

REPORT TITLE: COUNCIL CONSTITUTION – REVIEW

FULL COUNCIL– 19 MARCH 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 takes into account 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 undertaken this work supported by the officer team. The draft Constitution was made available to all members for comment and was considered at two meetings of a special joint meeting of The Overview and Scrutiny Committee and Audit Committee.

This report details:

- the key changes proposed to the Constitution
- Comments from the members of the informal Standards Committee which 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.

The Constitution is set out in Appendix 2

Also attached as an appendix to this report is a document setting out how the Working Group responded to matters raised by Members as a consequence of consultation previously undertaken with all Members.

RECOMMENDATIONS:

1. To adopt the Council Constitution March 2019 (Appendix 2)
2. that the Monitoring Officer be authorised to make any necessary further changes to the draft document in relation to, formatting, numbering or such other changes consequential to or incidental to the intentions of Full Council.
3. That the Constitution become effective from the new municipal year.

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 to provide a framework for more effective decision-making and in response to 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.

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. An external consultant has advised upon the draft constitution and proposed amendments to it and 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.

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 A Joint Audit and Overview and Scrutiny committee meeting have considered the draft constitution and their comments are set out in Appendix 1. The Working group response to the comments are also contained within the appendix.

7 ENVIRONMENTAL CONSIDERATIONS

7.1 None.

8 EQUALITY IMPACT ASSESSMENT

8.1 None.

9 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<u>Property</u> <i>Decisions on property matters are set out in the constitution.</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 the new constitution to be in place from 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>Financial Contract Standing Orders have been reviewed. Making the Constitution less prescriptive enables management to manage more 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	
<u>Legal</u> <i>The Constitution must adhere to legislation otherwise the Council could be subject to legal challenges and claims for</i>	The proposed constitution adheres to legislation.	

<i>costs.</i>		
<u><i>Innovation</i></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>		
<u><i>Reputation</i></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>	The proposed constitution has provides for appropriate decision making	
<i>Other</i>		

10 SUPPORTING INFORMATION

- 10.1 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.
- 10.2 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.
- 10.3 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.

- 10.4 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. 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.

10.5 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**

Members are referred to the redrafted Article 13 at pages 61-64.

In the report to the Joint meeting of The Overview and Scrutiny Committee and Audit Committee, it was recorded that Article 13 had been updated to provide a process for, and add greater transparency to, the notification procedure for:

- Key decisions of the Council at Leader/Cabinet and Cabinet Committees/Portfolio Holders and Officers (above a threshold of £250,000)
- Significant operational decisions (revenue expenditure £100,000 to £250,000)
- Administrative decisions

The Democratic Services section will implement these changes utilising the Mod Gov system and issue the appropriate notices. Work on this is taking place now.

Members have also asked for greater clarity on the notification of decisions, prior notice for motions and time limits where the Constitution has a caption saying, in various forms that a certain number of days notice is required. The statutory decisions in these cases vary and are not wholly consistent with clear days' notice/working days' notice or notice excluding weekends and bank holidays. Where possible greater clarity on this has been given and in

some cases the statutory definitions have been repeated in detail in the Constitution.

The Development Management Committee

The Working Group has considered further the split of Development Management decisions to be taken by the Committee or to be placed within the delegation of the Head of Development Management. The text relating to the latter can be found at Part 3, Section 4 – The Scheme of Delegation to Officers, pages 123-125.

On the basis of representations from Members it was agreed by the Working Group that the text in the current Constitution requiring, in relation to Parish and individual objections, determination by committee should be retained.

10.8 The Cabinet

Members are referred to Article 2 (pages 35-36) which sets out the provisions relating to the Cabinet and the Cabinet Procedure Rules (pages 155-158) in Part 4.

Greater clarity has been given to the wide powers of Cabinet Portfolio Holders which is set out in Part 3: The Cabinet, its Committees and the Portfolio Holder Structure. Members are specifically referred to the General Powers Granted to Portfolio Holders on pages 86-87 at paragraph 2.4.

10.9 The Overview and Scrutiny function.

The report to the Joint meeting of The Overview and Scrutiny and Audit Committee on 19 February sets out the rearrangements of this committee to provide a principle Scrutiny Committee which will have the sole power to deal with Call-In. In addition it records the broad Terms of Reference of the two new Policy Scrutiny Committees. These matters have been the subject of detailed discussion in the Working Group.

- The Terms of Reference are therefore those that have been agreed with Members.
- Such other changes that have been made to Article 7 at pages 46-47 and the Overview and Scrutiny Procedure Rules at Part 4.3, pages 159-168 are largely to align better the script with the statutory arrangements.
- For example, Members are referred to the expanded text at pages 162-163 that sets out a much clearer procedure for the use of Call-in, its grounds and the nature of valid and non-valid Call-In requests. This is a significant updating of the previous Constitution.

- At paragraph 11 of the Rules, which sets out the procedure for reports from Scrutiny Committees, the arrangements for the submission of Minority Reports is in line with the agreed approach taken collectively by Members at the Working Group.

10.10 The decision making Framework

The report to the Joint meeting of The Overview and Scrutiny and Audit Committee on the 19 February sets out ten changes (set out in bullet points) where the Scheme of Delegation has been altered. Members are referred to the section in the report on this matter.

- There are significant changes to the Financial Procedure Rules and Contract Procedure Rules which have been highlighted in the previous report. These documents are in Part 4: Financial Procedure Rules, pages 186-199 and Contract Procedure Rules at pages 201-225.
- Such changes that have been made have been discussed with the Working Group and Member comments taken on board where appropriate. It is the collective view of the officers that the new rules are fit for purpose for a modern Local Authority, and in their terms, are easier to navigate and understand.

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

The report to the Joint meeting of The Overview and Scrutiny and Audit Committee on 19 February sets out the structural changes to this committee: under its auspices the Standards Committee becomes a sub-committee and personnel matters are to be under the auspices of a sub-committee. Members will note that to some extent there will need to be further reports and consideration of the procedures governing these amalgamating functions for the reasons to be set out below. Part of this information is set out in the above mentioned report but for ease of reference Members will wish to consider the following points:

- It is proposed to review the capacity of the Standards Sub-Committee in terms of potential workload, training of Members and their availability. This is in line with the representation of Members at the joint meeting of the Overview and Scrutiny Committee and Standards Committee. Such review and its timing will be discussed with Members in due course.
- The Monitoring Officer will set out arrangements for Members' training on Standards.
- The Standards Complaints Investigation Procedure at Part 5.3 of the Constitution at pages 243-249 will need review. This is because, as outlined in the previous report, the arrangements for the hearing of complaints have been the subject of a landmark judgement in a judicial review case in the High Court. The written judgement has not yet been handed down. At the point this happens, the Monitoring Officer will report on this matter to the Audit and Governance Committee and consider with them such amendments to the Complaints Investigation Procedure as may be required or desirable. The High Court, in terms, reach conclusions that in principle effect the procedures all Local Authorities are undertaking in this area.

Declarations of Interest

Members are referred to the Code of Conduct in Part 5 of the Constitution at pages 229-234. Appendix A to the Code of Conduct at pages 235-236 sets out the arrangements for the Declarations of Disclosable Pecuniary Interests and Non-Pecuniary Interests.

- The definition of non-pecuniary interests at page 230 is in the form agreed by the joint meeting of the Overview and Scrutiny Committee and Standards Committees Members on 19 February. It is therefore presented in full form to the Members, also with agreement of the Working Group.
- There is one matter that remains to be settled, that is not the subject of cross-party agreement. This related to whether or not the definitions of those bodies which a Member may be in which are directed to charitable purposes or which include bodies whose principal purpose is to influence public opinion or policy should be expanded and if so in what form. It is open to Members to agree a list of organisations that Members are required to disclose on their form.

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.

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 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.

10.15 Access to Information Procedure Rules

The previous report set out the necessary amendments to comply with the 2014 and 2015 regulations and the updating has reflected this. Members are referred to the previous report to the Joint committee.

10.16 Petitions

The Democratic Services Manager is to update the Petitions Scheme which the Council is required to publicise on its website and approve by Full Council. A report on this will shortly be submitted for Members to a future Full Council meeting.

10.17 Council Procedure Rules

The report to the Joint meeting of The Overview and Scrutiny and Audit Committee on 19 February sets out changes to these rules. The final version is that which has been agreed with the Members' Working Group.

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

The Members' Working Group has considered those matters that will remain outstanding and will involve further amendments to the Constitution in due course. These remain the following items:

- The joint arrangements between Winchester City Council and East Hampshire District Council. This appears at pages 88-99. Members have queried whether this stays in the Constitution to be adopted. It will need to remain until the current arrangements cease in October 2019. Prior to the cessation date the Monitoring Officer will bring forward the necessary amendments to the Constitution.
- Winchester Town Forum – the Terms of Reference for this appear at pages 108-110 of the Constitution. A later report is to be out to Members on this matter and changes are not currently to be made to the text of the Constitution.
- Standards Matters which relate to the High Court judgement referred to above.
- 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
- The petition scheme

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.

- 11.2 Retain the current constitution. This option has been rejected as the Council has this review in the Council Strategy to deliver and wishes to have a constitution which supports decision making in a clearer manner.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

OS224/AUD231 – Council Constitution Review – 19 February 2019

Other Background Documents:-

None

APPENDICES:

Appendix 1 - Response to Members' Consultation

Appendix 2 - Council's Draft Constitution