

Chichester District Council

CABINET

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Review of the Constitution

1. Contacts

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2. Executive Summary

This report proposes revisions to the Constitution. Changes of significance or principle have been considered by and are recommended by the Task and Finish Group set up by the Council in March. These are reported in this report and its appendices. Other changes are shown in a track changed version of the whole Constitution, which is published but not printed as a Background Paper. This is the version the Council is to be invited to approve.

3. Recommendation

- 3.1. That the Council be recommended that the revised Constitution, as set out in the background paper, including the significant alterations described in section 6 below, be approved.**

4. Background

- 4.1. The Constitution is a large document and not an easy read. It is, largely, a work of reference. It consists of 7 parts as follows:

Part 1 – Summary and Explanation

Part 2 – Articles of the Constitution (an overview of the way the Council conducts its business)

Part 3 – Responsibility for Functions (essentially the scheme of delegation to committees and officers)

Part 4 – Rules of Procedure (including Procedural Standing Orders, Rules on Access to information, the roles of the Executive (Cabinet) and Overview and Scrutiny, Complaints Scheme, Financial Regulations, and Contracts Standing Orders)

Part 5 – Codes and Protocols (including Members Code of Conduct and arrangements for handling complaints against members, Code of Conduct, Petition Scheme, Public Question Time, and Protocol on Task & Finish Groups)

Part 6 – Members Allowance Scheme

Part 7 – Management Structure

- 4.2. At their meeting on 31 March 2016, the Council made a number of decisions about the timing of Council meetings and, among other things set up a Task and Finish Group (TFG), comprising Mrs Hardwick, Mrs Apel, Mrs Lintill, Mr Ridd and Mrs Tull, with the following terms of reference:

“To review the Council’s Constitution and advise Cabinet and Council on any changes. In particular:

- How decisions are made
- The effective operation of the Council’s business.”

- 4.3. In addition, the Constitution is periodically reviewed by officers and such a review was already in progress.
- 4.4. The TFG did not support a fundamental re-structuring of the Constitution to improve readability and eliminate duplication. This would risk sacrificing precision and introducing ambiguity. It would also make it more difficult to compare the Council’s Constitution with those of other authorities who have retained the standard format.
- 4.5. The TFG also decided that they should not replicate a line-by-line review of the Constitution, as officers would do this. However, officers would seek the TFG’s views on any matters of significance or principle arising from their review.
- 4.6. This report follows similar principles. It reports the TFG’s views on matters of significance or principle, for Cabinet’s recommendation and Council’s decision. Matters which are not of significance or principle are not recorded in this report, but a marked up copy of the whole Constitution in track changes is available electronically as a background paper.

5. Outcomes to be achieved

- 5.1. The outcomes will be to improve and set out clear rules for the effective operation of the Council’s business.

6. Proposal

- 6.1. The remainder of this report draws attention to proposed changes of significance or principle.

Part 1 – Summary and Explanation

- 6.2. No changes are proposed to this three page introduction to the Constitution.

Part 2 – Articles of the Constitution

- 6.3. Article 1 - The Constitution: In Article 1.03, the out-dated first two sentences of the following paragraph should be deleted and the third sentence incorporated into the next paragraph:

“The Constitution recognises the Council’s role as a Community Leader and its strategic responsibility for community planning and for the efficient and effective delivery of services. Its overall objective is, therefore, to organise all of its activities in such a way as to ensure that they demonstrably contribute to agreed community outcomes as identified through the community planning process. The Council believes in the importance of partnership working in order to effectively discharge its community role, achieve value for money and to seek continuous improvement in all its endeavours.”

- 6.4. The TFG noted that the Constitution was generally written in the masculine, although attempts have been made in places to update the gender slant. Rather than undertake the substantial task of going through the whole constitution to eliminate gender bias, they agreed that wording similar to that of the Interpretation Act should be incorporated in Article 1.04:

“In this Constitution, unless the contrary intention appears,

(a) words importing the masculine gender include the feminine;

(b) words importing the feminine gender include the masculine;

(c) words in the singular include the plural and words in the plural include the singular.”

- 6.5. Article 4 – The Full Council: (see Appendix 1). This Article, which sets out the role of the full Council, was considered in detail by the TFG and a marked up copy is attached. Some significant points considered by the TFG were:

- (a) In recognition of the new and untried Community Infrastructure Levy (CIL), the Infrastructure Business Plan, incorporating the CIL Spending Plan, should be added to the list of Policy Framework documents that require approval by the full Council.
- (b) The wording of 4.03 (b) and (c). The latter clause in particular was considered imprecise as worded and revised wording taken from elsewhere in the Constitution is recommended.
- (c) Paragraph 4.03 (l), and a corresponding provision in the Cabinet’s terms of reference, require the Council to be given the opportunity to express its views before the Cabinet resolves to make a Compulsory Purchase Order (CPO). Making a CPO is, by law, an executive decision to be made by the Cabinet, not the Council. However, the TFG considered the Council should continue to have the right to express its views before the Cabinet resolves to make a CPO.
- (d) Paragraph 4.03 (q) requires the Council to approve documents associated with the Local Plan before public consultation on them, as well of course as finally approving them. This means that the Council frequently considers the same document twice, before and after public consultation, which lengthens the preparation time. The suggested revised wording follows the requirements of Government Regulations in clarifying which documents need this double consideration.

- 6.6. Article 5 – Chairing the Council: The current Constitution contains the following clause, which the TFG recommend should be deleted:

“The Chairman may promote a Chairman’s Charity appeal for the charity or charities of his choice during his term of office.”

This has not been used and could cause contention over the Chairman’s choice of charity.

- 6.7. Article 7 – the Cabinet (see Appendix 2): The TFG recommends:
- (a) Delete paragraph 7.03 relating to Panels and Forums.
 - (b) Amend paragraph 7.05(d), and corresponding provision in Part 3 of the Constitution, so that the Leader is required to consult Cabinet Members before appointing Special Advisers to assist them
 - (c) Remove Table 2 listing the names and portfolios of Cabinet Members.
- 6.8. Article 8 – Regulatory and other Committees; Article 9 – The Standards Committee; Article 10 – Area Committees (see Appendix 2): The list in Article 8.01 includes all the main committees. There are other Panels and Forums, but rather than list them in the Constitution, which implies a degree of permanence and formality, the TFG recommends that a reference is made to the Council’s power to appoint other Committees. The list in paragraph 8.01 includes the Standards Committee, and Article 9, therefore seems redundant as it largely duplicates the terms of reference of that Committee set out in Part 3. Since the abolition of the North Area Development Management Committee, this Council has no Area Committees (as legally defined). Article 10 is no longer required. A reference to the power to appoint such committees is included in Article 8, as amended.

Part 3 – Responsibility for Functions

- 6.9. The TFG considered the terms of reference of the Cabinet and suggested some minor changes. Other issues are set out in the following paragraphs.
- 6.10. The Boundary Review Panel: The Boundary Review Panel consists of six members. It is appointed by the Cabinet and its broad objectives are stated to be:

“To consider and advise the Cabinet on matters relating to electoral areas as and when the need arises.”

The functions dealt with by this Panel are matters to be determined by the full Council, and the TFG supported the view that the Cabinet, as a single-party committee, should have no part to play in considering these matters. The TFG recommends that the Panel should report directly to the full Council, and its membership should be appointed by the Council.

- 6.11. The Joint Employee Consultative Panel: The staff side membership of this Panel currently makes provision for representation from Westgate Leisure Centre. Since the out-sourcing of Leisure Services such staff are no longer employees of the Council. The JECP was, therefore, asked to review its constitution.

- 6.12. The JECP recommended the following:

- Remove the Westgate Leisure Staff Side Representative
- Reduce the CCS membership from two members to one with the flexibility that this member is not named and discretion is used as to whether a representative is sent dependent on item relevance
- Staff Side Membership therefore made up of five East Pallant House representatives, one Careline representative and one CCS representative
- Reduce the quorum requirement for Staff Side to three
- Keep the quorum requirement for members at two

6.13. The TFG had reservations about JECP bullet points 2 and 3. They agreed that the employee side should be reduced to seven, by removing the Westgate Leisure representative and the change to the quorum. Given the proportion of total staff at the Depot, they felt the existing wording: “where possible to be two from Chichester Contract Services” should be retained (accepting the caveat in bullet point 2). Bullet point 3 was not clear whether it was deliberately intended to increase the number of EPH representatives from four to five. The TFG did not support this. Since the TFG meeting, the Senior Leadership Team has suggested that the Council’s other outpost (The Novium Museum) should be mentioned, and the recommended wording is:

“Employees - Seven, where possible to be two from Chichester Contract Services, and five from East Pallant House, including Careline and The Novium Museum. The staff representatives must be serving employees but not necessarily accredited representatives appointed by the recognised trade unions.”

6.14. Other Panels and Forums etc. A number of Panels and other bodies are not explicitly referred to in the Constitution. These include: The Business Routeing Panel; Waste and Recycling Panel; Chichester District Parking Forum; Infrastructure Joint Member Liaison Group; the three Programme Boards, which consist of officers but include the relevant Cabinet Member. The TFG felt that Inclusion in the Constitution implies a degree of formality and permanence. They did not therefore consider it appropriate to include these other panels, forums and bodies.

6.15. Delegated Powers of Staff: This part lists powers delegated to officers by previous decisions of the Council or Cabinet. The TFG supported a number of recommendations for change:-

(a) Head of Commercial Services: This officer has powers delegated relating to property, some of which are subject to financial limits. It is recommended these should be revised to take account of inflation as follows:

- To approve leases, licences, wayleaves and easements of land up to an annual income level or consideration of £50,000 in value in each case. Suggest increase to £60,000.
- To approve sales and easements of land which has been declared surplus by the Cabinet up to a consideration or market valuation of £200,000 in each case. Suggest increase to £250,000.
- To agree rent reviews and re-gearing up to a maximum annual rental of £50,000. Suggest increase to £60,000.

- To negotiate terms on behalf of the Cabinet to take a lease, licence or to acquire the freehold of land or premises where a service need has been identified and budgetary provision made up to a maximum annual expenditure or consideration of £50,000. Suggest increase to £60,000.
 - To authorise the service of notice of the Council's intention to determine leases, with a view to their renewal on fresh terms if the premises are not required for use by the Council (terms to be approved by the Cabinet if exceeding an annual value of £50,000). Suggest increase to £60,000.
 - To take appropriate action including expenditure up to £10,000 to deal with land owned by the Council which is contaminated within the meaning of the Environmental Protection Act 1990 or in respect of other pollution and the management of air quality – such action to be taken following consultation with the Head of Housing & Environment Services. Suggest increase to £15,000.
- (b) Head of Housing & Environment Services: The TFG noted that the environmental health and other delegations to the Head of Housing & Environment Services require significant legal research to ensure that they are all entirely consistent with the current law. The legal team is actively investigating the alternatives to ensure that delegations do not need to be constantly reviewed when legislation changes.
- (c) Head of Planning Services: Some minor changes are proposed to this officer's delegated powers to:
- delegate operational powers relating to the Community Infrastructure Levy
 - enable inflationary increases to be made to S106 obligations proposed by the Solent Recreation Mitigation Partnership
 - remove the requirement for ward member consultation where it is proposed to object to HGV operators licenses
 - make a minor addition to neighbourhood planning to cover Publicity Statements
 - delegate new requirements associated with Supplementary Planning Documents
 - Respond to consultations by other local authorities on minor and/or urgent policy documents, following consultation with the Leader and Cabinet Member.

Part 4 – Rules of Procedure

6.16. The TFG considered the Procedural Standing Orders and suggested some minor changes, which are shown in Appendix 3. These include:

- (a) In order to give the Chairman of a meeting a degree of flexibility in how the meeting is conducted (and to protect the Council from the risk that a Court may consider it has not complied with its own procedures), it is suggested that SO 3.2 should be amended to read:

“3.2 The chairman of the meeting shall be entitled to give a final ruling on the interpretation of these procedural Standing Orders *or to vary processes*

for particular meetings or circumstances within the general framework of these Standing Orders.”

- (b) Senior staff salaries are now discussed in public, which conflicts with SO 8.9. The TFG agreed that SO 8.9 should be deleted and reliance placed on the Access to Information Rules in Part 4.2 of the Constitution.
- (c) The TFG felt that the special entitlement of the Chairman of the Council to sit and speak at the Committee table of all meetings of committees of which he is not a member should be withdrawn, and SO 13.4 deleted accordingly.
- (d) SO 22 entitles all members to attend meetings of committees of which they are not members, and to speak with the chairman’s consent. The TFG suggest that it should be clarified that such participation must be related to items on the agenda. They also agreed that a note of the way the current Leader applies this to Cabinet meetings should be included.

6.17. Part 4.5 Overview and Scrutiny Procedure Rules - Call-In Procedure (see Appendix 4)

A review of the call-in procedure was requested following the last call-in received and heard by the Overview and Scrutiny Committee in July 2015. Amendments are suggested around the requirement for the member calling in the decision to prove any breach of the criteria for call-in and not to delay the provision of evidence to demonstrate the alleged breach.

- 6.18. Part 4.9 Contract Standing Orders: Contracts Standing Order 6 relates to exceptions to the necessity for obtaining tenders. As currently worded it is confusing because there are exceptions that relate both to particular circumstances and to financial thresholds. It is suggested that some simplification would be helpful and re-wording is proposed in Appendix 5.

Part 5 – Codes and Protocols

- 6.19. It is suggested that the recently issued “Guidance to members on the offer, acceptance and declaration of receipts of gifts and hospitality” should be added to this part of the Constitution immediately after the Members Code of Conduct.
- 6.20. Part 5.3 – Code of Conduct for Employees and Part 5.4 – Protocol on Member/Staff Relations are both overdue for review. These have been referred to the JECF for consideration, but any changes will need to be considered outside the timetable for the current review. In any event, it is suggested that the recently issued “Protocol on members’ contacts with staff” should be added to Part 5.4

Part 6 – Members’ Allowance Scheme

- 6.21. This has been updated following the recent review of the Scheme.

Part 7 – Management Structure

- 6.22. Heads of Service have been asked to update their sections of these three pages.

7. Alternatives that have been considered

- 7.1. Some of the changes shown in the revised Constitution have already been approved by the Council. The Constitution could continue to be updated piecemeal as the Council approves changes or as the Monitoring Officer uses delegated powers to make necessary changes to comply with the law, to reflect decisions of full Council, or to correct errors or clarify ambiguities. However, this seems an appropriate time to review the Constitution and obtain the Council's approval for a revised version.
- 7.2. Many of the individual changes proposed could be expressed differently, or indeed be left unchanged. The recommendations in this report reflect the TFG's opinion and officers' assessment of most appropriate practice.

8. Resource and legal implications

- 8.1. There are no resource implications, except for the cost of re-formatting for display on the website and printing a few copies of the revised Constitution.
- 8.2. The Council by law has to comply with relevant regulations and guidance from the Secretary of State about local authority constitutions. The Monitoring Officer confirms that this is the case.

9. Consultation

- 9.1. This review has been carried out by the Head of Finance and Governance Services, the Monitoring Officer and the Member Services Manager, and the TFG appointed by the Council for this purpose. There has been no external consultation. Staff teams and Heads of Service have been invited to suggest changes and improvements. The Joint Employee Consultative Panel has been consulted about membership changes.
- 9.2. Members of the Council who have queries are encouraged to raise them with the Monitoring Officer or Member Services Manager before the Council meeting on 19 July.

10. Community impact and corporate risks

- 10.1. The changes should make the Council's practices clearer and more streamlined, but generally do not in themselves impact on the community.

11. Other Implications

Crime & Disorder	None
Climate Change	None
Human Rights and Equality Impact	None
Safeguarding and Early Help	None

12. Appendices

(printed in black and white; available in colour on the Council's website)

Appendix 1 – Part 2 Article 4 The Full Council

Appendix 2 – Part 2 Articles 7 to 10

Appendix 3 – Part 4.1 Procedural Standing Orders

Appendix 4 – Part 4.5 Overview & Scrutiny Committee Call-in Procedure

Appendix 5 – Part 4.9 Contract Standing Orders; Exceptions to the necessity for obtaining tenders

13. Background Papers

Parts 1 to 7 of the Constitution with changes marked up