

ITEM 11 Review of the Council’s Constitution

Report of the Corporate Portfolio Holder

Recommended:

- 1. That the Constitution be amended as shown in the Annex to the report.**
- 2. That the Head of Legal and Democratic Services be authorised to make these changes and any further minor or consequential amendments.**

Recommendation to Council

SUMMARY:

- The Council’s Constitution has been reviewed and a number of amendments have been proposed.
- This report seeks approval for the proposed changes to be made to the Constitution.

1 Introduction

- 1.1 The Council’s Constitution underpins all of the Council’s areas of activity and therefore contributes to the achievement of all its strategic objectives.

2 Background

- 2.1 Since the Constitution’s adoption, it has remained under review in accordance with Section 37 of the Local Government Act 2000. This report sets out proposed amendments to the Constitution following the most recent review.
- 2.2 The scope of the review was not to entirely re-write the Constitution but for a thorough review and to make the Constitution more accessible and user-friendly, and to bring it up to date.
- 2.3 The format of the Constitution is based on the national model recommended by government in 2000. It is divided in to 6 parts – Summary and Explanation, The Articles, Responsibility for Functions, Rules of Procedure, Codes and Protocols, and the Members’ Allowances Scheme.
- 2.4 For note, the following sections have not been included as part of this Review:
 - Proper Officer Appointments;
 - Members’ Allowances Scheme, as this is due for review in Autumn 2018;
 - Members’ Code of Conduct, as this will be reviewed prior to the Borough elections in May 2019; and
 - Licensing Procedure Rules, as these are used regularly by the Licensing Committee and Sub-Committee, and have been confirmed as up to date.

- 2.5 Members should note that any formatting or layout inconsistencies (including page numbering) will be corrected when the amendments are implemented in the Constitution.
- 2.6 The Constitution will be reviewed henceforth on at least an annual basis.
- 2.7 In accordance with Article 15, the proposed amendments will be reported to a meeting of the General Purposes Employment Appeals and Ethics Sub-Committee (regarding their powers and duties only) on 17 January 2018 and to a meeting of the Cabinet on 17 January 2018.

3 Details of amendments

- 3.1 Where changes are of a minor nature, comments are included in the margins of the relevant section of the Annex to the report. More significant changes are detailed below.
- 3.2 *Page 34 of amended Constitution.* An increase in the key decision threshold is proposed from £50,000 to £75,000. The statutory definition of a key decision is set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 which accompanied the Local Government Act 2000. Individual Local Authorities are given their own discretion to agree and set the level of expenditure/savings considered to be “significant” in relation to the definition of a Key Decision in their area. Whilst guidance issued at the time stated that this may vary from service to service, taking account of relative overall budgets, it was agreed in Test Valley to set a single financial threshold at £50,000. There is a broad range of key decision thresholds across Hampshire authorities, from £20,000 at Rushmoor to £200,000 at Winchester. The threshold was last reviewed in 2012. The suggested increase is consistent with proposed changes to delegated powers referred to later in this report and whilst not mathematically arrived at, reflects a realistic revision of the threshold.
- 3.3 *Page 18 of amended Constitution.* The Constitution currently refers to the ability of the Council to appoint one or more Overview and Scrutiny Committees. Whilst this ability remains, the Constitution has been updated throughout by removing reference to multiple Committees, to reflect the current situation of only appointing one Committee.

3.4 Articles of the Constitution

- 3.4.1 *Page 11 of amended Constitution.* Article 4.1 – Policy Framework: The list has been updated, to reflect changes in legislation requirements, and to correspond with the Financial Procedure Rules. The Framework has also been divided to make the distinction between those required by law and those chosen by the Council for inclusion.

3.4.2 *Page 21 of amended Constitution.* Article 9 – General Purposes Employment Appeals and Ethics Sub-Committee: This article has been removed as it was the only committee listed individually after Article 8 (list of Regulatory and other committees). The content is still available however as it is located in Part 3 of the Constitution along with the other committees.

3.4.3 *Page 38 of amended Constitution.* Article 15 (now 14) – Review and Revision the Constitution:

- (a) It is proposed to remove the requirement for all changes to the Constitution to be considered by Cabinet before being approved by Full Council. There is no legal requirement to do so and removing the requirement in the Constitution will reflect the current decision making process and will allow for future changes to be approved efficiently. Cabinet may still request to consider proposed changes to the Constitution should they wish but Council is the decision maker in relation to the Constitution.
- (b) The Constitution currently requires that changes to the General Purposes Employment Appeals and Ethics Sub-Committee's powers and duties are considered by the Sub-Committee prior to approval at Council. It is proposed to remove this as there is no legal requirement to do so.
- (c) It is also a current requirement to report to the General Purposes Employment Appeals and Ethics Sub-Committee any changes to its powers and duties made by the Monitoring Officer without prior approval in one of the Exceptions in Article 15.3. It is proposed to extend this requirement to all Committees where the changes relate to their Powers and Duties.
- (d) It is proposed that two additional Exceptions be added to the Article 15.3, allowing the Monitoring Officer:
 - to make typographical changes to the Constitution; and
 - in consultation with the Corporate Portfolio Holder, to make minor changes to the Constitution, such as changes to a staff member's post numbers, job titles and portfolio titles (as determined by the Leader).

3.5 Responsibility for Council Functions – General Purposes Committee and Sub-Committees

3.5.1 *Page 46 of amended Constitution.* Amendments to the scope of the General Purposes Committee, the General Purposes Employment Appeal and Ethics Sub-Committee, and the General Purposes Redundancy Sub-Committee are suggested to reflect current practice and to take account of the legislative requirements of appointment and involvement of an Independent Panel where dismissal of the Chief Executive, Chief Finance Officer or Monitoring Officer is contemplated.

3.6 Officer Scheme of Delegations

3.6.1 *From page 52 of amended Constitution.* Minor changes have been made to most sections of the Officer Scheme of Delegations, and explanations are included in comments in the margin of the Annex. The following paragraphs provided more detailed information on the more significant changes. Members should note that the delegation numbers referred to are the original numbers.

3.6.2 *From page 67 of amended Constitution.* Head of Estates and Economic Development

(a) Changes to values in delegations 3, 9, 20 and 22 – these changes have been suggested to align the delegations with current market values, taking account of inflation and rental growth over the years from when the original levels were set. The Council now has more leases to manage resulting from the Council's recent investments through Project Enterprise. Modestly increasing the limits will allow the Head of Estates and Economic Development to be more agile in the market and to complete lower value business more swiftly.

- Delegation 3 – any lettings where the rent does not exceed £150,000 (increased from £75,000) per annum
- Delegation 9 – variations to the terms of legal agreements where the variation does not exceed £50,000 (increased from £10,000) per annum or a premium payment of £150,000 (increased from £100,000)
- Delegation 20 – to dispose of land where the consideration is £75,000 or less (increased from £25,000)
- Delegation 22 – to authorise the acquisition of land and/or premises subject to the purchase price or annual rent not exceeding £75,000 (increased from £25,000)

(b) Engineering and Transport - Following the transfer of the Engineering and Transport teams from the former Planning Policy and Transport Service to the Estates and Economic Development Service, a review of the transport related delegations to the Head of Service was undertaken. As a result of the review, a number of minor alterations are proposed, together with two new delegations.

- (i) Off Street Parking Places Order - From time to time there is a need to make changes to the Off Street Parking Places Order in response to changes in legislation, ruling or guidance issued by the Joint Committee of England and Wales for Civil Enforcement or the Traffic Penalties Tribunal or operational issues such as the termination of third party agreements. The delegated authority requested is to enable timely changes to be made to the order to ensure the order is appropriate, effective and enforceable. This authority would be subject to consultation with the Planning Portfolio Holder and exclude authority to make changes to car park tariffs and maximum stay limits. For example would be where a grass verge or bus layby within a car park was not included in the original order, allowing a car to be parked there without penalty.

Under this delegation, changes to the order could be made to include these areas.

- (ii) Parking Enforcement Policy and Guidance - The Cabinet decision of 30 Nov 2017 was “That the Head of Planning Policy and Transport be authorised to make changes to the Parking Enforcement Policy and Guidance in response to changes in legislation or operational procedures.” The post of Head of Planning Policy and Transport no longer exists and those transport related authorities have now passed to the Head of Estates and Economic Development. The proposed change is to include this authority in the Scheme of Delegation.

3.6.3 *From page 74 of amended Constitution.* Head of Housing and Environmental Health

Members should note that further work will be undertaken to review these delegations following the appointment of the new Head of Housing and Environmental Health.

- (a) The most significant change to the delegations to the Head of Housing and Environmental Health is the removal of delegation of 21 (m) as this has been amalgamated in to (l) and the individual lists of delegations to each individual officer have been combined where the officers have the same delegations. The legislation lists have also been alphabetised. These changes have been included simply to reduce the length and complexity of this delegation.
- (b) Delegation (25) has been deleted and the relevant legislations contained in that delegation have been included in the lists above in delegation 21 (l).

3.6.4 *From page 107 of amended Constitution.* Head of Planning and Building Services – Suggested changes have been made to the Delegations to the Head of Planning and Building Services to allow more efficient and responsive planning decisions to be made. These are explained in more detail below:

- (a) Removal of the requirement to refer applications of significant or local interest to the relevant Planning Committee (Delegation 1b) – As there is no accompanying definition of what “significant or local” interest might represent, it is proposed to remove this requirement to ensure consistency and transparency when referring applications to the Planning Committees under this requirement. The Head of Planning and Building has the ability to refer any planning application to Committee and the removal of this sub-paragraph would not hinder the ability to refer any applications which would otherwise fall within the scope of their delegated powers.
- (b) Amendment to allow Members to withdraw any written requests for referral to the relevant Planning Committee (Delegation 1c) – There may be instances where a Member does not know the officer recommendation at the time they request that an application be brought before Committee. This can lead to applications being considered by Committee where it is no longer necessary for this to happen (i.e. the

Member's reasons for requesting the referral no longer remain following the officer's recommendation). Adding the ability to withdraw their request would improve the efficiency of decision-making in these cases.

- (c) Removal of requirement to refer Notification applications to Committee (Delegation 1e) – Many notification applications (arising under the General Permitted Development Order) have a tightly defined determination period where, if a decision is not made within this period, then permission is deemed to be given. Due to Committee lead-in times, it can be difficult to guarantee that all notification applications where a Member wishes the application to be referred to Committee can be considered before the expiry of the determination period. This has led on a number of occasions to an application which has been referred to Members in accordance with the Constitution, it cannot be referred to Committee as the application time frame would expire and planning permission would automatically be granted. It is deemed that a relatively small number of applications would be affected by this amendment, which would reduce inefficient use of time and resources, as well as prevent potential embarrassment for Members and confusion for the public.
- (d) Further minor amendments to the Delegations to Head of Planning and Building Services are explained in the comments in the margin of the Annex.

3.7 Functions retained by the Leader and Delegations to the Deputy Leader and Portfolio Holders

- 3.7.1 *Page 115 of amended Constitution.* There have been a number of deletions from part (3) – delegations to Portfolio Holders. These have been removed either because they are covered elsewhere in the Constitution (for example in the Financial Procedure Rules or Officer Delegations), or they have been moved to a more appropriate location (for example Member attendance at conferences is a function of the Leader so has been moved in to part (2) of this section).

3.8 Access to Information Rules

- 3.8.1 *Page 127 of amended Constitution.* Cabinet Work Programme – Section 14 of the Access to Information Rules, relating to the Cabinet Work Programme has been amended to reflect a change in legislation. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 repealed the 2000 Regulations, and thereby removed a number of requirements regarding the publication of the work programme. This section has been updated to reflect those changes.

3.9 Council Petition Scheme

- 3.9.1 *From page 283 of amended Constitution.* The sections of the Scheme referring to petitions to hold an officer to account have been removed as the legal requirement to include this type of petition in the scheme was repealed by the Localism Act 2011.

- 3.9.2 Other amendments consist of the removal of repetitions and the reordering/relocating of sections to make the scheme more readable and accessible by the public.

3.10 Officer Employment Procedure Rules

- 3.10.1 *From page 268 of amended Constitution.* Amendments are suggested to take account of legislative changes requiring:

- (a) the appointment of an Independent Panel to share their views with Council where dismissal of the Chief Executive, Monitoring Officer or Chief Finance Officer is contemplated; and
- (b) a member of Cabinet to sit on any committee appointing or dismissing Chief Officer (which is defined in the Rules). The definition of Chief Officers in the pay policy statement will be aligned with the definition in the Rules.

4 Corporate Objectives and Priorities

- 4.1 Maintaining and improving the Constitution to reflect current legislation and the broader agenda of local government is essential in order to deliver effective and lawful decisions in the day to day implementation of the Corporate Plan.

5 Consultations/Communications

- 5.1 All Heads of Service and Portfolio Holders were consulted and support the proposed changes to the Scheme of Delegations.

6 Option Appraisal

- 6.1 Failure to update the Constitution to reflect current legislation or to ensure clarity in the authority and execution of decision-making could mean that the Council may be subject to legal challenge or that any legal action taken under these regulations would be invalid.

7 Risk Management

- 7.1 A risk assessment has been completed in accordance with the Council's Risk management process and the existing risk controls in place mean that no significant risks (Red or Amber) have been identified, save for the potential for legal challenge.

8 Resource Implications

- 8.1 None save the time of officers in undertaking the necessary changes to the Constitution.

9 Legal Implications

- 9.1 Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review. The lack of an up to date and effective Constitution could increase the risk of governance failures.
- 9.2 The amended Scheme of Delegations will ensure that the powers delegated to Officers are clearly and accurately stated. Such clarity and accuracy will ensure that delegated powers are always operated lawfully.

10 Equality Issues

- 10.1 An Equality Impact Assessment of the matters in this report is not required as no potential for unlawful discrimination and/or low level or minor negative impact have been identified.

11 Other Issues

- 11.1 Community Safety - None
- 11.2 Environmental Health Issues - None
- 11.3 Sustainability and Addressing a Changing Climate - None
- 11.4 Property Issues - None
- 11.5 Wards/Communities Affected – None specifically

12 Conclusion and reasons for recommendation

- 12.1 This report seeks approval for those changes which are required now in order that the Constitution reflects accurately operational changes within the organisation, established practice and current law.
- 12.2 With regard to the changes to the Officer Scheme of Delegations, Members will be aware that the delegation of powers is essential to the work of the Council and its officers and for that reason it is important that such powers are both lawful and effective. The proposed changes to the Constitution will ensure that the Council maintains an effective and lawful Scheme of Delegations.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1	File Ref:	
(Portfolio: Corporate) Councillor Flood			
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Report to:	Council	Date:	24 January 2018