

Title of Report	REVIEW OF THE CONSTITUTION	
Presented by	Councillor Rushton Corporate Portfolio Holder	
Background Papers	The Council's Constitution Council Minutes 20 March 2018 Council Minutes 15 May 2018 Council Minutes 13 November 2018 Council Minutes 25 June 2019	Public Report: Yes but Appendix 3 is confidential
Financial Implications	There are no financial implications to be considered under this report	
	Signed off by the Section 151 Officer: Yes	
Legal Implications	The Monitoring Officer has reviewed the constitution to ensure that members and officers can make robust effective decisions. The proposed amendments are based on legal advice and are in compliance with the law. External legal advice has been sought issue debated by the Audit and Governance Committee in relation to the planning call in decision-making process and that advice is contained in a confidential appendix (Appendix 3)	
	Signed off by the Monitoring Officer: Yes	
Staffing and Corporate Implications	An up-to-date and modern constitution helps the council to make robust and effective decisions and deliver corporate priorities. The MO consulted and engaged with the Chief Executive, Directors, S151 Officer, other officers, the Leader and Deputy Leader, the Planning Cross Party Working Group and the Audit and Governance Committee in carrying out this review.	
	Signed off by the Head of Paid Service: Yes	
Purpose of Report	To explain the outcome of the Monitoring Officer's review of the constitution and present proposed changes.	

	To address the proposal for amendment to the decision-maker in relation to planning call in decision raised by the Audit and Governance Committee.
Recommendations	<p>THAT COUNCIL</p> <ol style="list-style-type: none"> 1. CONSIDERS THE COMMENTS FROM THE AUDIT AND GOVERNANCE COMMITTEE MEETING ON 21 JULY 2021 2. ADOPTS THE PROPOSED AMENDMENTS TO THE CONSTITUTION AS SET OUT IN THIS REPORT 3. ADOPT THE PROPOSED AMENDMENT TO THE PLANNING CALL IN PROCESS AS SET OUT IN PARA 3.1.3 OF THIS REPORT

1.0 BACKGROUND

- 1.1 The Local Government Act 2000 requires each local authority to prepare, keep up to date and publicise the document known as the Constitution.
- 1.2 The Constitution should be logical, integrated and accessible to members, officers, local people and anyone else interested in the way a local authority makes its decisions. There is also a statutory requirement on the Council's Monitoring Officer to keep the Constitution up to date, and accordingly the update of the Constitution is an on-going process.
- 1.3 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Council to reflect best practice. This report takes a wider look at improvements to the Council's processes and proposes changes to the Constitution to Full Council.

2.0 METHOD OF REVIEW

- 2.1 In carrying out the review, officers have been consulted on areas of the constitution that need updating/amending, any areas that have been raised with the Legal Team previously for clarity have been taken account of and any relevant changes in law have been considered. In addition, the review has also taken account of requests from Members raised through working party discussions.
- 2.2 The entire constitution has been reviewed, including the articles, responsibility for functions, rules of procedure and codes and protocols, but in most cases only minor changes have been made for consistency reasons. This report only sets out the key changes that are being proposed and where appropriate those changes are shown in the relevant extracts in Appendix 1.

3.0 KEY CHANGES TO THE CONSTITUTION

- 3.1 The key changes being proposed to the constitution are as follows:

- 3.1.1 Removal of outdated definitions and explanations

It was identified that some definitions within the constitution were either out-of-date or no longer in common usage. It was therefore considered appropriate to remove them where they are no longer relevant. There are a few of these and they aren't referenced in Appendix 1 as it would add to the volume of the report. The Monitoring Officer could make these changes under her delegation to make amendments arising from fact and law but they are mentioned here for completeness. If any member wishes to see these, they can be provided upon request.

3.1.2 Revised descriptions of Council Functions and Local Choice Functions to provide clarity

The Council gets its powers to do things by statute. The law will set out which functions rest with Council and which need to be retained by Council or can be delegated to committees and sub-committees, which are functions of the executive and which are matters of local choice and which are delegated to officers. The changes proposed make it clearer which functions are Council, executive or local choice. This is important as it makes it clearer to officers, Members and the public which body makes decisions. **See Appendix 1 – pages 1-2**

3.1.3 Amended the remit of the Planning Committee so that call in only applies to the decisions that it is legally required to

It was identified that certain planning functions were susceptible to call in because of the way in which they were presented in the constitution but they should not legally be and in practice they would never be called in because the applications to which they relate would have long since been dealt with. This has been discussed at the Cross Party Planning Working Group and it was agreed that amendments to the constitution on this point would be appropriate. **See Appendix 1 – pages 3-7**

This was subject to further discussion at the Audit and Governance Committee on 21 July 2021 and their comments are covered later on in this report.

3.1.4 Amended the Scheme of Delegation to provide that both Strategic Directors can exercise the powers of the other Strategic Director if that Strategic Director is unavailable for any reason and/or there is other good reason

It was raised that there may be circumstances in which it would be prudent for a Strategic Director to exercise the powers of the other e.g. due to sickness or a project crossing areas of responsibility. Amendments have therefore been proposed that allow the Strategic Directors to do this. It will mean that each Strategic Director will still have their own delegated powers but the other Strategic Director could exercise one or more of those powers if there was good reason to do so. **See Appendix 1 – page 8**

3.1.5 Addressed some inconsistencies on the delegation of functions and removed unnecessary duplication

The current scheme of delegation has some duplication of functions where general delegations overlap with more specific ones. To avoid confusion, instances of these overlapping delegations have been removed. As above, there are a few of these and they aren't referenced in Appendix 1 as it would add to the volume of the report but if any member wishes to see these, they can be provided upon request.

3.1.6 Updated asset disposal limits to be consistent with Asset Disposal Policy

The current constitution has a delegation to the Strategic Director for Housing and Customer Services to dispose of land up to the value of £10,000 to give effect to the Council's policies and programmes. We are proposing to remove this delegation as both the Strategic Directors and the Chief Executive already have a separate delegation to acquire land of value up to £100,000 and dispose of land up to a value of £30,000. **See Appendix 1 – page 9**

3.1.7 Increased the number of substitutes available per seat under the Substitute Scheme

It was identified by Members that the availability of substitutes was causing an issue, particularly in relation to Planning Committee where applications cross ward boundaries. It is therefore proposed to double the number of substitutes to be appointed under the Substitute Scheme. **See Appendix – page 10**

There is a separate report on this agenda regarding the appointment of additional substitutions.

3.1.8 New band of contracts for £25k-50k to enable less formal contracting and can be signed off by officers within their financial authorisations

Currently contracts above £25k are required to be procured under a full tender exercise. Officers consider that for contracts below £50k a full tender exercise should not be necessary and a formal quote process for those contracts between £25k-50k would be more appropriate. The introduction of this new contracts band will give officers greater flexibility to award contracts. Whilst support will always be available from Legal and Procurement where needed, it is no longer compulsory to seek approval and therefore officers will be under greater responsibility to comply with the rules. This process is in line with the Public Contract Regulations 2015 and modern procurement practices. **See Appendix 1 – pages 11-14**

3.1.9 Authorisation for contracts where the Council doesn't incur costs

The current Contract Procedure Rules make it clear who has authority to sign contracts where they do not incur costs (e.g. if the Council is receiving a grant or entering into an information sharing agreement) but it doesn't address who has authority to agree entering into them. It is therefore proposed to make this clear and consistent with other agreements that require an authority to enter into them and an authority to sign them. **See Appendix 1 – page 15**

3.1.10 Introduced Budgetholder as the decision-maker in certain circumstances

The Finance Procedure Rules set out how budgets are managed by Team Managers, however, it is not always the case that budgets are held by them. Consequently, it is proposed to introduce a definition of 'Budgetholders' and make them the decision-maker in such instances. **See Appendix 1 – pages 16-17**

3.1.11 Amended the Planning Code of Conduct to revise the circumstances in which questions can be asked of speakers at Planning Committee

As a consequence of COVID, the Planning Committee ceased questioning of public speakers (e.g. applicant or objector) due to partial remote attendance making this difficult. Prior to this, issues had been raised around whether questioning of public speakers was appropriate and legal advice from counsel had been sought on the issue, which cautioned against it. In light of this, following meetings returning to in

person, the Cross Party Planning Working Group considered whether to reintroduce questioning of public speakers and took the view that it would be best not to remove it completely but to restrict it. Proposed revisions that limited questioning to factual clarifications in exceptional circumstances through the Chair were presented to the Planning Cross Working Group and no comments were received. It is therefore proposed to introduce these revisions to the Planning Code of Conduct. **See Appendix 1 – pages 18-20**

3.1.12 Removal of Remote Meeting Procedure Rules

Under the Monitoring Officer's delegation to make changes arising out of fact and law, a change is being made to remove the temporary standing order relating to the remote meetings procedure rules. These were introduced last year as a matter of urgency to confirm how remote meetings would take place and ratified by Council in September 2020. It was always intended that these rules would be temporary as the regulations were time limited. Now that the regulations have expired and Members have to attend in person as before, these rules are no longer relevant and therefore they will be removed.

4.0 COMMENTS OF THE AUDIT AND GOVERNANCE COMMITTEE

- 4.1 A report was taken to Audit and Governance Committee on 21 July 2021 setting out the proposed changes to the constitution as set out in this report. That report recommended that the Committee comment on and support the changes to the constitution, and recommend to Council that the changes be adopted. An extract of the minutes regarding this issue is appended at Appendix 2.
- 4.2 The report was the subject of lengthy debate, primarily focussed on the amendment relating to the call in of planning decisions (see paragraph 3.1.3 above). The Members of the Committee did not object to the principle of excluding the listed types of planning applications from call in but proceeded to debate the process for call in generally and in particular the role of ward members in that process.
- 4.3 The current call in process under the constitution provides that a Ward member may notify the Strategic Director for Place that they wish for an application to be determined by the Planning Committee. In such circumstances, the Chair of the Planning Committee will determine (based on planning and legal advice) whether the request is supported by one or more material planning grounds and whether the item relates to a matter of local concern. In the event that those tests are met, the matter shall be called in to the Committee. Where those tests are not met and the call in is declined, the Chair is required to provide written reasons to the requesting member and that will be saved on the public planning file.
- 4.4 This process was derived from a planning peer challenge review that was carried out in 2018, which concluded that the Chair, on the advice of officers, should make the decision whether to approve call-in requests. Council agreed to adopt this process at its meeting on 15 May 2018. Following its adoption, the process has been the subject of discussion at meetings of the Cross Party Planning Working Group, the outcome of which was that the procedure was amended to make it clear that Ward members could contact the Chair to discuss their request prior to a decision being made.
- 4.5 At the Audit and Governance Committee meeting of 21 July 2021, concerns were raised regarding the decision on call-in requests sitting with the Chair and officers. It was expressed by members that they felt the Ward member should have a greater role

in the decision-making process and should determine the decision rather than it being left to the Chair. The full debate can be viewed [here](#).

- 4.7 Following the debate, a motion was moved and passed that this issue be brought to Council, along with the other proposed changes, for a decision to be made on the Council's call in process. Members were advised by the Monitoring Officer during the meeting that legal advice would need to be sought on whether it was appropriate for the Ward member to take part in the decision-making process.
- 4.8 Subsequently, legal advice has been sought from Counsel on this point. That advice is appended as a confidential appendix (Appendix 3). Given that the advice is confidential, if Members wish to discuss the advice in detail during the meeting, Council will need to retire into private session. For the reasons set out in that advice it is recommended that Council does not amend the decision-maker in relation to planning call in decisions and leaves the call in process as it is (subject to the amendments proposed at paragraph 3.1.3 of this report) and recommendation 3 refers. Clearly, whilst officers have made a recommendation, this is a matter for Council to decide based on the information before it.
- 4.9 At the time of debating this issue, the Audit and Governance Committee did not have the benefit of the previous wording of this part of the Constitution before them. To assist in understanding how the wording was changed as a consequence of the Peer Challenge Review in 2018, Appendix 4 sets out the previous version, along with what it has changed to and the changes proposed under paragraph 3.1.3 above.

Policies and other considerations, as appropriate	
Council Priorities:	An up to date and modern constitution helps the council to make robust and effective decisions and deliver corporate priorities
Policy Considerations:	N/A
Safeguarding:	N/A
Equalities/Diversity:	N/A
Customer Impact:	The constitution is made available to customers on the Council's website
Economic and Social Impact:	N/A
Environment and Climate Change:	N/A
Consultation/Community Engagement:	The MO consulted and engaged with the Chief Executive, Directors, S151 Officer, other officers, the Leader and Deputy Leader and the Planning Cross Party Working Group
Risks:	An up to date constitution which is reviewed regularly ensures that robust effective decisions can be made by members and officers
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