

## COUNCIL

11 March 2019

# CONSTITUTION

### Report of the Strategic Director for Resources

Strategic Aim:	All	
Key Decision: No	Forward Plan Reference: FP/240818	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr O Hemsley, Leader and Portfolio Holder for Rutland One Public Estate & Growth, Tourism & Economic Development, Communications, Resources (other than Finance)	
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### DECISION RECOMMENDATIONS

That Council:

1. Approves the Constitution in so far as these fall within the powers of Council as detailed in the table at 2.3.3.
2. Notes the approval of the Leader for those powers that fall within the remit of the Executive as detailed in the table at 2.3.3.

## 1 PURPOSE OF THE REPORT

- 1.1 To present an updated Constitution for approval to Council.

## 2 BACKGROUND AND MAIN CONSIDERATIONS

### 2.1 Rationale for the review

- 2.2 The Council will be aware that the Constitution has not been reviewed as a whole since changes were made to implement the Leader and Cabinet model 2011. In the intervening period, various piecemeal alterations have been made to aspects of the Constitution such as the provisions in relation to referring planning decisions to full Council. Also a number of delegations have subsequently been put in place

(for example in relation to transport decisions) that were not contained within the overall Constitution and as a consequence decision making could sometimes lack clarity as these issues were picked up in reports that were not incorporated into the Constitution.

## 2.3 Development of the new Constitution

- 2.3.1 The Constitution Review Working Group (CRWG – Consisting of Councillors Hemsley, Baines, Bool, Cross, Gale, Oxley, and Waller) has been dealing with the review of the Constitution as a part of its ongoing work since December 2017 (meeting in formal session on 10 separate occasions and Councillors kindly agreeing to give up time to meet individually to discuss matters on a page by page basis) with the intention of ensuring that a new version of the Constitution was in place ready for the elections in May 2019. The intention of the CRWG was to put in place amendments to sections to enable the Constitution to be more user friendly and effective.
- 2.3.2 CRWG did not consider Part 5 of the Constitution as each of these are standalone documents that will require significant work. These documents will be updated individually as required as part of future work.
- 2.3.3 Below is a summary of each Part of the Constitution with reference to the work undertaken and where further information can be found. The reference to administrative changes means that no rules, procedures or powers of individual Committees have been altered. The current copy of the Constitution can be found at:

<https://rutlandcounty.moderngov.co.uk/ieListDocuments.aspx?CId=349&MIId=1735&info=1&MD=Constitution>

	Changes	More information	Comments
Part 1 – introduction	Administrative changes	The definitions have been moved from the beginning of the document to the end.  This is referred to for the sake of completeness	No approval is required for these changes as the Monitoring Officer has delegated powers to make these changes.
Part 2 – Articles	Administrative changes	Additional alterations occur depending on decisions in relation to matter such as deputations, Chairman and Vice-Chairman in the discussion on Part 4.	No approval is required for these changes as the Monitoring Officer has delegated powers to make these changes.

	<b>Changes</b>	<b>More information</b>	<b>Comments</b>
Part 3 – Responsibility for Functions	Yes	<p>The key intention was to make decision making more transparent, reflect the changes in the Officer Structure and responsibilities without creating significant additional delegations to Officers or changing the remit of the Council's Committees</p> <p>Significant alterations described in Section 2.4</p> <p>Full text of this part is included at Appendix A</p>	This section requires the approval of both the Leader and Council.
Part 4 – Procedure Rules	Yes	<p>Significant alterations described in section 2.5 of the report below</p> <p>The substantive alterations do not relate to the role of Cabinet.</p> <p>The full text of this section is included in Appendix B.</p>	<p>The Leaders approval is required for the Procedure Rules that relate to Cabinet (Section 3 – Rules 130 to 189).</p> <p>Council approval is required for all other Sections</p>
Part 5 – Codes and Protocols	No	<p>The present versions can be found at the link above.</p> <p>Members are not asked to consider or approve any amendments at this point in time. See para 2.3.2.</p>	The Committee for Standards in Public Life has released a report on Ethical Standards in Local Government that will inform a future review of the Code of Conduct.
Part 6 – Member Remuneration	No	The present versions can be found at the link above.	This is the subject of work by the Independent Remuneration Panel and will be

	<b>Changes</b>	<b>More information</b>	<b>Comments</b>
		Members are not asked to consider or approve any amendments at this point in time	the subject of a future report to Council.
Part 7 – SMT Structure Chart	Administrative Changes	The table has been amended to reflect the changes to Structure already approved and appointments of new officers.	Approved by Council through re-structure proposals reports
Part 8 – Scheme of Delegation	See part 3 above		
Part 9 – Cabinet Members	No	These appointments are for the Leader to make.	This will continue to be maintained.
Part 10 – Financial Procedure Rules	Yes	Details are included in section 2.6 of the report below  The full text of this section is included in Appendix B	This document forms a part of the Policy Framework and is for Council to approve.
Part 11 – Contract Procedure Rules	Yes	Details are included in section 2.7 of the report below	This document is for Council to approve.

## **2.4 Parts 3 and 8 – Responsibility for functions and Scheme of Delegation**

2.4.1 The CRWG decided that the main area that needed attention within this part was the Scheme of Delegation to ensure that the decision making process was transparent for both the public and Councillors.

2.4.2 The Scheme of Delegation sets out who can do what and where the authority comes from (i.e. Executive or Council). The issue is that the split between Executive and Council is not straightforward and legislation is not clear on this point. So the solution is to seek approval of the Constitution by both the Leader and Council (This is also the approach taken by other Councils).

2.4.3 The key issues with the present Scheme of Delegation are:

- The delegations and responsibility for functions are split over 2 sections (Parts 3 and 8).

- The need to update the scheme to reflect the current structure; and
- The legalistic approach (i.e. quoting legislation and regulations rather than functions) means that the document is not in plain English. For example in the current version, there is a long list of legislation and a named officer responsible for exercising that power. So every time new legislation is adopted, we would be required to amend the Constitution.

2.4.4 In creating the Scheme of Delegation an effort was made to retain the existing powers delegated to Officers in a more transparent way. The CRWG considered two models of Constitution and felt that the Scheme of Delegation proposed based on functions provided the most clarity as it was in plain English. In simple terms, the new version states the officer responsible for functions (environmental health, housing etc). This means when the legislation changes or new legislation is adopted then no change will be required to Constitution.

2.4.5 Our approach has not been to split the powers explicitly because as long as they are approved by both the Leader and Council the authority for officers come from both Executive and Council.

2.4.6 The key issue for this section of the Constitution is whether officer delegations are appropriate. CRWG considered the Scheme as proposed struck the right balance in giving Officers the powers needed to ensure the effective running of the Council with proper Councillor involvement in key decisions.

## **2.5 Part 4 – Procedure Rules**

2.5.1 Procedure Rules – These have incorporated very few major changes however there have been some changes around simplifying the sections. The structure has also been retained to enable the public to access the procedure rules for the body they are attending quickly and easily. Also incorporated are the amendments to the Scrutiny Rules previously agreed by CWRG and Scrutiny Commission which reduced the original document from 29 to 15 pages and provided a clearer guide on the procedures for the committees along with reducing repetition, deleting ambiguous and out of date terminology. There were no changes to the scope, role or powers of Scrutiny.

2.5.2 The following changes are proposed:

- Recording of meetings section has been brought up to date to reflect the Council's practice and to ensure that there is a consistent approach (Procedure rule 6)
- Deputations. Procedure Rules 28(3), 93 and 217 set out the requirements for Deputations. It was felt that 15 minutes before the meeting was not sufficient to enable proper checks to be made by Officers in relation to any potential defamation or other issues, ensure that a conversation had been had with the person proposing to make the Deputation (with the intention of ensuring that they were able to speak by removing any offending section) and then ensuring that copies were produced for Councillors. Both CRWG and Cabinet members were of the view that the object of such matters was to inform the debate and so moving the notification period to 12 noon on the day of the meeting would be reasonable.

- Procedure Rule 27 states that the style of minutes will be set by the Chief Executive. CRWG and Cabinet members requested that the Council is very clear on the minute style that the Council adopts i.e. that minutes are there to record the decisions taken and the thrust of the debate and not a verbatim record of what was said. The Procedure Rule has been amended to reflect this.

2.5.3 Also discussed at CRWG and within this section was the appointment of Vice-Chairman. The CRWG considered 2 main options which were:

- The appointment of both the Chairman and Vice-Chairman at Full Council;
- The appointment of Vice-Chairman in Committee; and
- Following consultation with Cabinet, CRWG came to the view that the appointment should be done in the Committees except for Planning and Licensing Committee that should be done through Full Council. The CRWG felt that an exception should be made for the Planning and Licensing Committee as the work of the Committee with the community and its quasi-judicial role mean that the vice-chairman is called up more routinely.

## 2.6 Part 10 - Financial Procedure Rules (FPRs)

2.6.1 The FPRs were reviewed and approved in full in March 2015. Minor amendments have since been made. The Council's Section 151 officer keeps the FPRs up-to-date and keeps a log of:

- issues that arise that are not covered explicitly in the FPRs
- external factors such as changes to legislation or codes of practice that need to be reflected in our rules
- examples where our way of working is overly cumbersome or unnecessary and may need to be revisited

2.6.2 In this context, three changes are proposed to the FPR's:

- **Acceptance of funding terms and conditions (para 6.6)** - Often funding is received in year from Government which is not ring fenced but for specific purposes e.g. the most recent example is for Brexit. The acceptance of terms is usually non contentious (in most cases we do not need to formally reply to Government to accept) and does not require match funding so a minor change to FPRs is suggested which would allow the Chief Executive, Leader/Portfolio Holder for Finance and Chief Finance Officer to accept new funding of less than £500k without need for formal Cabinet approval. As with other financial limits amounts above £1 million are required to have Council approval. Any decisions will be notified to Cabinet at the next available opportunity.
- **Fees and charges and commercial rents (para 8.33)** - The existing FPRs require the scales of charges for services, except where fixed by statute, to be reviewed annually and to be submitted to Cabinet for approval. This practice is not suitable for commercial rents. Commercial rents for units etc.

are set in accordance with market conditions and other factors e.g. type of unit, level of voids, competition etc. Review of rents is undertaken at intervals specified in lease terms and some flexibility is required to adapt charges accordingly. An amendment has therefore been made to allow Directors more discretion and to not require formal Cabinet approval. The safeguard in this area is that both Cabinet and Scrutiny still have the opportunity to review financial performance in this area to ensure the financial objective of maximising income is being achieved.

- **Disposals (Para 10.12)** – The existing FPR's require approval of Cabinet for any acquisition or disposal of assets in excess of £10,000. The practice is not suitable for dealing with the various plant and equipment that the Council has (such as aging vehicles). An amendment has been made to provide that the Officers may dispose of assets up to £200,000. This higher provision only applies in relation to disposals and not in relation to acquisition which remains subject to a £10,000 limit.

## **2.7 Part 11 - Contract Procedure Rules (CPRs)**

2.7.1 Much of the Council's expenditure is contract based so the CPRs are very important. In reviewing the rules, we have tried to balance a number of objectives:

- Ensuring compliance with legislation and regulations (e.g. OJEU, Public contract regulations, etc.);
- Getting value for money/best value through procurement – this is increasingly important in the context of our financial position;
- Ensuring our procedures are not too onerous and are risk based e.g. not requiring managers to write full specifications and get umpteen quotes for small value purchases; and
- Facilitating suppliers to bid for work by not placing unnecessary requirements on them.

2.7.2 In light of the above, various changes are being proposed (the full text is attached at Appendix B) which are summarised below and shown in Appendix C:

- The Contracts process now enables managers to be able to ask for and receive quotes by email and not all on the same day;
- For lower value contracts (<£5,000p.a.), managers may seek fewer quotes and have more discretion but are still required to ensure value for money is achieved;
- For contracts of £25,000p.a. to £49,000 p.a, Cabinet approval will no longer be required and Directors in consultation with the relevant portfolio holder will be allowed to approve contracts within an overall limit of up to £100,000 for no more than 4 years; and
- For large value contracts of £50,000 p.a or more, managers will have to complete a Contract Risk Assessment Tool. This will ensure that all options have been considered before committing to large value contracts and that

things such as risks to any procurement approach (e.g. Competitive Dialogue) for high value contracts has been considered.

- The Council's Standard Terms and Conditions are required to be used unless an exception is approved. The exception is provided as there are contracts where the terms and conditions may be set through frameworks or the standard terms and conditions are inappropriate owing to the specialist nature of the services such as expert financial services

### **3 CONSULTATION**

- 3.1 This Constitution has been considered over a significant period by the Constitution Review Working Group which has spent a great deal of time considering and revising drafts in order to produce the drafts that are now available.
- 3.2 The Scrutiny Commission has also been consulted on the revised Scrutiny Procedure Rules.
- 3.3 Cabinet members were consulted on the drafts and fed their comments into the CRWG.

### **4 ALTERNATIVE OPTIONS**

- 4.1 No changes could be made to the Constitution from the existing version. This is not recommended as the present version of the Constitution does not address the issues set out in the report and significant additional work would be required to update this in a way that reflects the present structures of the Council.
- 4.2 Council could ask CRWG to reconsider the drafts and re-present for their consideration however this would be very likely to mean that approval would not be possible before the election period. The CRWG has sought to provide a revised Governance Framework for the Authority before the election.
- 4.3 Council could choose to make other and/or additional alterations to the Constitution.

### **5 FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications arising from this report.

### **6 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 6.1 These are set out in the body of the report.

### **7 DATA PROTECTION IMPLICATIONS**

- 7.1 A Data Protection Impact Assessments (DPIA) has not been completed because this report does not affect personal data of natural persons.

### **8 EQUALITY IMPACT ASSESSMENT**

- 8.1 An Equality Impact Assessment (EqIA) has not been completed at this stage as the changes proposed are not such that would be reasonably expected to have an impact on protected characteristics.

## **9 COMMUNITY SAFETY IMPLICATIONS**

9.1 There are no community safety implications.

## **10 HEALTH AND WELLBEING IMPLICATIONS**

10.1 Good governance arrangements promote the financial wellbeing of the local community.

## **11 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

11.1 CRWG has spent significant time and effort preparing the draft papers for consideration. Council is asked to approve the Constitution in so far as these fall within the powers of Council as detailed in the table at 2.3.3. Note the approval of the Leader for those powers that fall within the remit of the Executive as detailed in the table at 2.3.3.

## **12 BACKGROUND PAPERS**

12.1 There are no background papers to the report.

## **13 APPENDICES**

13.1 Appendix A – Scheme of Delegation

13.2 Appendix B – Procedure Rules

13.3 Appendix C – Financial Procedure Rules

13.4 Appendix D – Summary table of Contract Procedure Rules

13.5 Appendix E – Contract Procedure Rules

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**