

<b>DECISION-MAKER:</b>	COUNCIL		
<b>SUBJECT:</b>	ANNUAL CHANGES TO THE CONSTITUTION		
<b>DATE OF DECISION:</b>	4 JUNE 2014		
<b>REPORT OF:</b>	HEAD OF LEGAL AND DEMOCRATIC SERVICES		
<b><u>CONTACT DETAILS</u></b>			
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<b>STATEMENT OF CONFIDENTIALITY</b>			
None			

### **BRIEF SUMMARY**

This report sets out the annual review of the Constitution. This was considered and discussed by Governance Committee on 28 April 2014 in its governance role. The recommendations of the Governance Committee are included below.

### **RECOMMENDATIONS:**

- (i) to agree the changes to the Constitution as set out in this report;
- (ii) to authorise the Head of Legal and Democratic Services to finalise the arrangements as approved by Full Council and make any further consequential or minor changes arising from the decision of Full Council;
- (iii) to approve the City Council's Constitution, as amended, including the Officer Scheme of Delegation for the municipal year 2014/15.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. It is appropriate as a core tenant of good governance for the Council to keep its Constitution under regular review and to amend it, both to reflect experience and changing circumstances.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. The Council resolved in May 2002 to review its Constitution on an annual basis. Therefore, it is appropriate that this report is considered by Members. There are a range of recommendations set out within the report. Members have a range of options about various changes not least of which is to reject some or all of them.

### **DETAIL (Including consultation carried out)**

3. This report was considered by Governance Committee on 28 April 2014. The committee's comments and amendments are embodied within this report and the appendices.
4. The Constitution of the Council describes the way in which the Council conducts its business; it is required by law. It contains not only the Articles of the Constitution, but also the various rules and procedures for decision-making, access to information, Overview and Scrutiny, the Codes of Conduct, the

Officer / Member Protocol, as well as other specific rules relating to contracts and finance.

5. The Constitution forms the cornerstone of effective corporate governance. Whilst Southampton City Council's constitutional arrangements continue to be recognised as being of a high standard, Full Council agreed in May 2002 that it would on an annual basis robustly review the Constitution and its operation. The purpose of this report is to bring forward proposed changes to the Constitution as detailed below, these having been considered by Governance Committee with a view to build upon the constitutional arrangements for the Council. The main thrust is to try to streamline procedures where possible, remove the need for some matters to come to Cabinet or Council for decision where they do so only on financial grounds and where possible avoid bureaucracy.

### **Revisions to committee arrangements**

6. The Leader of the Council has recommended that a number of changes be made to the present committee structure and if approved that these changes be reflected in the overall appointments to be made by the Council elsewhere on the Council agenda. These detailed changes are listed below:
7.
  - i. **Licensing Committee** – that a smaller main panel of Members be constituted. This would reduce the overall number of Members serving on the Licensing Committee from its present membership of 13 Members to 10. This would reduce the committee to the statutory minimum in respect of any matters before it under the Licensing Act 2003.
  - ii. **Planning and Rights of Way Panel** – in principle that the present Planning and Rights of way Panel be held in the evening rather than during the day. It is felt that evening meetings would make it easier for the public to attend and to participate.

It is also recommended that the present Planning and Rights of Way Panel be split into two Panels. These two panels, A and B would consist of 5 members on each Panel, instead of the current 7, but with a common chair who would be appointed to chair both Panel meetings. One Panel meeting would deal predominantly with the East of the City side planning applications, whilst the other would mainly deal with planning applications for the West of the City. City centre applications would be dealt with by either of the Panels.

The meetings will be located at the Civic Centre for the first six months and then consideration would be given to moving to venues located in the east and west of Southampton. The costs of alternative venues would need to be finalised as no budget is held for this purpose. Equally, there will be a resource implication in servicing two panels; this straddles the Planning and Democratic Services teams.

- iii. **Employment and Appeals Panel** – There is a strong case for the abolition of this Panel as it is not a lawful requirement, very few decisions are changed by the panel, numerous meetings are cancelled and it lengthens the period for a final decision. However, this can only proceed at the conclusion of the Council's current negotiations on terms and conditions and is currently being discussed with union

colleagues. A further report will be brought to Council in due course

- iv. **Scrutiny Panels** – presently there are two enquiry panels, scrutiny panels A and B, each consisting of 7 Members. Each of these panels only has the resource to run for half a year. Therefore, there is a strong case for running one panel throughout the year undertaking enquiry work. In order to fully utilise the interests and expertise of all Members, it is proposed that only the number of Members and the political proportionality of the panel be determined at the meeting of Full Council. In order to appoint different members onto the Panel to take on different enquiries it is recommended that all non executive members would be able to serve on the Panel. The Overview and Scrutiny Management Committee could then appoint Members when they decide on the scrutiny inquiry work programme or they could be appointed under delegated powers for first inquiry. For each subsequent inquiry, delegated powers would be used to replace the members and reappoint new ones.

### **Health and Well Being Board – Annual appointment**

8. The Health and Social Care Act 2012 requires upper tier local authorities to establish Health and Well Being Boards. While Council determines the number of places allocated to Elected Members on the Board, the decision as to whom to appoint to such vacancies is an Executive function to be determined by the Leader of the Council at the next Cabinet meeting.
9. Council is therefore requested to determine the membership of the Board should comprise:
- 5 Elected Members of Southampton City Council (to be appointed by the Leader of the Council having had due regard to the recommendations of the Health and Well Being Board)
  - Statutory Director for Public Health
  - Statutory Director for Adult and Children's Services (Director of People)
  - A representative from the Southampton Clinical Commissioning Group
  - A representative of Healthwatch
  - A representative from the NHS Commissioning Board's Wessex Area Team

### **Council and Executive Procedure Rules -**

10. Council will recall that at last year's Annual Meeting the Leader requested that if following either annual or a by election the political control of the authority changes as a direct result that the Constitution is revised so that no significant decisions can be taken by Council, the Executive, or by Executive Members through delegated powers during the period between annual elections and the AGM. The concern is that the Council's arrangements need to ensure that there is no "democratic deficit" which to the public would appear to show political bias and limited legitimacy in the circumstances when one political party (whichever party that is) may have lost control of the Council. The revisions are detailed at paragraph 13 below.
11. Such changes will not affect the Council's ability to react to any time limited or emergency matters in the rare event that they should they arise, as there are

existing adequate powers under the Officer Scheme of Delegation to permit the Chief Executive, Director of Corporate Services and/or Head of Legal and Democratic Services to act.

12. Council deferred the matter and requested the Governance Committee to reconsider. The Governance Committee considered the specific issue again at its meeting on 16<sup>th</sup> December 2013. Accordingly, officers revisited what can practically be done to ensure that the “democratic deficit” referred to in the original report to Council is addressed. The difficulty in devising a revised solution is that by law call ins are permitted after any Executive decision is made. It is, therefore, the timing of the original decision, the call in and then the timing of the subsequent Cabinet meeting to reconsider (should this be needed) that causes the potential issue. Whilst the last scheduled meeting before an election could take place well before the election, as was the case this year, there is no guarantee for a variety of reasons that the matter would be ultimately disposed of before the election. The only guarantee that the matter will not be decided upon after call in is by putting in place a local arrangement so no Cabinet meeting can take place during this interregnum. That remains the only option which at law will work and in practice meets the “democratic deficit” concern and therefore remains the recommendation. Governance Committee recommended that the original revisions proposed are adopted as they remain the same as the most workable and appropriate option.

13. The proposed addition is as below:

***“PERIODS BETWEEN ELECTIONS***

*If, following either annual elections or a by election, the political control of the authority changes, as a direct result no meetings of Council can be called, or the Urgent Business Sub Committee convened to enable significant decisions to be taken until the next meeting of Council.*

*Such changes will not affect the Council’s ability to react to any time limited or emergency matters, in the rare event that they should they arise as there are existing powers under the Officer Scheme of Delegation to permit the Chief Executive, Director of Corporate Services or Head of Legal and Democratic Services to act.”*

**Officer Delegations**

14. The scheme of delegation has been updated to reflect the substantial operational changes that have occurred as a result of the ongoing Directorate restructures and the usual operational changes. The full, revised scheme (Appendix 1) can be found in the Members’ Rooms and online. It has not been printed due to its size. As is usual, several delegations have been removed; others moved to reflect operational changes. No new delegations have been added save for:
15. i. specific authority to act in the People Directorate to enter into agreements with health bodies
- ii. revised arrangements for the submission of planning applications which the Head of Planning, Transport and Sustainability has agreed in principle with the Chair of Planning and Rights of Way Panel. In summary these cover the following scenarios.

- a. Any planning application will be considered by the Panel if there are five or more objections and a ward councillor wishes it to go rather than one objection as now. If it is of wider importance it can still be referred to Panel. Officers have deleted the complicated and repetitive text for better clarity so this broadly achieves the same but with brevity and hopefully is easier to understand.
- b. For departures from the development plan, at least three objections to be received, rather than referring to Panel because it is a departure – there have been lots of these over the last year or two and they tend to generate no interest. If a matter is contrary to policy then a lower threshold should apply than the 5 used for others.
- c. The hazardous substances applications are deleted as this is about delegation rather than who officers are meant to consult
- d. Further delegations regarding changes to s.106 as technically numerous variations should possibly be going to Panel, A clarification has been added that if there is any s.106 that Panel is interested in and they want it to return to Panel for determination then that can happen, thereby removing the delegation

#### **Key Decisions and related operational matters**

- 16. At the Annual Meeting in 2012 additional financial limits were inserted in the Scheme of Delegation as below:
 

*“Save where otherwise provided for in this Scheme, in relation to financial decisions all expenditure over £125,000 shall be made by the relevant Cabinet Member, over £250,000 by the Cabinet and over £2 million by Full Council except in respect of the matters identified below. The limits on financial expenditure set out above will not apply to payments made under contracts, statutory obligations, property transactions, settlement of legal proceedings, treasury management or resulting from any specific decision to delegate at different levels made by the Cabinet or by Full Council”*
- 17. The Leader of the Council has reviewed the ongoing necessity for these caveats as whilst it was reasonable to put them in place on taking office they have caused some delays in the ability to take decisions in as short a timeframe as is permitted under the law. With the inherent need to streamline processes and remove bureaucracy where possible, whilst recognising the legal constraints, it is considered sensible to remove these caveats. Decisions will still need to abide by Key Decision criteria and other rules. It is not intended to revise the financial Key Decision limit of 500k (by way of comparison Portsmouth’s is 250k and Hampshire CC’s 1m). However, it is intended to remove some operational criteria on the level of decision making i.e. that there are no significant, major and operational decision categories. If a matter does not need to come before Cabinet or Council etc then officers will follow a simplified Delegated Decision Notice route. Again, it is intended that this will speed up some decisions.

## **Financial Procedure Rules (FPRs) [for Governance Committee – as of the date of publishing the report this is “work in progress”]**

18. These too have been revised primarily with regard to financial thresholds. In summary the revisions are as follows:-
19. A greater role for the Council Capital Board to oversee how capital resources are allocated across the various programmes and monitoring of the overall programme.
20. Aligning of financial responsibilities with Financial Procedure Rules as described below. Authorisation limits to be streamlined for all financial decisions, provisionally:
21.
  - Up to £200k – Directors after consultation with Chief Financial Officer (CFO) and Cabinet Member
  - £200k to £500k – Cabinet Member after consultation with CFO
  - £500k to £2M – Cabinet
  - Over £2M – Council
22. General simplification of FPRs where possible and flowcharts included to illustrate the decision making process.
23. Again, copies of the FPRs (Appendix 2) have not been printed due to their size but are both online and in the Members Rooms.

## **Contract Procedure Rules (CPR)**

24. Members will be aware that a significant review of sub £100k spend has been undertaken by the Head of Contracts, Procurement and Health and Safety with Capita Procurement colleagues. Whilst that review has been completed the subsequent review of the Contract Procedure Rules is still ongoing. The CPRs require a major rewrite and accordingly this is being undertaken at present. As a result draft revised CPRs will be presented to the next Council meeting for consideration.

## **Member and Officer Protocol**

25. The Governance Committee at its meeting on 16 December 2013 considered revisions to the above protocol as a result of issues raised at the Employment and Appeals Panel in relation to allegations of unauthorised release to the media of personal data. Whilst the appeal was dismissed Governance Committee was requested to review the protocol and it duly recommended minor changes to the Protocol. These are as follows:

*“Any Member request for personal information or personal data about an individual employee (rather than a general group of employees as a whole) should only be supplied where there is a demonstrable need for that Member to have the information at that level of detail in order to carry out their duties as a Member of the Council. Any such requests should be referred to and considered by the Head of Strategic HR who may if necessary refer the request to the Monitoring Officer.*

*In cases where such information is to be released the Head of Strategic HR will specifically remind the Member that the information is confidential, subject to the protection of the Data Protection Act 1998 and confirm the necessary measures for handling that data in order to keep it*

*confidential and ensure that it is not further disclosed to any other person or body either within or external to the Council”*

**Contracts and sealing requirements**

- 26. Under CPR 11.3 currently all contracts over £100,000 in value require sealing by the Head of Legal and Democratic Services. There are some benefits in having a document under seal as it extends the limitation period for enforcement from 6 years to 12. However, in reality it is very rare for enforcement of a contract of such relatively modest value to stretch to 6 years after the contract ending. This value was set many years ago and it is considered reasonable to revise it upwards to £250,000. This will mean that fewer contracts will need to be processed by Legal Services and will be handled direct by both Procurement colleagues and the Divisions themselves. The Legal Services Contracts team has been reduced by 25% over the last year so such a revision would be timely without any realistic negative impact on the Council or increased risk.
- 27. Additionally, the threshold under CPR 14.2 whereby all tenders over £100,000 will be referred to Legal Services for consideration is intended to be increased to £250,000 for the same reasons as detailed above.

**RESOURCE IMPLICATIONS**

**Capital/Revenue**

- 28. None

**Property/Other**

- 29. None.

**LEGAL IMPLICATIONS**

**Statutory power to undertake proposals in the report:**

- 30. The Executive Arrangements and Constitution are required under the Local Government Act 2000 (as amended). Other matters referred to in the report are addressed in the Local Government Act 1972 (as amended) as well as the Local Government and Public Involvement in Health Act 2007 and Localism Act 2011.

**Other Legal Implications:**

- 31. None.

**POLICY FRAMEWORK IMPLICATIONS**

- 32. None.

**KEY DECISION?** n/a

<b>WARDS/COMMUNITIES AFFECTED:</b>	None
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## SUPPORTING DOCUMENTATION

**Appendix 1 and 2 are available for viewing online and hard copies have been placed in Members rooms. They have not been printed due to their size.**

1.	Revised Officer Scheme of Delegation
2.	Revised Financial Procedure Rules

### **Documents In Members' Rooms**

See above.

### **Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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### **Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None.	
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