

REPORT TITLE: COUNCIL CONSTITUTION – REVIEW

THE OVERVIEW AND SCRUTINY COMMITTEE – 19 FEBRUARY 2019

THE AUDIT COMMITTEE – 19 FEBRUARY 2019

REPORT OF THE MONITORING OFFICER

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WARD(S): ALL

PURPOSE

The Council has undertaken a comprehensive review of its Constitution which is presented for comment prior to consideration by Council.

The review of the Constitution has also taken account of the recommendations of the Independent Report on Silver Hill and of the Local Government Association Peer Review in February 2017.

A cross party Member Working Group has met on several occasions supported by the officer team to consider various sections of the Constitution

This report details:

- the key changes proposed to the Constitution
- a full draft Constitution is also appended, with the agreed comments of the Working Group and Standards Committee incorporated where appropriate. Further comments from the members of the informal Standards Committee are set out in this Report with appropriate officer advice.
- a note about the 3 areas for further review (Code of Conduct for Members, The Winchester Town Forum and the East Hampshire Joint Arrangements) and the reasons for this.

RECOMMENDATIONS:

1. That The Overview and Scrutiny Committee and the Audit Committee consider the proposed changes and updates to the Council's Constitution, as detailed in this report and provide any comments for further consideration.
2. That subject to the comments provided for further consideration and implementation as appropriate, that the new Constitution be considered by Council for a proposed implementation with effect from the Annual Council on 15 May 2019.

IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME – KEY PROPOSALS FOR CHANGE

- 1.1 The Council has undertaken a review of its Constitution following the action in the Council Strategy for more effective decision-making and external reports following the Independent Report on Silver Hill and the Local Government Association peer review in February 2017.
- 1.2 The objective of the review was to ensure that the Council has strong and effective decision-making in place to deliver the Council's strategic aims.

2 FINANCIAL IMPLICATIONS

- 2.1 The overall aim of the Constitution Review was to produce a revised Constitution that allowed the Council to be a more efficient and effective decision-maker. As such, key current financial limits are suggested for increasing, namely:
 - Proposals for the S151 Officer to be given authority to approve new budgets of say up to £50k or £100k or the Capital Strategy Board with S151 sign-off
 - Increasing the financial rules enable the S151 Officer to approve expenditure up to £250k before a PHD or Cabinet approval is required.
 - The financial limit above which a decision is regarded as significant (and thus forms part of the attributes of a key decision) is increased from £200,000 to £250,000.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Council's Constitution must not only be 'fit for purpose' but facilitate decision-making that is both open and transparent. The mix of experience and expertise within the Working Group membership, which included the Council's Monitoring Officer, ensured that proposed changes, as they were developed, stood up to challenge and scrutiny. The external consultant cross-checked proposed changes and required updates both with legislation and good practice from other authorities.

4 WORKFORCE IMPLICATIONS

- 4.1 One of the main priorities of the original brief for the Constitution Review was to 'open up' the officer scheme of delegation so that it became less prescriptive and thus enabled more timely and responsive progressing of work (without the need to keep going back to Members to seek further approvals for matters that were already authorised). Thus, the proposals for the new scheme of delegation have been designed to enable officers to 'get on with the job' but within clear parameters set within the Council's decision-making framework.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 None.

6 CONSULTATION AND COMMUNICATION

- 6.1 The Working Group comprised two Members from each of the political groups represented on the Council. These Members liaised directly with their groups at appropriate points.
- 6.2 In reviewing the decision-making structure, the purpose and responsibilities of the Winchester Town Forum were revisited, and whether it was an appropriate time to conduct a community governance review of the area covered by the Forum to see if a parish council or councils would be a more appropriate form of governance for this area. An initial dialogue has commenced with the Town Forum Members on this matter which will be progressed, as appropriate, beyond this review of the Constitution.

7 ENVIRONMENTAL CONSIDERATIONS

7.1 None.

8 EQUALITY IMPACT ASSESSMENT

8.1 None.

9 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<u>Property</u> <i>Without a Constitution that is fit for purpose, management of the Council's assets could be compromised.</i>	The proposed constitution has an improved decision making structure	
<u>Community Support</u> <i>The Constitution should enable residents and other stakeholders to engage with the decision-making process in clear and accessible ways.</i>	Decision making processes are clear and transparent in the new constitution	
<u>Timescales</u> <i>Authorising the changes now will enable them to be in place for the new municipal year.</i>	The proposals will be reported to Council to enable an amended constitution to be in place	
<u>Project capacity</u> N/A		
<u>Financial / VfM</u> <i>By making the Constitution less prescriptive, management will be given more appropriate freedoms to manage effectively, avoid incurring unnecessary costs, take immediate action when required or necessary etc.</i>	Decisions can be taken at an appropriate level in the proposed constitution	

<p><u>Legal</u> <i>The Constitution must adhere to legislation otherwise the Council could be subject to legal challenges and claims for costs.</i></p>	<p>The proposed constitution adheres to legislation.</p>	
<p><u>Innovation</u> <i>Much of what can comprise a Constitution is set down in legislation. However, the review has sought to continually organise this in such a way as to make it workable and appropriate for the City Council.</i></p>		
<p><u>Reputation</u> <i>If the Council does not have an appropriate decision-making framework in place, and can not make timely decisions or take appropriate actions, the Council's reputation will be compromised.</i></p>	<p>The proposed constitution has provides for appropriate decision making</p>	
<p><u>Other</u></p>		

10 SUPPORTING INFORMATION:

- 10.1 The new Constitution will retain the current organisational format of seven parts, but there will be a reduction in the number of Codes and Protocols in Part 5 – by the removal of those which do not need, as a matter of settled law, to be included within the formal Constitution e.g. Member role profiles.
- 10.2 The Council formed a cross-party working group comprising Councillors Horrill, Learney, Mather and Thompson with support from officers and an external consultant to review practice from across the sector and compare against the existing constitution. Special regard was also had to existing and emerging legislation.

- 10.3 Six meetings of the Working Group were held over an 18 month period and a draft of the proposed constitution was shared with all members for comment in January 2019. Comments received from Group Managers were then reviewed and considered by the Working Group. Those matters agreed have been included.
- 10.4 The objective of the review was to ensure that the Council has strong and effective decision-making in place to deliver the Council's strategic aims.

Format and document inclusion.

- 10.5 The individual documents in the Constitution have been updated. Some documents in the published constitution have been replaced completely, split into separate documents, or amended. This includes separate full council procedure and cabinet procedure documents. It should be noted that final page numbering and formatting will be completed following final consultation comments

The guiding principles have been to:

- include those documents required to be in the constitution as originally directed by the Secretary of State and such amendments to the original statutory Order
- update those documents where there has been legislative or judicial interpretive change
- reflect the plans of the council, in the deliberations of the officer/member working group and continuing member officer consultations.

10.6 Amendments made:

In reviewing and updating the Constitution the following work and amendments have been carried out.

10.7 Decision making Structure

10.8 The Cabinet

The Cabinet Article in Part 2 , The Responsibility for Function provisions in Part 3 and the Cabinet Procedure Rules in Part 4 have been updated. They are better aligned and expressed in terms of the statutory provisions for the executive decision making powers. There is a revised Portfolio Holder Decision Scheme.

10.9 The Overview and Scrutiny function.

Article 6 in Part 2 (Articles of the Constitution), and the Overview and Scrutiny Rules in Part 4 have been amended and in parts substantially redrafted.

A principal Scrutiny Committee with amended terms of reference which will be more strategic, with key policy and budgetary scrutiny at its centre allowing for the call in function to be operated solely by the principal Scrutiny committee with the Chairmanship of this committee to be from an opposition party

Two new Overview Committees (Business and Housing Policy Committee and Health and Environment Policy Committee) are proposed, based around the four priorities within the current Council Plan. These committees will work more pro-actively on projects and key areas of work alongside Cabinet and Portfolio Holders, with the intention being to conduct more meaningful input to decision making. These two committees will be chaired by a member of the administration

10.10 The decision making Framework

a) **Article 13**

Article 13 in part 2 has been updated to improve the formal notification (where required) and the formal recording of:

- key decisions of the local authority at Leader/Cabinet and committees/Portfolio holder/officer levels.
- Significant operational decisions
- Administrative decisions

b) **The Scheme of Delegation**

The schemes of delegation (in Part 3 of the Constitution) have been updated to bring them in line with many modern local government constitutions and to retain transparency and accountability. The changes provide for:

- Chief Executive has more 'open' powers to take operational, managerial or professional decisions that progress agreed strategies, plans and policies
- Strategic Directors have delegated authority from the Chief Executive for their respective areas of responsibility
- Strategic Directors can then delegate onwards to staff within their areas of responsibility
- Less prescriptive about what each officer can do / the limits of their powers; approach is more about who is responsible for what so that a task can be administered more quickly
- Development of the 'Proper Officers' section so that named officers (as required by law) are clearly stated

- The financial limit above which a decision is regarded as significant (and thus forms part of the attributes of a key decision) is increased from £200,000 to £250,000
- Proposals for the S151 Officer to be given authority to approve new budgets of up to £50k or £100k or the Capital Strategy Board with S151 sign-off
- Increasing the financial rules enable the S151 Officer to approve expenditure up to £250k before a PHD or Cabinet approval is required.
- Greater flexibility for bringing forward capital schemes that have already been approved by Council for future years
- Clearer carry forward requirements where capital schemes have been previously approved

10.11 The Regulatory Committees

Article 8 in Part 2 and the detailed text in Part 3 (relating to planning and licensing matters) have been amended and updated to provide for

- A renamed Development Management Committee instead a Planning Committee
- simplified terms of reference for the Licensing and Development Committees that are easier to navigate and understand
- a updating of the decision thresholds between member and officer determinations

10.12 The Audit and Governance Committee

An Audit and Governance Committee is proposed. Standards matters and some human resources matters will be included within its remit.

a) **Standards matters**

- A sub committee will be responsible for Standards/ code of conduct matters.
- A redrafted procedure for the consideration and investigation of alleged breaches of the Member Code of Conduct.
- A redrafted members' Code of Conduct.
- A redrafted Protocol on Member/Officer Relations.
- A revised/suggested Code of Conduct complaints process as part of this.
- Independent person moved to the above committee with an aspiration to consider an independent individual to sit on the audit committee.

b) **Personnel Committee**

- Personnel matters are to be addressed by Cabinet, the Head of Paid Service other than appointment and disciplinary matters which will be addressed by a Human Resources Sub Committee of the Audit and Governance Committee.

c) **Consultation with the Standards Committee**

The members at the informal Standards Committee on 05/02/2019 considered these matters and expressed these key comments:

- After a long discussion they were, by majority, in favour of the amended provisions to declare non-pecuniary interests
- There was concern about the amalgamation of the audit / standards/ personnel functions under the committee and its sub committees. Some members felt that their was insufficient capacity to undertake these tasks together and the differing skill sets that members need to develop for audit and standards matters are very different.

d) **Monitoring Officer advice**

There was no opportunity for the Working Group to consider these matters, therefore the Monitoring Officer would offer the following advice:

- There will be a need to review capacity issues in terms of potential workload and numbers on the committee and sub committees.
- Detailed work will be needed on member training especially in relations to developments in the members standards area

10.13 Further more, Members will wish to note the following matters that were outlined to the informal standards committee:

- The committee on Standards in Public Life published a report on Local Government Ethical Standards in January 2019 with detailed recommendations to alter the statutory arrangements that govern declarations of interests by members/investigation procedures/ sanctions for breaches of the Code of Conduct, etc.
- The Report is subject to a government decision to legislate
- At the same time the High Court in a landmark case, handed down a Judgment that defined the circumstances in which: Standards committees could meet in private and impose sanctions on a member for a breach of the Code of Conduct without an oral inter parties hearing.

All in all, upon the adoption of the constitution, further work will need to be undertaken in this area and the Monitoring Officer will bring forward a report accordingly.

10.14 The Finance Procedure Rules and the Contract Procedure Rules.

There are amended Finance Procedure Rules. This includes amended text relating to the treatment of decisions on the virement, supplementary estimates and carry forwards within the budget and policy framework.

The intention has been to provide a clearer scheme of financial delegation that is easier to apply.

The Contract Procedure Rules have been updated to take account of legislative and changes in professional practice.

The financial and contractual thresholds in the Cabinet Committees terms of reference have been updated.

10.15 Access to Information Procedure Rules

These rules are amended in line with the Openness of Local Government Regulation 2014 and Transparency Regulations 2015 and include reference to:-

- Press and public able to use modern technology and communication methods to report the proceedings meetings open to the public
- Background papers to executive matters available at same time as report
- Greater breakdown of exempt information categories
- Inclusion of the public interest test
- Simplification over Forward Plan dissemination – to be produced and disseminated at least 28 days before the start of the period covered, and available on the Council's website
- Inclusion of procedure for confidential Council business Matters for later review.

10.16 Petitions

The Council's Petition Scheme is a revised and simplified scheme so that it is easier to understand:

- The distinction between paper petitions and e-petitions has been deleted but clear purpose / intent must be cited from named lead petitioner and acknowledgement by the portfolio holder
- Blanket 200 minimum signatures of people living/working in the district required in order to be presented at full Council (5 minute time slot)
- No 'repeat' petition within twelve months

- Other petitions can still be submitted, and will be dealt with flexibly – officers in liaison with the appropriate Members can direct it to the most appropriate committee/meeting
- Written responses to named lead petitioner: acknowledging receipt / where it is going/what the outcome is

10.17 Council Procedure Rules

Some suggested minor administrative and organisational amendments to the Council Procedure Rules (part 4-2) are proposed. The most significant suggested alteration is extending the deadline for Member Questions at Council meetings from 2 days to 5 working days (in order that more comprehensive and considered responses can be provided) and, in the interests of more effective Council meeting management, only the questioner be allowed to ask one supplementary question and that time limits be kept

10.18 Other proposed changes

- The inclusion of a a short protocol regarding Members meetings on-site where an officer presence is proposed
- Updated to reflect current establishment and practical arrangements (e.g. electronic availability of the Constitution rather than paper copies, named officer ability to update the Constitution when officer structure changes.

10.19 Matters for later review

- Some parts of the Constitution will require further consideration and later amendment. These include:-
- The joint arrangement with East Hampshire District Council. This will be replaced as the new contractual arrangements are made.
- A review of the Winchester Town Forum. A report on the future of Winchester Town Forum has begun initial discussions with relevant parties on future town centre governance arrangements (including the potential for parish council).

11 OTHER OPTIONS CONSIDERED AND REJECTED

11.1 The original brief for the Constitution Review was relatively narrow and was rooted largely in reviewing the scheme of delegation and making necessary legislative updates (e.g. in respect of changes around Access to Information, the Transparency Regulations etc.). However as the project progressed it became clearer that a wider set of revisions was required to make the Constitution a more useful and responsive document for the Council (and to more fully address the points raised in the Independent Review report). This included looking more fully at the decision-making structure, the Council's financial and procurement

processes, specific policies and protocols and the Portfolio Holder decision scheme. To that end, the review took longer to complete than originally envisaged but enabled a more complete piece of work to be produced.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None

Other Background Documents:-

None

APPENDICES:

Council's Draft Constitution