being; the individual's views, wishes, feelings and beliefs; and the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate (section 1(3)(a), (b) and (e) Care Act 2014).

Local authorities must promote diversity and quality in the provision of services. There is a duty to promote the efficient and effective operation of the market, which includes ensuring that there is a variety of high quality services and providers to choose from (section 5 Care Act 2014).

An assessment of needs must be carried out where it appears to the local authority that a person may have needs for care and support. The assessment must identify whether the adult has any eligible needs. If there are, the assessment must state what those needs are. (Section 9(1), Care Act 2014.) A Local authority must also assess any carer (current or prospective) where it appears they may have need for support.

After assessing what the needs of an adult or carer are, a Local Authority must consider whether the needs meet the eligibility criteria for a provision or service (section 13(1), Care Act 2014). The criteria does not specify the types of care and support that a Local Authority must provide to meet eligible needs. Prior to any individual moving accommodation, their needs assessment and care and support plan should be reviewed. In offering alternative accommodation the Local Authority should have regard to the Care and Support (Choice of Accommodation) Regulations 2014.

Proposals to make significant changes in service provision require consultation with the public and those directly affected, including service users, staff and carers and relevant stakeholders.

Case law has established minimum requirements of consultation, which are:

- a) Consultation must be at a time when proposals are at a formative stage;
- b) Sufficient information must be given to permit a person to “give an intelligent consideration and response”;
- c) Adequate time must be given for consideration and response; and
- d) The results of the consultation must be conscientiously taken into account in finalising any proposal and provided to the decision maker to inform their decision

Following the consultation set out in the report Members will need to take careful account of the views expressed in arriving at their decision. In addition, any final decisions must also take into account the rights of service users as set out in the Human Rights Act 1998, specifically Article 8, “Right to respect for private and family life”.

In assessing these proposals, the Council should also have regard to its statutory duties under the Care Act 2014 set out above and the Public Sector Equality Duty. (PSED) under the Equality Act 2010.

The PSED requires public authorities to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (*section 149(1a)*).
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (*section 149(1b)*). This involves having due regard to the needs to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (*section 149(4)*); and
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Preliminary consideration has been given to the impact of the proposals on persons with protected characteristics in drawing up these proposals. In particular it is recognised that the methods and content of the consultation will need to be designed so as to fully reflect the needs of the relevant protected groups, in particular older people and disabled people.

In addition, regard has been paid to the Equality Impact Analysis (EIA) carried out in respect of the care pathway redesigns as is referred to in the report. A full EIA will be prepared during the consultation process reflecting issues that are raised during the consultation process. This will be reported in full to Cabinet and a full copy of the EIA made available to Members in order that any adverse impact along with any potential mitigation can be fully assessed. Cabinet members will be reminded at that time of the need to have careful regard to the conclusions of the EIA.

Human Resources

- 3.1 Any workforce implications arising from the proposals will be the subject of further reports on the conclusion of public consultation. Staff will be included in the public consultation and as mentioned in Section 5 of the report, separate engagement with, and support for, all staff of the homes

that are the subject of this report will be carried out as part of any consultation exercise.

Information Technology

4.1 None directly arising.

Equalities Impact

5.1 The Council has a duty to recognise and mitigate the impact of any changes it proposes upon people in protected groups. The proposals in this report affect older and disabled people living in residential care homes.

5.2 There are 73 long term residents living in the 7 homes (as at 20 July 2021) of which 78% are women and 22% are men; 57.5% are over 85 years old, 42.5% are between 65 and 84 years old and 0 are under 65; 98.5% are white British, 1.5 % are from other backgrounds. There are an additional 18 short term residents, (as at 20 July 2021), 77% are women and 23% are men; 61% are over 85 years old and 39% are between 65 and 84; 100% of the short-term residents are white British.

5.3 The Council will take account of the challenges which the people affected by the proposals in this report face, both in terms of participation in the consultation and in ensuring that the impact of any changes is mitigated if they are to be implemented. Family and friends will be invited to participate in the consultation and advocacy services will be arranged for people who require them. In terms of the impact of the changes, if they are to be implemented, attached at appendix 4 is the Council's "Major Change and Closure Guidance" which sets out the arrangements which will be made if a decision is made to close a home.

5.4 A full Equality Impact Analysis will be undertaken and this will be reported to Cabinet on the completion of the consultation on the proposals in this report, should a consultation exercise be approved by Cabinet.

Corporate objectives and priorities for change

6.1 In the Council Plan 2021 – 2025 the Council states that listening to, engaging and involving local people in order to ensure services are responsive and take account of what matter most to people, as being a core value.

6.2 The Council commits to work together with its partners and communities to be an enterprising council, delivering value for money and enabling local people and places to thrive, and to spend money wisely making the best use of the resources that it has.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 As set out in the report.

11 March 2021 – Scrutiny of the Next Steps in Relation to Direct Care Homes for Older People – Update on Progress from Councillor Musson

On 4 June 2020 Cabinet invited Scrutiny Committee – People to consider including within its work programme, oversight of the next steps (with particular reference to the need for and type of local provision required), to ensure transparency of decision making and to make any recommendations to Cabinet or elsewhere that may arise as a result of such scrutiny.

On 11 March 2021, the Chairman of the Improvement and Scrutiny Committee – People, provided an update in relation to the work completed and provided comment on the methodology that might be used to determine what is “local” and “suitable” alternative provision, in the event of each of the above-mentioned care homes closing.

Whilst the committee did not provide any comment on any proposals with respect to the future of the seven homes, they did provide comment on the proposed methodology to decide what the definition of the terms “local”, “suitable” and “reasonable” might be. To assist the Scrutiny Working Group, Officers from Adult Care provided descriptions of different types of alternative provision and suggested definitions for the terms “local”, “suitable” and “reasonable”. The definitions provided were as follows:

Local - It was suggested by officers that for the purposes of relocating people as a result of any residential care home closure any accommodation within a ten-mile radius of their existing care home would be considered as local.

Suitable – In the context of any proposed care home closure it is *likely* (but not always) that the most suitable alternative would be another residential care home.

Reasonable – It was suggested that a reasonable alternative would be that which is the most appropriate setting for the individual, based on an assessment of need and which could offer a combination of “suitable” and “local” as defined above. It would be expected that in the context of an alternative residential care home this would be any establishment within the whole market, not necessarily just a Council operated alternative.

As part of this work, Scrutiny Members were provided with a map of the surrounding area for each of the seven homes with a 10 mile radius drawn and Members were advised of the vacancies at residential care homes in this ‘local’ area with an indication of the Care Quality Commission rating for each home. This information has been updated and the latest figures are at Appendix 3.

Cabinet was asked by the Chair of the Improvement and Scrutiny Committee – People, to note the following;

- Note that due to the revised timetable the Committee will not be able to deliver against all of the key lines of enquiry in the timeframe anticipated.
- Note that the Improvement and Scrutiny Committee – People has considered the proposed methodology to determine what is “local” and “suitable” alternative provision.
- When determining what is “local” provision, not only consider distance but also place a high priority on a person’s connectedness to an area, the location of family and friends and accessibility to transport routes.
- When determining what is “suitable” provision, place a high degree of importance on the ongoing affordability for individual service users of CQC rated “good” or above provision.
- Note that the Committee recognises that in this current pandemic climate occupancy levels have been significantly reduced and operating costs are temporarily well above the norm. The situation is unlikely to change in any significant way in the immediate term, but measures are being put in place, both nationally and locally, to improve the situation in the more medium term. The Committee understands the need to delay the development of the Market Position Statement and think it sensible to delay decisions on long term strategies until such a time that future service needs and the state of the market are more predictable.
- Note that when the Committee conducts pre-decision scrutiny deliberations in relation to the future of the seven care homes, Members will require demand and the supply data for residential care that can be viewed with a high degree of certainty.

The Committee explained the position that given there is the potential for both demand for residential care and the supply of appropriate provision to fluctuate considerably during the ongoing uncertainties created by the pandemic, the timing of the decision about the future of the seven care homes and the long-term accommodation strategy needs to be carefully considered.

When considering the proposed methodology, Members placed great importance on the individual assessment of current needs when determining what is “local” for each resident. There was unanimous agreement that whilst distance is an important factor, it is not sufficient to determine “local” in terms of a 10-mile radius from a person’s existing residence. Therefore, Members sought assurance that factors outlined in the explanation of individual assessment of current need, (such as accessibility to transport routes, location of family and friends and a person’s connectedness to the area), will be given sufficient consideration when identifying options for each individual.

The Committee considered that the maps provided were a helpful visual aid to see the number and location of provision in each area. However, it was felt that it was an oversimplification to ask Members to form a view about the approach for future provision by merely counting up the number of vacancies in an area and comparing that to the number of residents in each of the DCC homes under consideration.

As such, the parameters set for “local”, “suitable” and “reasonable” are very much to be treated as guiding principles which must be viewed entirely subjectively and subject to an individual’s personal circumstances, which may require those parameters to be flexed in order to provide the best suitable alternative provision that will meet their appropriate individual needs.

Appendix 3

See attached documents

Appendix 3 Goyt Valley House

Appendix 3 The Spinney

Appendix 3 Ladycross

Appendix 3 East Clune

Appendix 3 Holmlea

Appendix 3 Gernon Manor

Appendix 3 Beechcroft 10

Appendix 3 PVI – DCC vacancies as at October 2021

Appendix 4

See attached document

Appendix 4 - Major change and closure guidance - Accommodation, care and support for older people - DCC Adult Social Care

<https://staff.derbyshire.gov.uk/site-elements/documents/working-here/adult-care/major-change-and-closure-guidance-accommodation-care-and-support-for-older-people.pdf>

OUR PLEDGES TO RESIDENTS

1. We will treat you with dignity and respect, consulting with you and keeping you informed throughout the process
2. We will ensure relatives and friends chosen by you are informed of the home closure and are able to remain involved in the process too
3. We will name a member of staff from your present care home who knows you well to listen to you, support you and stay in contact with you
4. We will provide an advocate to assist anyone who does not have mental capacity to make decisions about their future arrangements and has no family or friend to do this
5. We will discuss your preferences, and care and support needs with you; addressing any concerns you or your family or friends have about you moving. We will update your assessment if necessary and check you agree with what has been written
6. We will try our best to meet your own personal priorities, for example you may have friends you particularly wish to stay together with when you move
7. We will ensure you have as much choice as possible about the type of care service you choose. We will arrange for you to visit ones you consider may be suitable, or for your family or friends to do this if you are unable to do so
8. We will complete a new 'support plan' and 'life book' with you to make clear your likes, things you want to do or be assisted with, your interests and priorities now and in earlier life. Once you are in agreement with what is in the plan/book this can be used to brief your new service providers and help them prepare for your arrival
9. We will ensure within reason you do not incur any additional costs through moving to a new provider
10. We will carefully plan the day of your move with you to reduce stress or worries. We will take into consideration things like how you travel, who you want to travel with you, and write a list of your personal items
11. Finally, we pledge to visit you and find out how you are doing after the move and check if there is anything else you wish to be done

Draft Cabinet Minute 18 November 2021

191/21 THE FUTURE OF DIRECT CARE HOMES FOR OLDER PEOPLE (Adult Care)

The Council owned and ran 23 residential care homes for older people. In 2018, detailed property condition surveys were commissioned in relation to a number of these homes, focusing on general building condition and electrical systems in the older homes. The reports were commissioned in the context of concerns that the ageing buildings were no longer considered fit for purpose and a concern for the state of the buildings given their age and the ongoing need to ensure the safety and wellbeing of residents both now and in the future. The Director of Adult Social Services (DASS) advised Cabinet Members that an appropriate and rapid course of action was needed to mitigate the concerns raised and thereby ensure the ongoing safety of residents.

Significant maintenance, renovation and refurbishment needs were identified which included the requirement for arrangements to be made for the homes to be rewired by September 2022 in addition to significant refurbishment works, including the replacement of boilers and heating systems, the refitting of all bathrooms and kitchens and the installation of sprinkler systems throughout the buildings. To complete these major works Adult Care was advised that there would be significant disruption to residents including the potential requirement for people to move out of their home for up to 40 weeks whilst the work was undertaken.

As a result of the inspections and alongside implementing the urgent mitigation measures, a consultation exercise was undertaken in early 2020 on proposals for the future of ten of the homes. It had proposed that approval was sought to commence consultation; with the possible closure of the seven homes subject to securing local reasonable and suitable alternative provision for the current residents set out as the perceived most viable option within that consultation.

RESOLVED to approve (1) the programme of formal public consultation on the future of the homes listed below (one of which included an integral day centre), including possible closure, for a period of 12 weeks, to be conducted as set out in the report:

- Ladycross House (Sandiacre)
- Beechcroft (West Hallam)
- East Clune (Clowne)
- Holmlea (Tibshelf)

- The Spinney (Brimington)
- Goyt Valley House (New Mills)
- Gernon Manner (Bakewell)

and (2) that a further report would be received following the conclusion of the consultation and market engagement processes, including a full Equality Impact Analysis.

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Call in procedure set out in the Improvement and Scrutiny Procedure Rules

CALL-IN PROCEDURES

Procedure to be Adopted when a Decision is Called-In

1. The Director of Legal & Democratic Services on receiving a request for the call-in will check that the call-in notice is signed by the requisite number of Members. The call-in notice must identify which principle(s) of decision making in Article 7 of the constitution have allegedly been breached and give reasons. This requirement will be checked by the Director of Legal & Democratic Services.
2. The Director of Legal & Democratic Services will arrange a meeting of the appropriate Committee, in consultation with the Chairman of that committee.
3. The Director of Legal & Democratic Services will acknowledge the call-in notice and notify the appropriate Cabinet member.
4. The Scrutiny Officer will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Strategic Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Strategic Director may nominate a second or third tier officer to attend in his/her place. If none of the call-in signatories attend, the Committee will decide whether to proceed. If the Committee decides not to proceed, then the call-in will be decided on the basis that the Committee does not have any concerns it wishes to refer to the Council Cabinet, and the Council Cabinet will not be required to reconsider the decision.
5. The Scrutiny Officer will send copies of the call-in notice, minute of Council Cabinet/Cabinet Member meeting and any associated reports to members of the Committee with the agenda for the meeting.
6. The Scrutiny Officer will liaise with the Chairman and the Vice Chairman of the Committee over any other appropriate arrangements for the call-in, e.g. additional information, witnesses etc. If the Chairman or Vice Chairman have signed the call-in notice, the SO will liaise with another member of the Committee nominated by the Chairman or Vice Chairmen.
7. The aim of the Committee meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a call-in of a Council Cabinet decision will be adopted.

Meeting Procedure for a Call-in of a Council Cabinet Decision

The role of the Chair

1. This procedure shall be implemented at the meeting by the Chairman and any deviation from this procedure will be at the discretion of the Chairman. The Chairman will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.
2. In the absence of the Chairman, the meeting will be led by the Vice Chairman. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chairman shall be appointed. The appointed Member will chair for the duration of the meeting or until the Chairman or Vice Chairman is present.
3. Where the Chairman is in attendance, the Vice Chairman shall be treated in the same way as every other Member of the Board.

Role of signatories to the Call-in notice and the Council Cabinet member

4. Signatories to the Call-in notice and the Council Cabinet Member will be invited to provide evidence to the Committee, both in terms of a presentation and by answering questions put to them by the Committee.
5. There is no provision for either the signatories to the Call-in or the Cabinet Member to question each other, either directly or through the Chairman.

Role of officers in attendance

6. Supporting Officers will be present from Democratic Services (providing procedural advice to the Chairman and Committee as required and recording decisions) and Improvement and Scrutiny (advising the Chairman and the Committee as required on relevant scrutiny of the decision under consideration). The Monitoring Officer or their representative may also be present and may undertake any of these duties in addition to providing any legal advice if required.
7. Executive Directors or Assistant Directors or Heads of Service may provide support to the Council Cabinet Member and contribute to the meeting as required by advising the Committee on the strategic, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to questions referred by the Council Cabinet Member to them.

Procedure at the meeting

8. The signatories to the Call-in notice will be invited to address the Committee on the Call-in, and will be required to focus on justifying

why they considered the council's decision-making principles to have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. The order in which signatories are invited to speak will be at the discretion of the Chair. Signatories shall limit their contributions to the reasons for the call-in.

9. After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions.

10. The Council Cabinet Member will then be invited to address the Committee on the call-in by the Chairman and will be required to respond to the assertions relating to the council's decision-making principles as set out in the Call-in notice.

11. Members of the Committee to make any contributions they may wish prior to the vote being taken. Each member of the Committee shall be permitted to make one speech lasting no more than ten minutes.

Voting on whether decision-making principles have or have not been breached

12. The Chairman shall then ask each Member in turn to state whether they consider the decision-making principles identified in the Call-in Notice were, or were not, breached giving reasons. Where a Member considers that a principle has been breached, they will be required, at this stage, to state which principles they consider to have been breached. This information shall be recorded by the Monitoring Officer or their representatives.

13. The Chairman may, at their discretion, state whether they believe the decision-making principles identified in the Call-in Notice were or were not breached, giving reasons.

Finding of no breach

14. In the event that a majority of Members consider that there was not a breach, the Chairman will state that the Committee has resolved that the Council Cabinet Decision identified in the Call-in Notice did not breach the decision-making principles and close the meeting.

Finding of a breach

15. In the event that a majority of Members consider that there was a breach in the decision making procedure, the Chairman will invite the Monitoring Officer or their representative to address the Committee. The Monitoring Officer or their representative will state which decision making principles were individually identified by Committee members as having been breached, and

which of those principles were identified by a majority of Members present as having been breached.

16. The Chairman will declare the outcome of the vote and the resultant resolution and close the meeting referring the decision back to the next meeting of the Council Cabinet.

Consideration of multiple Call-in notices in relation to the one decision of Council Cabinet

17. In the event that more than one Call-in notice is received in relation to a single matter, the Chairman will use their discretion to vary the procedure accordingly to afford signatories to all Call-in notices equal opportunity to state their case.