

TEIGNBRIDGE DISTRICT COUNCIL

ANNUAL MEETING 2020

28 JULY 2020

Report Title	Second Report of the Constitution Working Group (CWG)
Purpose of Report	This report sets out the CWG's recommendations on changes to the Constitution for full Council's approval.
Recommendation(s)	<p>RECOMMENDATIONS TO FULL COUNCIL:</p> <ol style="list-style-type: none">1. The Executive and Scrutiny Committee Chairs should meet as required (but preferably no less than quarterly) to consider the forthcoming work of the their committees;2. The Regulatory & Appeals and Licensing Act 2003 committees be replaced with a new committee called Licensing and Regulatory Committee as provided for in Section 3 of the Report;3. The Constitution procedural rules be amended regarding:<ol style="list-style-type: none">(a) Membership changes to committees during the civic year(b) Notice requirements for questions(c) Motions(d) Chair of Standards Committeeas detailed in the Report paragraphs 5.2 – 5.5 respectively <p><i>NB. Additional recommendations proposed by the Leader (which were not agreed by the CWG) comprise:</i></p> <ol style="list-style-type: none"><i>4. The current Overview and Scrutiny Committee be replaced with two new scrutiny committees as provided for in paragraph 2.5 of the report; and</i><i>5. The Planning Committee comprise 17 members.</i>
Report Author	Monitoring Officer on behalf of the members of the CWG. The group comprises the group leaders (namely Leader who acted as Chair, Cllr Haines, Cllr Bullivant and Cllr Mullone) & Cllr Connett.

1 BACKGROUND

- 1.1 Full Council on 24 September 2019 considered a report of the CWG and resolved to revise the format of the constitution to improve the general understanding of the Constitution. This has been done (see Appendix A by way of illustration regarding the terms of reference of full Council and committees which are now contained in one section and will be published along with the rest of the Constitution following any changes as per this report and updating by the Monitoring Officer).
- 1.2 The members of the CWG met on four occasions since November 2019. They considered a variety of issues including:
- Decision making structure of the Council (see below Report Sections 2 to 4);
 - Changes to procedural rules (see Section 5 below).
- 1.3 It should be noted that the recommendations 1 to 3 above comprise those matters which the majority of members of the CWG agreed. There was a difference in view regarding a proposal to change to the size of the Planning Committee (from 21 to 17 members) and replacement of the Council's main scrutiny committee (Overview & Scrutiny Committee of 30 members) with two smaller overview and scrutiny committees (of 13 members each). Consequently, these two proposals are listed in italics for information above (and numbered Recommendation 4 and 5).
- 1.4 Importantly, it should be noted that the allocation of seats amongst the groups which is the subject of another agenda item for the Annual Meeting 2020 at which the current report is being considered, is based upon three options. These are: no change to the committee structure; a structure consistent with the CWG's recommendations (in particular Recommendation 2) being approved; and all relevant recommendations being approved. Should full Council consider any other changes to the committee structure, the seat allocations would need to be recalculated and it would not be possible to appoint to committees at the Annual Meeting. It is recommended in that situation, delegated authority be given to the Monitoring Officer to determine the allocations and for Group Leaders to appoint members to the committee accordingly. The allocation would then be published on the Council's website for information. Otherwise, the meeting will need to be adjourned and reconvened when the Chairman determines.

2 SCRUTINY FUNCTION OF THE COUNCIL: Recommendations 1 and 4 (latter from the Leader)

- 2.1 At the suggestion of the Leader, the CWG considered changes to the scrutiny function of the Council. Currently the scrutiny function of the Council (which is a statutory requirement) comprises two committees (other than the joint authority Strata Scrutiny Committee). These committees are the Audit Scrutiny Committee and Overview & Scrutiny Committee. The existing terms of those committees reference as per the reformatted Constitution, are set out in Appendix A - Section 3.5 (which sets out matters applicable to both committees), Section 3.6 and Section 3.7 (which covers matters specific to Overview & Scrutiny and Audit Scrutiny respectively).

- 2.2 The CWG members discussed the scrutiny committees' work, commenting that there could be an improved focus on policy delivery review and development generally. (In commenting on the draft CWG report it was mentioned by a member of the CWG that the need to change the focus of the Overview and Scrutiny Committee (possible without any constitutional change) was recognised 12 months ago with a revised structure put in place at the end of last year; such changes being designed to improve focus and accountability; and that such changes had (only) been running since January 2020). Whilst it is for both committees to determine their work programmes for the year, with regard to promoting a more effective partnership between the Executive and remainder of the Council, it was proposed that the Executive and scrutiny chairpersons should meet regularly to consider matters which the scrutiny committees, particularly Overview and Scrutiny should examine, as part of their work.
- 2.3 Mention was also made to a need for better review of service performance indicators from a strategic perspective, including annual reports of the Local Government Ombudsman. As this type of work potentially already falls within the general terms of reference of each committee, particularly Audit Scrutiny, no changes are required although setting of more strategic performance indicators which reflect the corporate priorities approved by Council would be appropriate. (In commenting on the draft report, it was mentioned by a member of the CWG that the Task & Finish Group reporting to the Overview and Scrutiny Committee on 14th July 2020 was established to make recommendations on reporting methodology etc. and it would be worth referring to their report).
- 2.4 Consideration was also given to the general effectiveness of the Overview and Scrutiny Committee over recent years. Consideration was given by the CWG to the existing committee improving the use of small review groups. These ad hoc groups could undertake time limited inquiry style projects, better engage the public and report back to the committee with the purpose of assisting with policy development and the review of progress towards delivery of the Council's adopted T10 programmes.
- 2.5 In the absence of specific topics being identified at the current time, the CWG considered a proposal by the Leader to have two smaller overview and scrutiny committees (in addition to the Audit Committee) which would collectively cover the work of the current single Overview and Scrutiny committee comprising 30 members. In this regard and to avoid potential overlap of work with each other and also the Audit Committee, the Leader proposes that the two smaller committees' areas of work should be as follows. The Leader also proposes that the committees meet alternate months.

Name of Committee	Work Area	Number of Members
Overview & Scrutiny (1)	Strategic Direction; Environmental Health; Waste & Recycling; Climate Change Emergency; Communities; Housing; and Information Technology	13
Overview & Scrutiny (2)	Economy, Business and Tourism; Planning; Corporate Resources; Sport, Recreation and Culture	13

2.6 The proposal to create smaller committees did not gain sufficient support amongst the group to warrant a CWG recommendation to full Council. Nevertheless, Appendix A, Section 3 includes for Members' ease of understanding, relevant changes in draft to the existing terms of reference for the Overview and Scrutiny Committee which the proposal, if resolved, would require.

3 LICENSING & REGULATORY FUNCTIONS – Recommendation 2

3.1 Currently there are two committees which cover licensing functions, namely the Regulatory and Appeals Committee (RAC) and the Licensing Act 2003 Committee. The majority of the committees' work covers determination of licensing and taxi licence matters. With regarding to the former committee, the need for the committee has diminished overtime. In particular, the functions it performs are largely govern by statutory processes for which there are well established routes of challenge through the courts and tribunal processes; its functions overlap with other committees; it has recently recommended to full Council that employee appeals are removed; and its remaining appeal work could be undertaken by the licensing sub-committees given the similar skill set needed to undertake such regulatory functions.

3.2 Whilst the CWG considered the amalgamation of RAC and the Licensing Act 2003 Committee would seem sensible, it did not support a request that the Licensing Manager's delegation be extended to enable her to determine applications to use taxis which are more than 10 years' old (subject to advice of mechanical engineer). Consequently this role would transfer to the new committee if Recommendation 2 is resolved.

3.3 The (new) committee size will need to have between 10 and 15 (inclusive) members to meet statutory requirements. The current licensing committee has 10 members. The CWG recommends that the committee has 11 members (such being the suggestion of the Leader). The impact of this on seat allocations amongst the groups (with no other changes being made to the overall committee structure) is as follows:

Committee	Total Seats	Lib Dem seats	Cons seats	Ind seats	NSN seats
Overview & Scrutiny	30	15	8	5	2
Planning	21	11	5	4	1
Licensing & Regulatory	11	5	3	2	1
Audit Scrutiny	8	4	2	1	1
Standards	6	3	2	1	0
Strata Scrutiny	3	2	1	0	0

4 PLANNING COMMITTEE – Recommendation 5 from the Leader

4.1 Although recognising the existing committee was much larger than the typical size of planning committees of other authorities; there were limited resources available to provide the on-going bespoke training to all members of the committee; the importance of accountability of decision makers (which was reduced in larger committees and

potential lack of consistency in decision making in larger committees), the members of the CWG acknowledged the general and extensive interest of members in determining individual planning applications. Consequently, the proposal by the Leader to reduce the number of seats in the committee from 21 to 17 did not receive sufficient support amongst the group to warrant any recommendation to full Council. Nevertheless, for information the following table sets out the impact on the seat allocations which would apply if this and the Leader's recommendation regarding the changes to the Overview and Scrutiny Committee were both resolved by full Council.

Committee	Total Seats	Lib Dem seats	Cons seats	Ind seats	NSN seats
Overview & Scrutiny (1)	13	6	3	3	1
Overview & Scrutiny (2)	13	7	3	2	1
Planning	17	9	4	3	1
Licensing & Regulatory	11	5	3	2	1
Audit Scrutiny	8	4	2	1	1
Standards	6	3	2	1	0
Strata Scrutiny	3	2	1	0	0

- 4.2 The need for members to attend what training is available within resources but also to be willing to accept responsibility for their own development in particular when dealing with regulatory functions such as planning, licensing and standards was discussed by the CWG. Provision could be included in the Constitution to require such training if members considered such appropriate, although it was noted that group leaders should in any event ensure that they only allocated seats to suitably trained members. Nevertheless it would be possible for the Constitution to be amended to include a specific requirement for members to attend training. If this were to be resolved the following could be added to provisions regarding membership of relevant committees:

Each member of the committee is required to complete in full an induction programme; undertake regular training; and attend development updates in relation to the [planning / licensing] function. Any member not undertaking these training activities will be unable to serve (or continue to serve) on the committee until such time that the full training requirement has been met.

5 PROCEDURAL ISSUES – Recommendations 3(a) – (d)

- 5.1 **Recording Votes:** Following on from the Notice of Motion approved by full Council on 24 February 2020 aimed at promoting open and accountable decision making by all councillors, the CWG discussed the practicalities of introducing recorded voting for all committee meetings (particularly Planning Committee), on 27 February 2020. It was acknowledged that as per the Constitution's current procedural rules, members already had the right to ask for their own personal vote to be recorded in the minutes; and further that if five members so required a recorded vote of all members would be taken. In practice, work had previously been commenced by officers as part of webcasting, to combine electronic voting with recording of votes for all Council Chamber held meetings. This would continue to be implemented. Due to the lock down restrictions, the CWG noted that the implementation of webcasting (with recorded voting) in the Council Chamber held meetings had since been unavoidably

delayed, but the use of roll calls as part of comprehensive remote meetings subsequently introduced had served to provide a practical means to record votes.

5.2 Appointments to Committee (Recommendation 3(a)):

Consideration was given to the appointment of members to committees during the course of the Council civic year. Currently, it is the sole role of the Annual Meeting to appoint to members to committee. It was noted that some authorities have provision in their constitutions to allow Group Leaders to make changes to the committee in limited circumstances only during the course of the civic year (e.g. resignation, death / ill health) so as not to undermine accountability for decision making inherent with frequent changes to committee membership. With this in mind and given the CWG members wanted to change membership in other circumstances, the following wording is proposed to be included in the Constitution:

A councillor can resign from a committee by notifying the Managing Director or Monitoring Officer in writing.

If a member stops being a councillor or resigns from a committee, the Group Leader of the relevant political group (if any) or in his absence his deputy, may nominate a replacement committee member who will fill the vacancy immediately.

The replacement member's appointment will be confirmed at the next Council meeting.

To secure accountability in decision making and committee expertise (particularly where training is required which has resource implications), no more than one appointment change each committee, may be made by a single group without prior full Council approval during the course of a civic year.

5.3 Notice requirements for Member and Public Questions / to speak (Recommendation 3(b)):

There is considerable inconsistency throughout the Constitution in terms of requirements for questions, which only serves to create confusion. With this in mind, it is proposed that the procedural rules be redrafted so that where questions are currently permitted the following shall apply:

- (a)** Notice of questions must be given by no later than 10 am, three clear working days before the day of the meeting;
- (b)** Each notice must be in writing or by electronic mail to the Democratic Services, (e-mail, comsec@teignbridge.gov.uk);
- (c)** Each question must be supported by the name and address of the specific questioner and where appropriate the body they represent;
- (d)** At any one meeting no body may submit more than three questions and no more than three such questions may be asked on behalf of one organisation or person;
- (e)** Questions (rather than speeches) may be put to the Chairman of Council, Leader, Portfolio Holder or a Committee Chairman (the person with relevant responsibility being the person who answers and to whom the question should be directed in the

- first instance, advice being provided by Democratic Services as to such responsibility if requested);
- (f) A maximum period of 15 minutes' agenda time will be allowed for each questioner (including supplementary questions) to be asked and answered;
 - (g) Questions will be asked in the order they were received, except that the Chairman may group together similar questions;
 - (h) The Managing Director may reject a question if it:
 - i. is not about a matter for which the member body to which it is addressed has a responsibility;
 - ii. is defamatory, frivolous or offensive;
 - iii. is substantially the same as a question which has been put at a meeting of the Council / committee in the past six months;
 - iv. requires the disclosure of confidential or exempt information (including confidential staffing matters);
 - v. relates to something that is or should be the subject of alternative recognised procedures for example, staffing issues, complaints, Licensing or Planning matters.
 - (i) The responses to questions will be circulated by 5pm on the working day preceding the meeting;
 - (j) The Chair will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, the Chair may, at his/her discretion ask the question on the questioner's behalf;
 - (k) A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The Chair may reject a supplementary question on any of the grounds that apply for the original question;
 - (l) A question which cannot be dealt with during public question time will be dealt with by a written answer by the person to whom the question was put within a reasonable timescale and at the latest before the next scheduled meeting;
 - (m) Unless the Chairman of the meeting decides otherwise, no discussion will take place on any question;
 - (n) At a Council meeting the Chair or another member may move that a matter raised by a question be referred to an appropriate Committee; once seconded, such a motion will be voted on without discussion.

5.4 Motions on Notice (Recommendation 3(c)):

The current drafting of the scope and timing of submission for motions throughout the Constitution leaves some room for improvement, currently providing insufficient time for officers to assist members in presentation of the motion (in particular securing appropriate wording of the proposed resolution). In the interests of clarity and to ensure that full Council's time is focused on motions which are potentially deliverable in practice, it is proposed that the rules for motions are amended as follows, (the process for such including reference to Executive and the committee remaining unaltered):

Except for motions which can be moved without notice, written notice of every motion must be delivered in writing or by electronic mail (whether signed by or submitted electronically) by least 5 Members to the Managing Director via comsec@teignbridge.gov.uk not later

than noon, 10 clear working days before the date of the meeting. The member proposing and seconding the motion must also be identified by the deadline for submission.

No member may propose or second more than two motions at a single meeting. If the meeting is not specified then the Managing Director shall decide which meeting it shall be addressed to. The following will be determined by the Managing Director in consultation with the relevant Chair, Leader or Portfolio Holder as appropriate:

- i. Motions must be about matters for which the Council has responsibility or directly affect the District.
- ii. Motions must not relate to the personal affairs or conduct of individual Members or officers; or otherwise use inappropriate or inflammatory language.

5.5 Chairman of Council and Standards (Recommendation 3(d)):

In recognition of the need to promote high standards of conduct across the Council and the non-political role of the post, on the suggestion of the Leader the CWG proposes that the Chairman of Council should also automatically be appointed as the Chair of the Standards Committee.