

Briefing note on Constitution Task and Finish Group

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2nd July 2018

Outline

Originally this Council's constitution followed a model prepared by national bodies. Four years ago a substantial project group was set up to revisit the whole constitution "line by line" and to overcome some conflicts within the Constitution. So our core Constitutional position is largely fit for purpose and effective.

As such, this task and finish group is primarily focussed upon the membership of committees and, indirectly, sub committees following the changes in membership which will follow the District boundary changes. However some other incidental issues as to the Constitution are presented for consideration.

Membership of Committees

1. The Leader has circulated a suggested membership structure which will be discussed at the group. The balance to be met for a structure is between a suitably efficient body (typically suggesting that we have a smaller, more experienced membership) and a suitably wide enough membership to make sure there are sufficient skills and bodies available to carry out its workload widening viewpoints involved in debate, and sharing out responsibilities (typically pushing us towards a larger membership for each committee). In truth this is a balancing exercise of both the needs of the committee and the need for sufficient, engaging workload for members.
2. There are few strict legal requirements though a committee has to include "one or more persons". Naturally a realistic working minimum is higher than one! A helpful outline of the legal position from the (independent) Local Government Information Unit can be read at <https://www.lgiu.org.uk/wp-content/uploads/2014/12/Changing-to-a-committee-system-in-a-new-era.pdf> though there are several similar guides available I would suggest you look at the Local Government Association website and other materials for informed background.

Delegations

3. Ultimately all decisions are for members, but most accept the need for them to be passed in many cases to officers. This internal delegation to be done clearly (and a 2010 case called **Technoprint v Leeds City Council** shows that if you don't then the Courts may overturn all decisions made under that Constitution by the officers concerned).

Background

4. Delegations can be either individual (e.g. to "The Director for Democratic Services") or to a class of officers (e.g. to "designated Environmental Health Officers"). We sometimes use wider classes at Chichester (e.g. "Senior Officers").
5. Following our management restructure last year many posts had their title amended. We now have The Chief Executive, Directors (SMT), Divisional Managers and then officers.

Delegation to the Monitoring Officer to amend the Constitution

6. The Monitoring Officer (MO) has powers under the Constitution to amend two types of matters without reference to others, being officer title changes (Changes to reflect recent job title changes have already taken place.) or changes which arise as the result of a change in Statute. So if a new planning act came out (for example) then the MO could change all references to the Planning Act 2006 for a new Planning Act 2019. This authority has not been considered for over 20 years, so Members should discuss whether they are content with the powers granted to the MO or whether they feel that they need to be reduced or even expanded. The MO view is that the current arrangements are suitable and sufficient and that widening the power to amend the Constitution would weaken member power over their own rules and that any reduction would only increase the administrative burden upon Full Council to deal with simple consequential changes of that kind.
7. When looking at wider delegations, it is open to Members to consider whether to amend the delegations from individual to the new classes. The advantage of this is that other officers of the same group might then be entitled to make decisions in the absence of a particular officer.
8. Secondly Members may wish to have officers look at having an established delegation protocol so that all Senior Officers have a given delegate to act in their absence.
9. Alternatively, Members might wish to leave delegations as they are, so that particular officers with specific expertise make the decisions delegated to them. Finally members may wish to leave delegations in their current balance.
10. The MO is not aware of significant issues around delegation, but there have been occasions where matters have needed to be taken to a higher officer if that was permitted for a particular decision or even been delayed due to the absence of a particular officer. Whichever option is preferred can be assessed against the Constitution and a draft setting out the changes which would arise from a particular direction could be set out for this group at its second meeting.

Incidental Constitutional Changes

Proposed Amendment relating to Deputy S.151 Officer

11. The S.151 officer role is a key, statutory, officer role at the Council. The financial arrangements of the authority are under daily scrutiny assessment and change. In the absence of the S.151 officer there is an overarching delegation for financial decisions set out in a schedule. Some elements of financial activity (such as VAT) isn't mentioned in Part IV where the deputy can act. The MO would suggest that for the avoidance of doubt, this element of the Constitution be amended to allow the Deputy S.151 Officer to delegate in all financial matters without exception.

Proposed Amendment relating to Leaving debates

12. There have been some representations made to the Monitoring Officer that members leaving debate should be barred from voting at a later point in the debate. There is no restriction in place within the Constitution to this effect, nor can such a ban be located in the Constitutions of other authorities. In truth, it would seem that such a bar would prevent individuals leaving for toilet breaks or similar and to serve no strong purpose. It is a matter

for members as to whether they feel individually that they have heard sufficient evidence on a matter to reach a decision even if they have taken breaks from the committee at present and that individual responsibility feels correct to the MO. However as a matter raised by members for potential change this is presented to the group for consideration.

13. Proposed Amendment to the Constitution relating to Delegated Powers for Neighbourhood Planning

14. Delegated functions are currently as set out in the Constitution as below for the Director of Planning and the Environment in relation to the operation of delegated powers for neighbourhood planning.

Part 3 – Responsibility for Functions

Director of Planning and the Environment

Planning Policy (Page 80 of The Constitution)

59. Neighbourhood Plans

15. *(a) To determine requests made under the Environmental Assessment of Plans and Programmes Regulations 2004 as to whether or not a strategic environmental assessment (including screening and scoping opinions) is required.*

16. *(b) To approve the designation of neighbourhood areas in accordance with the Neighbourhood Planning (General) Regulations 2012.*

and following consultation with the appropriate Cabinet Member and the relevant ward member(s):

17. *(c) To make formal comments on a draft Neighbourhood Plan at Pre-Submission stage and Submission stage;*

18. *(d) To accept a Neighbourhood Plan submission and, provided that the proposal complies with the relevant legislation, to publicise and consult on the Plan in accordance with the Neighbourhood Planning (General) Regulations 2012;*

19. *(e) To appoint an Independent Examiner to hold an examination to assess whether the draft plan meets the basic conditions and in exceptional cases to suspend the holding of an examination;*

20. *(f) Following receipt of the Independent Examiner's report, to publish a decision statement and to make the decision to proceed to referendum where the Independent Examiner's report recommends 'proceed to referendum as submitted' and no significant adverse representations have been made (g) To publish a Publicity Statement and an Adoption Statement;*
21. *(h) To carry out such other procedural processes, requirements assessments and determinations as may be necessary in accordance with the Town and Country Planning Act 1990, the Neighbourhood Planning (General) Regulations 2012 and any other relevant regulations to enable preparation of a Neighbourhood Plan.*
22. *(i) In relation to High Court challenges of any decisions of the Council throughout the neighbourhood planning process, to reply, defend and/or consent to judgement of any claims and to settle any costs claim arising.*
23. Suggested Proposal:
24. Items (c) to (i) are currently qualified as set out above by the wording: *'and following consultation with the appropriate Cabinet Member and the relevant ward member(s)'*
25. The word 'consultation' requires local members to be consulted on effectively their own locally drafted plan neighbourhood plan. In addition this also introduces an additional process and time delay element to the process.
26. In relation to item (c) the action of 'consultation' relates to completing formal comments on a draft Neighbourhood Plan at Pre-Submission stage and Submission stage. The period for the completion of the CDC response is 6 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.
27. During this same 6 week period there is also the requirement for Principal Officer sign off of 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.
28. 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 6 week period in order to allow for sufficient time for consideration, amendments and sign off etc. It is suggested that it may be more appropriate to therefore amend the wording from 'consultation' to 'inform', 'update' or something similar.