

TEIGNBRIDGE DISTRICT COUNCIL

COUNCIL

CHAIRMAN OF CONSTITUTION WORKING GROUP: Cllr Gordon Hook, The Leader

DATE: 24 September 2019

REPORT OF: Constitution Working Group

SUBJECT: First Report of the Constitution Working Group

RECOMMENDATIONS TO FULL COUNCIL

The Constitution be amended as follows:

1. (a) The format (including content) of the Constitution be revised as outlined in Section 3; and
(b) Delegated authority be given to the Monitoring Officer to make such minor amendments to the Constitution as they consider appropriate (including changes to reflect current legislation, organisational arrangements, to promote clarity and to enable the Constitution to be kept up to date).
2. The Scheme of Delegations be amended to:
 - (a) Reflect current legislation and operational arrangements;
 - (b) Extend the 'call in' procedure for planning applications as detailed in Section 4.3 to cover district councillors of contiguous wards and parish / town councils for at least six months subject to a review of its application not revealing significant resource implications for the Council as outlined in Section 4.3; and
 - (c) Delegate operational matters to CMT as detailed in Section 4.4;
3. The Constitution Working Group reconvene to consider the additional matters outlined in section 5 of the report and report back with its recommendations (if any) to full Council before the end of the municipal year.

REPORT DETAIL

1. PURPOSE

- 1.1 This report sets out the Constitution Working Group's recommendations on changes to the Constitution for full Council's approval.

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2. BACKGROUND

- 2.1 The CWG met on three occasions during the summer. In recognising the extent of the work required, the group identified the following priorities for its report to September's full Council meeting:
- (i) a review of the format of the constitution (to improve understanding of its content, reduce duplication and address gaps particularly in the procedural rules); and
 - (ii) a review of planning delegations in particular the Planning Committee 'call in' procedure to increase local engagement in planning matters as its priorities.
- 2.2 In undertaking this review, the CWG members have discussed the recommendations with their respective groups and have confirmed that their groups support the recommendations.

3. CONSTITUTION FORMAT – Recommendation 1

- 3.1 Currently, the Constitution is largely divided into sections with reference to each decision making meeting (i.e. full Council, the Executive and each Committees). This has led to each section repeating the same key rules which apply to all decision making, creating a rather cumbersome and unduly long document which omits to address some key areas. For example:
- The delegations to committees and staff are not in one place. They are instead unnecessarily split across well over 10 sections within the Constitution despite the fact that they could readily be combined in far fewer sections to ease identification (e.g. two sections namely Meetings of the Council and Scheme of Officer Delegations).
 - Unfortunately, there are still some basic gaps in these numerous sections collectively (e.g. absence of a clear officer delegations to facilitate the delivery of routine operational matters).
- 3.2 Further, it would seem that in the absence of a fundamental review of the Constitution in recent years, a series of seemingly minor changes which have been made to the rules over time have not been followed through or considered with referenced to other parts of the Constitution which they affect. This has created some contradictions and gaps within the originally duplicated text applicable to the decision making process generally across the Council. For example:
- The 'call-in' procedure to facilitate the scrutinising of Executive decisions (i.e. largely by Overview and Scrutiny and the Audit Scrutiny Committee) refers to different times for publication of notices (despite there being a specific statutory time period);
 - Time limits for questions to be submitted vary between public and councillors without reason.
- 3.3 These types of issues have understandably caused some confusion for staff councillors and importantly, the public they represent. It is considered that the Constitution could be made much simpler and easier to follow for the benefit of

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all concerned if a description of the different decision making bodies within the Council, common procedural rules applicable to all meetings and delegations to officers, could each be set out in their own single section. This approach would also enable gaps to be identified more readily and addressed.

- 3.4 As part of the Constitution review, work has been commenced by staff to review the main problems area (e.g. gaps in delegations to committees / staff and meeting procedural rules). The recommendations to which the remainder of this report refers set out the changes that are considered a priority, although this part of the Constitution review will (subject to approval of the relevant recommendations) need to continue over the coming months to further improve the layout of the Constitution and to remove minor errors. Assuming that the proposed on-going review also identifies further material changes that are required, such changes will be considered by the CWG over the coming months. Any recommendations regarding further material changes to the Constitution would then be included in a subsequent CWG report to full Council for councillor approval.
- 3.5 The CWG considers each of the following listed areas are pertinent to effective decision making and should be combined into a separate section in the Constitution (rather than being dispersed as is currently the case).
 - (i) The terms of reference and composition of councillor decision making bodies (i.e. full Council, Executive and the committees) be included in a section called "Meetings of the Council" or similar;
 - (ii) The existing meeting procedure rules be collated into one section of the Constitution headed "Meeting Procedure Rules" or similar; and
 - (iii) The existing delegations to officers to be included in a section headed Scheme of Officer Delegations.
- 3.6 As indicated above, this particular change will help improve the understanding and as such compliance with the Constitution by virtue of making it easier to identify what rules apply to particular situations. For the avoidance of doubt and as indicated above, the existing rules will not be materially changed (i.e. will only cover changes to remove / address clear errors in law or drafting to improve clarity and understanding of the relevant provision as the Monitoring Officer considers appropriate).
- 3.7 The CWG also proposes that in the interests of transparency and accountability, the important difference in roles of staff and councillors be highlighted in the Constitution. This would involve referring to elected councillor being responsible for strategic matters (e.g. developing policy and setting budget); and to staff/managers being responsible for day to day operational matters in accordance with the councillor approved policy and budget, in an updated introduction to the Constitution (currently Part 1 of the Constitution).
- 3.8 Recommendation 1 in this report seeks authority to amend the format of the Constitution to address all of these CWG proposals.

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4 SCHEME OF DELEGATIONS – Recommendation 2

- 4.1 Although the current delegations have operated for some years without significant issues in practice, the distribution of the delegations through the Constitution as noted above has created some confusion. An additional issue with the publicised delegations is that for some years, they have not been regularly updated to reflect changes in legislation and organisation structure. Recommendations 1b and 2a seek to address this omission. For the avoidance of doubt the existing Constitution already includes provision for delegations to specific officers to be sub-delegated in their absence so changes can be made in a timely fashion.
- 4.2 In addition to these general issues, two other key gaps have been identified as part of the CWG's review. These concern (i) the locally referred to 'call in' process whereby planning applications are referred to the Planning Committee and (ii) general delegations to senior staff to undertake day to day operational matters.
- 4.3 Regarding (i) to help improve public engagement in the planning process particularly via district and local / parish councillors, the CWG proposes that the relevant part of existing planning delegations be amended to permit town and parish councils and councillors whose wards adjoin the application site ward to request that an application be referred to committee. (Currently the delegation scheme only permits ward councillors and the chairman to refer applications to committee). This element of the CWG's work has also highlighted the need to ensure that the procedure for 'call in' is properly documented within the Constitution as it forms part of the scheme of officer delegations. The wording in Appendix A reflects the existing 'call-in' arrangements including the extension proposed by the CWG. Following consultation with the Business Manager, the CWG does not expect the extension of the 'call in' procedure to have any additional resource implications for the Council. However, if full Council wishes to approve Recommendation 2(c) the CWG would like to keep the number of call-ins under review over the coming 6 months. Any significant issues will then be considered by the CWG and, if it is so minded to do so in response to the review findings, may recommend to full Council that the right may be removed.
- 4.4 Turning to (ii) in line with common practice, a delegation should be documented in the Constitution to cover routine management and administrative decisions which senior staff take on a daily basis. Consequently, it is proposed that the following be inserted into the Scheme of Officer delegations:

Delegated authority be given to officers within the Corporate Management Team to make decisions on the management and administration of the services for which they are responsible subject to such decisions being within approved budget and policy and other relevant provisions in the Constitution.

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4.5 Whilst again in line with good practice the existing Constitution does enable staff to sub-delegate their decision making powers to colleagues with relevant expertise etc. in the interests of transparency there should be central record of sub delegations. Consequently it is proposed to include this within the general delegated powers procedure rules (currently within Part 3 of the Constitution).

5. MISCELLANEOUS – Recommendation 3

5.1 In view of the extent of the Constitution Review, the CWG also identified others areas which it considered it might (with full Council approval) usefully examine over the coming months. Issues which were mentioned included a review of meeting times. However, the CWG noted that with the pending introduction of webcasting of meetings, council meetings will be more accessible to all (whether by viewing live broadcasts or filmed meeting afterwards); and also that feedback from other councils with evening meetings illustrate that it is the topic under discussion, not the meeting time, which tends to affect public attendance.

5.2 The CWG notes that there has not been a significant review of the decision making structure for some years. Given the options for executive structures to reflect local circumstances (e.g. hybrid forms of decision making which potentially combine the benefits of committee and executive structures) such could be examined by the group. It was also noted that some committees may be busier than others and terms of reference may overlap. The CWG recognised that in seeking to promote public engagement / participation the CWG should consider recent national good practice guides for scrutiny committees. Other potential topics for consideration include the introduction of a petition scheme and also access by councillors to exempt / confidential meeting papers. In summary, the CWG suggests that it examine these various matters over the coming months and reports back to full Council with any recommendations before the end of 2019/20.

5.3 Whilst not directly within its terms of reference, as part of its discussions with the Business Manager regarding the call-in of planning applications, the CWG has asked for an officer report to be submitted to Overview and Scrutiny Committee over the coming months. The purpose of this will be to enable councillors to promote and support the improvements being made to the planning service under the management of the Business Manager.

Officer Name: Sarah Selway and Karen Trickey

Officer Designation: Team Leader and Solicitor to the Council respectively

The box below to be completed by the report author.

Wards affected	All
Contact for any more information	Sarah Selway and Karen Trickey
Key Decision	N
In Forward Plan	N
In O&S Work Programme	N

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Appendices attached:	Appendix A: Planning Application call in
Background papers attached:	