

Report to: **Audit and Governance Committee**

Date: **23 July 2024**

Title: **Constitution**

Portfolio Area: **Leader of the Council**

Wards Affected: **All**

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RECOMMENDATIONS:

That the Committee RECOMMENDS that Council AGREE the proposed changes to the Council’s Constitution (as highlighted in Appendix A to this report) and ADOPT the Constitution as amended.

1. Executive summary

- 1.1 The Council operates the committee system as its governance arrangements.
- 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 Monitoring Officer keeps the Constitution under review and he reports any changes made under his delegated powers or that require Council approval to the annual meeting.
- 1.3 On 21 May 2024, the Council considered a report from the Monitoring Officer recommending Council to agree further changes to the Constitution to ensure that it remained up-to-date.
- 1.4 The Council agreed to adopt the Constitution with the proposed administrative and in-year changes shown in Appendix A to that report but asked this Committee to consider the other changes proposed by the Monitoring Officer. Proposed changes relating to notices of motion are however not now being recommended.

2. Background

- 2.1 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
- 2.2 The Council completed a review of the Constitution in September 2022 (Min CM.42/22 refers) and agreed a minor amendment concerning membership of committees in June 2023 (Min. CM18/23 refers). Council agreed a further amendment to the rules on virement in February 2024. The Council publishes the constitution on the Council's website at <https://westdevon.gov.uk/constitution>.
- 2.3 On 21 May 2024 the Council considered a report from the Monitoring Officer [Constitution Update to Annual Meeting](#) that set out proposals for amendments to the Constitution. These were set out in Appendix A to that report ([Appendix A to Constitution Update](#)). The Council agreed to adopt the Constitution as proposed by the Monitoring Officer to be amended except for the proposed changes shown highlighted in bold italics in Appendix A to this report. The Council requested this Committee to consider those changes and to make recommendations to Council (Min CM. 14/24 refers).

3. The changes

- 3.1 Appendix A to this report sets out all the changes that the Monitoring Officer recommended to Council. The report asks the Committee to consider those shown highlighted in bold italics.
- 3.2 **The changes to notices of motion.** The original report to Council made proposals for changes increasing the time for the debating of notices of motion and their subject matter. The changes proposed reflected those agreed by South Hams. These proposals are not now being recommended and are shown as being struck-through.
- 3.3 **Additional delegations to officers.** The Head of Environmental Health requires the delegation to make orders under the Anti-social Behaviour, Crime and Policing Act 2014 to enable the orders created under the act to be made and renewed where there are no changes or minimal changes proposed to the orders. Where an order is likely to be contentious or would be sensitive, existing conditions on the exercise of delegated powers would allow the Head of Environmental Health to refer the matter to Hub Committee.
- 3.4 The introduction of statutory obligations about biodiversity net gain as part of the planning process mean that the Council must adopt

procedures to ensure that it can comply. The obligations include the registration, management, and monitoring of habitats banks. Habitat banks are parcels of land that a landowner manages in such a way as to achieve a measurable improvement in biodiversity. Under the legislative framework, landowners will agree a 30-year habitat management and monitoring plan with the Council as local planning authority which is the Council secures by entering into an agreement with the landowner under section 106 of the Town and Country Planning Act 1990. A metric converts the expected improvement in the diversity of the land into biodiversity units which the landowner can trade with developers to meet the impacts they are having on another site that they are developing. The delegation is conditional on consultation with Portfolio Holder for Planning.

- 3.5 In deciding whether to register a habitat bank, there are no issues of planning judgment but the issues are of a technical nature on which the Council will be guided by its ecological advisors.
- 3.6 Finally, the opportunity has been taken to clarify the terms of delegated powers, for example to clarify over the process for approving variations to section 106 agreements.

4. Proposal and Next Steps

- 4.1 The Committee’s views are sought on the changes proposed by Monitoring Officer that were referred to the Committee by the Council. The report asks the Committee to make recommendations to the next meeting of the full Council.

5. Options available and consideration of risk:

- 5.1 Apart from the additional delegations to officers, were the Committee not to recommend Council to agree the changes, none of the proposals would have a significant impact on the efficiency or effectiveness of the Council’s decision-making or the lawfulness of the Council’s decisions. Without the additional delegations, the Council’s decision-making would be slower and less efficient.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	These are set out in the report at paragraph 2.1.
Financial implications to include reference to value for money.	N	

Risk	Y	These are set out in the report at paragraph 5.1
Supporting Corporate Strategy	Y	Having an up-to-date Constitution supports the Council Plan by setting out transparently how the Council operates, how the Council makes its decisions and the procedures the Council will follow.
Consultation & Engagement Strategy	N	
Climate Change - Carbon / Biodiversity Impact	N	
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A: Proposed changes.

Background Papers:

There are none.