

Report to: **Council**

Date: **27 September 2022**

Title: **Council Constitution**

Portfolio Area: **Council – Cllr Jory**

Wards Affected: **All**

Urgent Decision: **N** Approval and **N/a**
clearance obtained:

Date next steps can be taken: **On approval of the recommendation**

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Recommendations:

It is recommended that Council adopts as its Constitution with immediate effect the draft Constitution in the form set out in Appendix A to this report.

1. Executive summary

- 1.1 The Council operates the committee system model as its governance arrangements. Under such arrangements a council creates a number of politically balanced committees, each with a specific area of responsibility and delegates decision-making to the relevant committee or to officers.
- 1.2 The Council has a legal duty to publish an up-to-date Constitution reflecting its governance arrangements and which contains its standing orders, its councillor code of conduct, such information as the Secretary of State directs or that the Council considers appropriate. The Constitution should be reviewed annually with any necessary changes being normally considered at the annual council meeting.
- 1.3 Appendix A proposes a draft constitution that meets the legal requirements and the Council is recommended to adopt it as the Council's Constitution.

2. Background

- 2.1 Under Section 9B of the Local Government Act 2000 there are essentially only two permitted forms of governance arrangements for local authorities in England: executive arrangements or a

committee system. The legislation does not permit a mix and match approach. The Council has a committee system of governance. Decisions are therefore made in accordance with sections 101 and 102 of the Local Government Act 1972.

- 2.2 Although overview and scrutiny is a feature of executive arrangements, it is optional for those authorities with the committee system. However, where authorities such as the Council have chosen to have one or more overview and scrutiny committees, the Local Authorities (Committee System) (England) Regulations 2012 apply set out specific requirements that must be reflected in the Council's overview and scrutiny arrangements.
- 2.3 The Council has agreed improvements its decision-making framework and arrangements to secure greater transparency, accountability, clarity of roles, and efficiency of the democratic process (Min. HC84/20 refers).
- 2.4 The Council has also adopted a new corporate strategy to ensure that Council resources are aligned to secure the efficient and effective delivery of the ambition and priorities set by Members (Min. CM40/21 refers).
- 2.5 These two decisions when taken together evidence an intention for the Council to be a council for the 21st century with governance arrangements and ways of working aligned to delivering the vision set out in A Plan for West Devon. To achieve this, there needs to be an approach to decision-making processes, which involves councillors and officers operating within a clearly defined, but nevertheless light-touch framework that balances efficient decision-making with appropriate levels of overview and scrutiny.
- 2.6 Section 9P of the Local Government Act 2000 requires the Council to prepare and keep up to date a document, to be known as the Constitution, which contains:
 - (a) a copy of the authority's standing orders for the time being;
 - (b) a copy of the authority's code of conduct;
 - (c) such information as the Secretary of State may direct; and
 - (d) such other information (if any) as the authority considers appropriate
- 2.7 The existing Constitution is based upon the Modular Constitution that was introduced following the Local Government Act 2000 coming into force. Most local authorities did so. The Council's Constitution currently comprises 7 Parts sub-divided into 34 further documents. However, there is a large measure of repetition within and between elements of the existing Constitution, in particular the Articles and other parts, and within the Financial Procedure Rules.

This makes the document cumbersome and longer than it needs to be.

- 2.8 The Constitution has not been helped by being amended over a number of years. Unfortunately, this has resulted in the Constitution being less than satisfactory in terms of its user-friendliness. It is difficult to navigate and because it has grown organically, it is not always internally consistent. Neither does it contain all the delegations in one place, with these spread across several documents.
- 2.9 At its meeting on 25 May 2021, Council considered a report setting out an aspiration that over the coming months the Constitution would have a complete face-lift that included:
- (a) a new easier to read introduction setting out the purpose of the Constitution;
 - (b) on-line links to the detail elsewhere in the Constitution or on the Council's website;
 - (c) the procedure rules for meetings of the full Council, the Hub Committee, other Committees and the Overview and Scrutiny Committee in a single place; and
 - (d) the meeting procedure rules supported by appendices which set out the rules for public questions, questions on notice from Councillors, notices of motion and substitutes as well as showing the rules of debate in an easy-to-follow flowchart. The appendices being intended to be the essential guide to the meeting procedure rules.
- 2.10 Unfortunately, progress has not been made as quickly as was anticipated. This report seeks to correct this by making proposals for a constitution to support the Council's vision and priorities (Attached as Appendix 1 'Draft Constitution').

3. The draft Constitution

- 3.1 The draft Constitution has a more consistent feel and hopefully will be a more user-friendly document. When live, it is planned that hyperlinks within the single document will make it easier to navigate around the Constitution. The intended hyperlinks are shown in red and underlined. Hyperlinks will also be used to reference policies and procedures that are referred to, but do not form part of the Constitution.
- 3.2 The sections of the draft constitution are clearly badged as being the Council's Constitution and with that in mind, it is written specifically to reflect the committee system operated by the Council.

- 3.3 As previously reported the starting point for the draft was to use terminology consistently across the Constitution (Min. CM12/21 refers).
- 3.4 As for the structure the Articles in the current Constitution have been removed from the Constitution. This avoids the repetition mentioned above. Where necessary some of the content of the Articles has been moved to other parts of the Constitution. The Constitution will comprise:
- (a) Chapter 1 – Introduction
 - (b) Chapter 2 – Responsibility for Functions and Scheme of Delegation
 - (c) Chapter 3 – Meeting Procedure Rules
 - (d) Chapter 4 – Access to Information Procedure Rules
 - (e) Chapter 5 – Other Procedure Rules
 - (f) Chapter 6 – Codes and Protocols
 - (g) Chapter 7 - Councillors' Allowance Scheme
- 3.5 The following paragraphs will take Council through each Chapter in turn.
- 3.6 Chapter 1 - Introduction – Summary and explanation. The purpose of the chapter is to provide information about how the Council works. In doing so, it includes much of what was in the Articles.
- 3.7 Chapter 2 – Responsibility for functions and scheme of delegation. The purpose of the Council's Scheme of Delegation is to define the remits of the Council's decision-making bodies and to specify the powers and functions that the Council has delegated to those bodies and to officers.
- 3.8 This replaces the current scheme in its entirety. The principal points to note are:
- (a) The number, size and terms of reference of committees are set out in the scheme (Tables 1 and 2). Tables 1 and 3 reflect too, that what the Council might have previously described as being outside bodies, are in fact, joint committees or joint advisory committees. An example of the former is the PATROL Joint Committee, while the Tamar Valley AONB Partnership is an example of the latter. Previously this information had been in the Articles, the scheme of delegation and in other parts of the Constitution.

- (b) Responsibility for the Code of Conduct and standards becomes that of the Audit Committee, which is re-named the Audit and Governance Committee to reflect this additional responsibility.
 - (c) The scheme of delegation cascades powers from Council down to the Head of Paid Service and Directors, with the power for further delegation of those powers to officers within their respective service areas. There are appropriate safeguards set out in Table 5, in that:
 - (i) In all cases, delegated authority is subject to any policies and procedures that have been approved by Council.
 - (ii) There can be no delegation of functions that are reserved to full Council or that cannot be delegated by law to an officer.
 - (iii) A decision can be cascaded upwards if in the circumstances it is appropriate to do so.
 - (d) Further to the safeguards set out in the previous paragraph, Table 5 also reflects the requirement under the Openness of Local Government Bodies Regulations 2014 for a written record to be produced and retained of decisions made by an officer that:
 - (i) grant a permission or licence;
 - (ii) affect the rights of an individual; or
 - (iii) award a contract or incur expenditure which, in either case, materially affects the Council's financial position.
 - (e) The scheme includes a list of those officers who are to exercise those functions identified in legislation as being exercisable by the Proper Officer.
- 3.9 The scheme also includes a list of those officers who are to exercise those functions identified in legislation as being exercisable by the Proper Officer.
- 3.10 Financial thresholds for decisions are included in the conditions applying to the exercise of delegated powers.
- 3.11 Chapter 3 – Meeting Procedure Rules. The Meeting Procedure Rules bring together the rules that are currently in three separate parts of the Constitution. They comprise the rules that apply to meetings of the Council, committees, panels and governance boards, and the Overview and Scrutiny Committee. The principal features are:

- (a) Opportunity at all meetings of the Council and a committee (except for the Annual Council meeting and meetings of the Development Management and Licensing Committee) for public questions on items appearing on the published agenda. Time is limited to 15 minutes and questions must not exceed 50 words.
- (b) Provision is made for questions to the Leader of the Council, Portfolio Holder and Committee Chairman by Councillors.
- (c) Period of up to 45 minutes is provided for the debate of notices of motion.
- (d) Appendices detail the procedures for public and councillor questions, notices of motion and the use of substitutes. A further appendix contains a flow chart to show the rules of debate.
- (e) the Council's rules for the filming and recording of meetings and the use of social media during meetings are set out in a procedure rule and an appendix;
- (f) provision is made to regularise the attendance of non-members of a Committee to attend via Teams.

- 3.12 Chapter 4 – Access to Information Procedure Rules. These rules explain how members of the public can attend meetings and get copies of the documents being considered at those meetings. They also explain the additional rights of Councillors to information supporting the overview and scrutiny of decisions.
- 3.13 The rules explain the publicity requirements before the Council, a committee or an officer takes a Key Decision. The concept of a decision being a Key Decision is something that is associated with executive arrangements and is linked with the power of an overview and scrutiny committee to call-in such decisions. For those purposes, a Key Decision is a decision that is likely “to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates” or “to be significant in terms of its effects on communities living or working in an area comprising two or more wards”.
- 3.14 Although not provided for in the current Constitution, the Council has maintained a forward plan of decisions and its committee report template asks the question whether the decision is a Key Decision. So, to maintain what might be seen as good practice, the Access to Information Procedure Rules provide for Key Decisions to be identified in the forward plan and that they may only be taken without publicity in cases of urgency and with the agreement of the

Chairman of the Overview and Scrutiny Committee. The Rules further provide for a record to be kept of Key Decisions

3.15 Chapter 5 – Other Procedure Rules. These rules are aimed primarily at internal Council controls. They deal with procedures for budget and policy setting, financial arrangements, procurement and the employment of officers.

- (a) Budget and Policy Framework Procedure Rules. These rules set out and explain how plans and strategies forming part of the Budget and Policy Framework, essentially: the budget together with the capital programme and strategy and the Medium-Term Financial Plan; and those policies and strategies required by the Local Authorities (Committee System) (England) Regulations 2012 or other legislation to be the responsibility of the Council.
- (b) Financial Procedure Rules. These have been amended so that much of the detailed operation of the Council's financial arrangements appears as the Section 151 Officer's guidance, which although linked to the Financial Procedure Rules, does not form part of them. This reflects the statutory duties of the Section 151 Officer and the distinction between the role of officers and members. It also makes the Rules and therefore the Constitution, less unwieldy and allows them to be updated more easily.

An increase in financial thresholds is proposed. This is to reflect the Council's agreed vision for efficient decision-making and ensuring that decisions are made at the right level. It is also a fact that the thresholds have not been increased for several years. Appendix B shows a comparison between the existing (shown in red) and proposed thresholds.

- (c) Contract Procedure Rules. These are largely technical, but have been completely re-written to reflect the changes in the law following Brexit.

To support the Council's Vision, it proposes new thresholds for seeking competitive tenders. It should be noted that the thresholds are now to be calculated including VAT, which is one of the Government's post-Brexit changes.

As an appendix, the Rules have, a summary of the procedural requirements set out in a table. This is intended to be an easy-reference guide and does not form part of the Rules themselves.

- (d) Officer Employment Procedure Rules. These rules apply to the employment, management of Officers. They reflect the Local Authorities (Standing Orders) (England) Regulations

2001, which require authorities operating the committee system to have specific standing orders relating to staff as well as standing orders incorporating provisions relating to disciplinary action against the Head of Paid Service, the Monitoring Officer and the Section 151 Officer.

With regard to taking disciplinary action against those officers, the current procedure rules simply set out the statutory language, which does not fit with the aim of ensuring that the Constitution is user-friendly and written where possible in plain English.

3.16 Chapter 6 – Codes and Protocols.

- (a) Councillor Code of Conduct. The Councillor Code of Conduct was adopted last year (Min CM 42/20e refers). Consequently, although the layout of the Code of Conduct has been improved, no changes to the text of the Code are proposed.
- (b) Councillor Complaints Process. It is proposed that the code of conduct is supported by including the Council's process for dealing with complaints as part of the Constitution. This reinforces the Council's duty to promote and maintain standards by enhancing the status of the process.

The process is amended so that it is more streamlined, while at the same time providing for councillors to be consulted by the Monitoring Officer at the assessment stage in most cases. A sub-committee will continue to determine complaints that are investigated fully. The process is intended to replace the Council's current approach and policy to dealing with standards complaints.

- (c) Councillor and Officer Protocol. The purpose of this protocol is to guide Councillors and Officers so that their respective roles are recognised and the relationship between the two is such that the Council operates smoothly.

The draft is entirely revised, with the result that it is shorter and more focussed, so does not replicate other provisions of the Constitution or policies/strategies.

- (d) Protocol for Councillors and Officers on Planning Procedures. This Protocol provides guidance to both Councillors and Officers when dealing with planning applications, so that the risk of allegations that a decision is biased or not soundly based are minimised.

The draft is entirely revised, both in terms of style and content. Importantly, it will apply to both Councillors and Officers. This is not entirely clear from the present protocol.

- 3.17 Chapter 7 – Councillors’ Allowance Scheme. This is subject to a separate review to comply with the Local Authorities (Members’ Allowances) (England) Regulations 2003.

4. Risk, consultation and next steps

- 4.1 The risks of not having an up-to-date, consistent and complete Constitution are that responsibility and accountability for decisions is unclear, decision-making lacks transparency and ultimately decisions are made unlawfully. The draft Constitution seeks to minimise the risk.
- 4.2 Group Leaders, Portfolio Holders and the Chairman and Vice-Chairman of the Overview and Scrutiny Committee have been consulted on the draft Constitution. Presentations have been given to both political groups on the Council and all councillors irrespective of whether they are members of a political group have been asked for their views in advance of the publication of the agenda for the meeting.
- 4.3 Following comments from councillors amendments have been made to the draft that was circulated for consultation purposes. Councillors will note in particular the revised Council Meeting Procedure Rule 21 (Councillor Conduct) which now refers to councillors standing to speak (if able) and refers to the Mayor’s powers to call a meeting to order. A number drafting errors were also highlighted and these have been corrected.
- 4.4 When adopted the Constitution will be published on the Council’s website. A copy will be provided to all councillors and work will be done to create the links within and without the document.

5. Conclusions

- 5.1 Local authorities must prepare a constitution, which must be kept updated and made available to the public. This report seeks the approval of a constitution that reflects proposals to improve the clarity, efficiency, and accountability of decision-making that were agreed by the Council previously. Unfortunately, the work on updating the Constitution was unable to progress as rapidly as might have been liked or was envisaged.
- 5.2 It is felt that the draft Constitution more accurately reflects the document that was anticipated by the Council’s previous decisions and that it will ultimately be a more user-friendly document. There will be areas that will need further work, but that is the nature of the document.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The legal and governance implications are explained throughout the report.
Financial implications to include reference to value for money	N	There are no financial implications arising directly from this report.
Risk	Y	See paragraph 4.1 of the report.
Supporting Corporate Strategy	Y	Having a Constitution that sets out clearly and simply a framework for decision-making that is lawful aligns fully with the aspiration to be a modern organisation delivering quality services as efficiently as possible.
Climate Change - Carbon / Biodiversity Impact	N	There are no climate change or biodiversity implications arising directly from this report.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	There are no equality and diversity implications arising directly from this report.
Safeguarding	N	There are no safeguarding implications arising directly from this report.
Community Safety, Crime and Disorder	N	There are no community safety or crime and disorder implications arising directly from this report.
Health, Safety and Wellbeing	N	There are no health, safety or wellbeing implications arising directly from this report.
Other implications		

Supporting Information

Appendices:

Appendix A – Draft Constitution.

Appendix B – Comparison of financial thresholds

Background Papers:

There are none.