

# Chichester District Council

THE COUNCIL

22 January 2019

## Constitutional Amendment

### 1. Contacts

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### 2. Recommendation

- 2.1 That the membership of committees shall be amended as set out in the appendix to the agenda report from the date of the May 2019 elections.
- 2.2 That the Monitoring Officer be required to provide a report annually to the Corporate Governance and Audit Committee as to the use of his delegated powers to amend the Constitution.
- 2.3 That the wording regarding the approval of designation of neighbourhood areas in accordance with the Neighbourhood Planning (General) Regulations 2012 be amended to further state: ‘...and following the Director of Planning and Environment informing the appropriate Cabinet Member and the relevant ward member(s)’.
- 2.4 That the Monitoring Officer be directed to amend the Constitution to clarify that attendance by members for the purposes of section 85 (1) of the Local Government Act 1972 shall be limited to the Council or a committee to which that member is allocated only.
- 2.5 That the consideration by the Task and Finish Group of the Monitoring Officer delegations as to the Constitution and its recommendation that these remain unchanged be noted.
- 2.6 That the delegation to the Deputy Section 151 Officer be amended such that the post-holder shall have delegation in the absence of the Section 151 Officer for all financial matters.

### 3. Background

- 3.1 As part of the proper and effective management of Chichester District Council's (CDC) Constitution, a task and finish group (TFG) was set up comprising members from all three groups, chaired by the Leader of the Council. This focussed upon the changes to committees resulting from the May 2019 elections but also considered

other constitutional issues which have arisen since the major review of the Constitution in 2016.

#### **4. Outcomes to be Achieved**

- 4.1 The main outcome will be a new committee membership structure which will be fit for purpose and provide a suitable workload for members to enable them to be engaged in committee roles while balancing their other duties and facilitating them to be fully representative for their wards.
- 4.2 In addition several other improvements to the efficiency of process of CDC will be generated through the above recommendations as set out further in the report below.
- 4.3 New reporting of the use of delegated powers by the Monitoring Officer (MO) to the Corporate Governance and Audit Committee will be introduced following this report, this will in turn also provide an opportunity for members to consider future further changes to the Constitution and maintain oversight as to the form and application of the Constitution.

#### **5. Proposal**

- 5.1 The TFG considered a range of issues relating to the constitution and reminded themselves of the previous group and its considerations. It will be seen from reviewing the background papers that some of that consideration led it to a conclusion that there was no need to amend the majority of the Constitution which was found to be fit for purpose. Specifically the TFG debated whether amendments to chairman powers, administration of motions to committees, terms of reference for each committee and sub-committee, the models of delegations and the definitions of senior officer needed amending and following debate these were all found to be sufficient at this time. Detailed explanation of that debate can be reviewed in the notes of the TFG which form the background papers to this report.

#### **Further Reporting**

- 5.2 The TFG noted the powers granted to the MO and the ability, through Modern.Gov, for all members to review changes made by the MO. However, in order to improve transparency and visibility of the use of those delegated changes it was felt by the group that some form of annual headline reporting of those changes would be useful.

#### **Change to Delegated Powers for Neighbourhood Planning**

- 5.3 Delegated functions are currently as set out in the Constitution for the Director of Planning and the Environment in relation to the operation of delegated powers for neighbourhood planning.
- 5.4 Items (c) to (i) of that authority are currently qualified as set out above by the wording: 'and following consultation with the appropriate Cabinet Member and the relevant ward member(s)'.

- 5.5 The word 'consultation' requires local members to be consulted on effectively their own locally drafted plan neighbourhood plan (NP). In addition this also introduces an additional process and time delay element to the process as consultations have their own formal requirements in this context.
- 5.6 In relation to item (c) the action of 'consultation' relates to completing formal comments on a draft NP at Pre-Submission stage and Submission stage. The period for the completion of the CDC response is six weeks. During that period the opportunity is provided to other CDC departments to provide comments to the NP officer to consider for inclusion in the CDC response.
- 5.7 During this same six-week period there is also the requirement for the Principal Officer to sign off the draft responses prior to delegated sign off by the Director of Planning and the Environment. Each of these again needs sufficient time to consider the draft response.
- 5.8 The need for 'consultation' of members requires a period of time. As a consequence the time available for internal comments to be made to the NP officer inevitably backs up through the six-week period in order to allow for sufficient time for consideration, amendments and sign off etc. The TFG considered this issue and recommended to the Council that the delegation be amended to 'informing' rather than 'consulting' in order to improve the efficiency of this process while also maintaining the member awareness.

### **Attendance at Meetings**

- 5.9 Members are required to attend a meeting of the Council not less than every six months. Meeting is not given further definition under the local government acts, so to ensure consistency the TFG considered that a clear definition should be provided within the Constitution that for the purposes of that calculation attendance shall only apply to the Council and committees to which the particular member is appointed.

### **Delegation to the Monitoring Officer to Amend the Constitution**

- 5.10 The MO has powers under the Constitution to amend two types of matters without reference to others, being officer title changes (amendments to reflect recent job title changes which have already taken place for example) or amendments which arise as the result of a change in statute or regulation such as amendments to authorisations as required by post or legal changes. The TFG considered that these are sufficient and reasonable to the requirements of CDC. The TFG also considered the scope of the MO to give dispensations for the purposes of section 85 (1) of the Local Government Act 1972 and noted that this is a statutory power and that no change to the Constitution was required.

### **Delegation to the Deputy Section 151 Officer**

- 5.11 The Section 151 officer role is a key, statutory, officer role at CDC. The financial arrangements of the authority are under daily scrutiny assessment and change. In the absence of the Section 151 Officer there is an overarching delegation for financial decisions set out in a schedule. Some elements of financial activity (such as VAT) are not mentioned in Part IV which outlines the matters delegated to that deputy. For the avoidance of doubt, the TFG considered that the Deputy Section

151 Officer needed to be able delegate in all financial matters without exception in the absence of the full Section 151 Officer and that the Constitution should be so amended.

**6. Alternatives Considered**

6.1 Subject to public law principles, all changes to the Constitution are within the Council’s control. It is open to THE Council to make no changes, but the view of the TFG was that this would interfere with the proper management of CDC activity.

**7. Resource and Legal Implications**

7.1 None of the recommendations has an impact on finance, staffing, IT or property.

7.2 The Constitution has legal effect and is required to be consistent with public law principles. The MO advised on those legal issues in the context of the TFG.

**8. Consultation**

8.1 This report sets out the recommendations of a member TFG, which included the Leader, Deputy Leader and the leaders of the opposition groups and several other experienced members.

**9. Community Impact and Corporate Risks**

9.1 The corporate risks follow on from the implications at para 7.2, that proper legal structure for the organisation is not appropriate if updating amendments are not put in place. The risk is that without proper constitutional arrangements decisions are made improperly or cannot be taken in an appropriate timescale.

9.2 There is no direct community impact from the recommendations of this report.

**10. Other Implications**

<b>Are there any implications for the following?</b>		
If you tick <b>Yes</b> , list your impact assessment as a background paper in paragraph 13 and explain any major risks in paragraph 9		
	Yes	No
<b>Crime and Disorder</b> The Council has a duty “to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”. Do the proposals in the report have any implications for increasing or reducing crime and disorder?		X
<b>Climate Change and Biodiversity</b> Are there any implications for the mitigation of/adaptation to climate change or biodiversity issues? If in doubt, seek advice from the Environmental Strategy Unit.		X

<p><b>Human Rights and Equality Impact</b> You should complete an equality impact assessment when developing new services, policies or projects or significantly changing existing ones. For more information, see Equalities FAQs and guidance on the intranet or contact Corporate Policy.</p>		X
<p><b>Safeguarding and Early Help</b> CDC has a duty to cooperate with others to safeguard children and adults at risk. Do these proposals have any implication for either increasing or reducing the levels of risk to children or adults at risk? CDC has committed to dealing with issues at the earliest opportunity, do these proposals have any implication in reducing or increasing demand on CDC services?</p>		X
<p><b>General Data Protection Regulations (GDPR)</b> Does the subject of the report have significant implications for processing data likely to result in a high risk to the rights and freedoms of individuals? Processing that is likely to result in a high risk includes (but is not limited to):</p> <ul style="list-style-type: none"> <li>• systematic and extensive processing activities and where decisions that have legal effects – or similarly significant effects – on individuals.</li> <li>• large scale processing of special categories of data or personal data relation to criminal convictions or offences.</li> <li>• Any larger scale processing of personal data that affects a large number of individuals; and involves a high risk to rights and freedoms eg based on the sensitivity of the processing activity.</li> <li>• large scale, systematic monitoring of public areas (including by CCTV).</li> </ul> <p><b>Note</b> If a high risk is identified a Privacy Impact Assessment must be provided to the Data Protection Officer.</p>		X
<p><b>Health and Wellbeing</b></p>		X
<p><b>Other</b> (please specify)</p>		

## 11. Appendices

11.1 Schedule of the amended committee numbers

## 12. Background Papers

12.1 Task and finish group meeting notes - 3 July 2018

12.2 Task and finish group meeting notes - 19 July 2018

12.3 Monitoring Officer's notes to the task and finish group

[**Note** These three background papers are published in the agenda supplement for this meeting]

## Appendix

The existing number of members sitting on individual committees was reviewed.

Following consideration of the workloads of each committee and the impact of their decisions member numbers were agreed for recommendation to the Council:

<b>Name of Committee</b>	<b>Existing Numbers</b>	<b>Agreed Numbers</b>
CGAC	10	8
Planning	15	13
Licensing	15	10
Overview and Scrutiny	15	11
<b>Sub-total</b>	<b>55</b>	<b>42</b>
Investigation and Disciplinary	5	5
Standards	7	7
<b>Full Total</b>	<b>67</b>	<b>54</b>