

Report to: **ANNUAL COUNCIL**
Date: **22 May 2018**
Title: **Annual Review of the Council's Constitution**
Portfolio Area: **Resources and Performance (Cllr Edmonds)**
Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **Immediately following this meeting.**

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RECOMMENDATION

That Council RESOLVES that:

- 1. the amendments to Parts 1, 2 and 3 of the West Devon Borough Council Constitution (as summarised in paragraph 2.8 of the report and fully outlined on the website) be approved and formally adopted; and**
- 2. the draft 'Members' Code of Planning Practice' (as outlined at Appendix A of the presented agenda report) be adopted and added to Part 5 of the Council Constitution.**

1. Executive summary

1.1 The Council is required to formally adopt its Constitution at the Annual Meeting in May for the forthcoming Municipal Year.

1.2 This report seeks to ensure that the Constitution is amended to reflect the changes that have either occurred in the Council over the previous year, or to implement any necessary changes to ensure that it is up to date, lawful (i.e. to incorporate changes in Statutory Legislation); and reflects the Council's current practices and priorities.

2. Background

2.1 The Audit Committee is responsible for 'maintaining an overview of the Council's Constitution' and for making any necessary recommendations to the Council;

2.2 The Audit Committee considered the latest Review at its meeting on 20 March 2018. In so doing, the Committee recommended approval (and formal adoption) of the revisions to the Constitution subject to '*Part 2, Article 3: 'Citizens and the Council' being updated to include Citizens rights to attend and participate at Licensing Sub-Committee meetings*'. Officers can confirm that this amendment has now been included in the latest version of the draft Constitution;

2.3 The Audit Committee also requested inclusion of a second recommendation whereby '*A Members' Code of Planning Practice be drafted and presented for approval as soon as is practically possible*'. As a result of this recommendation, officers have since drafted a Code which is presented at Appendix A and recommended to Council for approval.

2.4 Changes to the Constitution are also made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes, and are effective from the date of approval (unless otherwise agreed by Council). Examples over the past year include:

- Approval to a revised set of Terms of Reference and Procedure Rules for the Overview and Scrutiny Committee;
- Changes to the Delegation Scheme as a result of the recent review of duties amongst the Senior Leadership Team (e.g. the Group Manager: Commercial Services being appointed to the role of Returning Officer); and
- Establishment of additional Member Bodies, including the Corporate Strategy Review Member Working Group.

2.5 In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. The changes that have been made under these powers this year mainly relate to officer job titles and evolving areas of responsibility following the recent review of duties amongst the Senior Leadership Team;

2.6 Due to the large size of the Constitution, it has not been circulated with the agenda, but is available upon request by contacting Member Services (member.services@swdevon.gov.uk). Due to the size of the Constitution, it is suggested that the Review is divided into two parts. This part of the Review focuses on Part 1 (Summary and Explanation); Part 2 (Articles of the Constitution); Part 3 (Delegation Scheme) and Part 5 (Codes and Protocols);

2.7 It is then suggested that the second part of the Review be considered within the next six months that focuses on Part 4 (Rules of Procedure). This will ensure that these Rules can be extensively reviewed before the May 2019 local elections;

2.8 The key proposed amendments to this Part of the Review are as follows:-

- That a new Part 2 Article 6 (Hub Committee) and Part 2 Article 8 (Overview and Scrutiny Committee) be created;
- That Part 2 Article 5 removes reference to the role and function of the Council Leader and Deputy Leader. It is felt that this would be more appropriate for a designated page on the 'Your Council' area of the Council website;
- Inclusion of updated Public Forum procedures for Committees;
- Removal of duplication between the Part 2 'Articles' and the Part 4 'Rules of Procedure';
- Removal of reference in the Delegation Scheme to the Audit Committee having its own standalone budget;
- That the Planning Delegation Scheme be updated to reflect the 'Permission in Principle' applications; and
- To recognise that reference to 'Our Plan' should now be replaced with the term 'Corporate Strategy'.

2.9 Members will also be aware that the Political Structures Working Group has undertaken a review on the merits of whether or not the Hub Committee roles and responsibilities should be amended and the Committee size should be reduced. Members will also note that this matter is due to be considered by Annual Council before this report is presented.

3. Outcomes/outputs

3.1 The Council is required to have an up to date Constitution which reflects the law, its working practices together with best practice to ensure that it delivers efficient services and lawful decisions. The Constitution is a living document and changes are made throughout the year when necessary.

4. Options available and consideration of risk

4.1 The options are limited, save for agreed amendments where appropriate, as the Council has a statutory duty to adopt its Constitution annually and to review that document to ensure that it is fit for purpose and reflects both statutory requirements and the Council's working practices;

4.2 If the Council does not review the Constitution there is risk that the Council may make unlawful decisions with a consequent risk of challenge;

4.3 Senior Officers, the lead Hub Committee Member and the Audit Committee have been consulted on the Constitution and any necessary amendments incorporated.

5. Proposed Way Forward

5.1 The Council is asked to adopt the first part of its Constitution and to approve the establishment of a 'Members' Planning Code of Practice'.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Local Government Act 2000 requires the Council to have (and to maintain) a Constitution. The Monitoring Officer must review the Constitution annually and make recommendations to the Audit Committee, who in turn must recommend its adoption to full Council. Only the Council can approve and adopt the Council's Constitution.
Financial	N	There are no financial implications to this report
Risk	Y	<p>There is a risk arising from a failure to review the Constitution and approve the necessary changes because it may lead to unlawful decisions being taken by the Council.</p> <p>By undertaking an annual review of the Constitution the Council mitigates this risk by ensuring that the Constitution is up to date and reflects current practice and law.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		None arising from this report
Safeguarding		n/a
Community Safety, Crime and Disorder		n/a
Health, Safety and Wellbeing		n/a
Other implications		n/a

Supporting Information

Appendices:

A: Draft 'Members' Planning Code of Practice'

Background Documents:

Constitution Review 2017;

Agenda and minutes arising from the Audit Committee meeting held on 20 March 2018; and

Planning Advisory Service Guidance – Members' Planning Code of Practice.