

REVIEW OF THE CONSTITUTION

Executive Summary

This report seeks the adoption of the Council's new Constitution coming into effect at the start of the new Municipal year.

The overall objectives of the recommended changes to the Constitution are to:

- streamline and improve efficiency of decision-making;
- simplify the Constitution;
- make the Constitution simple and easy to navigate; and
- make the decision-making process easier to understand for Officers, Councillors and members of the public.

The recommended Constitution is attached as an appendix for consideration and approval and consists of the following:

- Part 1 – Summary and Explanation
- Part 2 – Articles of the Constitution
- Part 3 – Responsibility for Functions
- Part 4 – Rules of Procedure
- Part 5 – Codes and Protocols
- Part 6 – Group Company

The Constitution has been updated to reflect the objectives above as well as other more routine changes, such as updating Officer titles and removing duplication. The establishment of the Corporate Governance Working Group shall ensure Member engagement and oversight of Constitution.

Recommendations

The Executive is requested to:

RECOMMEND TO COUNCIL That

- (i) the Constitution and all the provisions contained within it be adopted with effect from 5 May 2023; and**
- (ii) the Corporate Governance Working Group be formally established in accordance with the Terms of Reference included within the body of the Constitution.**

Reasons for Decision

Reason: The revised Constitution will ensure that the Council's policies and procedures are consistent with delivering good governance.

The item(s) above will need to be dealt with by way of a recommendation to Council.

Review of the Constitution

Background Papers: None.

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1.0 Introduction

- 1.1 The Council is required to maintain and publish a Constitution, in accordance with Section 9P of the Local Government Act 2000, setting out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.
- 1.2 The Constitution Review is addressing concerns that the Council's governance and decision-making processes are not easily understandable to Officers, Councillors and members of the public.

2.0 Review

- 2.1 The review has sought to make changes in the interests of simplification and improving understanding of the Constitution. The new Constitution has been developed through an engagement process with Councillors and Officers.
- 2.2 Councillor engagement sessions were held on several dates in November 2022. These informal feedback and discussion sessions were well attended and provided a welcome insight from Councillors, both new and old, together with suggested areas for future change.
- 2.3 The Monitoring Officer grouped together themes which have arisen throughout the sessions with Councillors and Council Officers. These themes have been incorporated into the revised Constitution which has been reviewed by the Leader, Corporate Leadership Team and Chair of the Standards and Audit Committee. The revised Constitution, both as a clean copy and one marked with tracked changes has been considered by the Overview and Scrutiny Committee, the Standards and Audit Committee, and now the Executive prior to adoption by Full Council. The Monitoring Officer has offered to have individual meetings with any Councillor who wishes to discuss the amendments. Comments and feedback received throughout this process have been considered and incorporated into the revised Constitution now attached to this report.
- 2.4 The main focus of debate at the engagement sessions was the procedures followed at meetings of Full Council. It was agreed that the procedures can be confusing to residents watching from home and to those involved in the meetings themselves. Streamlining and modernising procedures is a priority area for consideration. The inclusion of flowcharts within the Constitution shall assist to explain matters such as proposed amendments on the evening. It was acknowledged that Full Council is an important business meeting of the Council and should be transacted in an appropriate manner however it was considered that some traditions such as standing to speak may no longer reflect practice of a modern council. The benefits of remaining seated being that Councillors can easily use the audio devices positioned within the chamber and consult notes.
- 2.5 It was suggested that a mechanism should be implemented to allow questions from the public to be put to Full Council and that clarity as to how petitions be received at Full Council be included within the revised procedures.
- 2.6 Councillors reflected that Notices of Motions can often be subject to a lengthy procedure; starting at Full Council before being considered by the Executive and then back to Full Council. It has been proposed to "turn this procedure on its head" in that the Notice of Motion shall be dealt with on the night at Full Council unless the Monitoring Officer or s151 Officer advises that there is a legal, policy or financial reason which need to be addressed before the matter is considered. If this is the case, the Notice of Motion shall revert to the Executive and then Full Council.

Review of the Constitution

- 2.7 It was agreed that some matters shall not be subject to this review. These include the current Code of Conduct and Arrangements for Dealing with Standards Allegations which have recently been reviewed and adopted. These arrangements remain up to date and in line with best practice. It is not considered that they need any further amendment at the moment.
- 2.8 At Review of the Constitution Full Council in July 2022, it was agreed to amend the Thamesway Group Protocols and create a separate section in the Constitution. Again, given the recent review of this section it shall not be reviewed again.
- 2.9 Further to the above, it is considered that a review should be undertaken of the Council's Financial Regulations following the appointment of the new s151 Officer. This would form a part of the work programme for the below mentioned Corporate Governance Working Group.

3.0 Documents

- 3.1 Councillors shall find the following appendices attached to this report to assist with their decision-making:
- 3.2 Appendix 1 – A summary report of changes made to the Constitution.
Appendix 2 – Constitution with amendments marked using tracked changes.
Appendix 3 – The new Constitution

4.0 Establishment of Corporate Governance Working Group

- 4.1 It is proposed to establish a Corporate Governance Working Group reporting to the Standards and Audit Committee bi-annually. The Group's primary focus would be to ensure the continuous review of the Constitution to ensure that it remains fit for purpose and in line with best practice. Terms of Reference have been drafted and are included in the updated Constitution. The Group shall be established with the view to commence in the next Municipal year; with appointments being made through the Selection Panel. It shall initially monitor implementation of the new Constitution and discuss those items which have been scheduled for future consideration.

5.0 Adoption and Commencement of New Constitution

- 5.1 The new Constitution is recommended for adoption at Full Council on 30 March. It is proposed that it comes into effect on the start of the next Municipal year. This shall enable Councillors and Officer time to familiarise themselves with the new provisions.
- 5.2 Following the adoption of the Constitution, the Constitution shall be finalised prior to it being published on the Council's website. The Contents and Index page shall be completed, page numbers added and any formatting or stylist amendments shall be finalised.
- 5.3 The Monitoring Officer has authority to make any minor amendments to the Constitution an example being minor changes to reflect organisational structure changes. This authority extends to the inclusion of any further flowcharts, diagrams or pictorial additions which do not change the content of the Constitution itself but simply provide clarity on process or ease interpretation.

6.0 Conclusion

- 6.1 The new Constitution has been developed with Member and Officer feedback. Feedback has been considered and the revised Constitution has been warmly received. It is recommended that the Constitution be adopted.

7.0 Corporate Strategy

- 7.1 The new Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Therefore, the Constitution supports delivery of all the priorities described in the Corporate Strategy.

8.0 Implications

Finance and Risk

- 8.1 Nothing arising specifically from the body of this report save as for robust governance arrangements ensure that the Council is making informed and documented decision reducing risk to the Council.

Equalities and Human Resources

- 8.2 Nothing arising specifically from the body of this report.

Legal

- 8.3 Under Section 9P of the Local Government Act 2000 (the 2000 Act), local authorities must prepare and keep up to date a Constitution, which must also be made available to the public.
- 8.4 The Council's Constitution follows a standard format as recommended by the former Department of the Environment, Transport and the Regions (DETR) in 2001, as part of the implementation of the 2000 Act.
- 8.5 Changes to the Constitution are matters reserved to the Council to determine. As a result, the adoption of a new Constitution must be agreed by Council.

9.0 Engagement and Consultation

- 9.1 Councillors and Officers have been fully engaged and involved in the review process.
- 9.2 This report contributes by improving clarity to the Council's decision-making processes. This will enable Councillors to fulfil their roles more effectively and make procedures and processes more transparent.

REPORT ENDS

Appendix 1 – Summary of Changes

Below is a summary of changes made to the Constitution. This summary has been prepared as an overview for Councillors and the list below should not be taken to be an exhaustive list of all amendments.

Part 1 – Introduction

The introduction has been updated and modernised to provide a more user-friendly overview of the Council and how it works. There are no substantial changes in law or practice.

Part 2 – Articles of the Constitution

The Articles of the Constitution have been updated and expanded upon. Parts have been changed to represent a more modern, simplified style of drafting. The Articles have also been reordered to place them in a more logical order.

Article 10 has been updated to include a provision in respect of a four-year term of office (followed by one further four year period) for the Independent Chair of Standards and Audit. This shall ensure that the Chair remains independent.

I am sure all Councillors shall agree that our current Independent Member, Claire Storey, has been a real asset to the Council and has served as an excellent Chair of the Standards and Audit Committee. She has been consulted in respect of the review of the Constitution and is supportive of this proposal. She has agreed to continue in her role for the time being to support a smooth transition.

The Terms of Reference for the Council's existing working/task groups are currently being formatted into a template document. Once this has been completed (prior to adoption at Full Council) they shall be inserted into the Part of the Constitution.

Part 3 – Responsibility for Functions, Management Arrangements and Scheme of Delegations.

This section now includes an introduction which explains in general legal terms responsibility of functions.

The existing table outlining responsibility is to remain the same however be landscape rather than portrait.

The current Joint Committee section is due to cease in April and be replaced with Partnership Boards. As such this section shall be removed from the Constitution and ultimately replaced.

The management arrangements section remains as drafted save as for a structure chart to be inserted to aid understanding.

The explanation of the operation of the scheme of delegations has been redrafted in a more modern and simplistic manner. The principles however remain the same. Notably, reference to ostensible authority and the ostensible authority panel has been removed and disbanded. This has been replaced with the ability to act in an emergency "to take all necessary actions including incurring expenditure with regards to any emergency involving serious danger to life, property and public welfare".

This part shall also include a Proper Officer section. Proper Officers carry out functions in relation to statutory provisions. It is commonplace to have such a section in the Constitution.

Part 4 – Council Procedure Rules

Council Standing Orders have been redrafted; the use of track changes makes the changes appear more significant than they actually are. The sections have been placed into a more logical order.

The provisions in respect of Notices of Motion have been redrafted. These propose that Notice of Motions shall now be dealt with at the first meeting of Full Council and only go to the Executive if the legal director or the finance director considers it appropriate i.e. there are legal, policy and/or budgetary reasons which need to be addressed in an Officers report to enable the Council to make an informed decision.

The process for dealing with amendments has been updated and to avoid confusion has been depicted in a flowchart which is to be appended to the Constitution. It is intended that this clarification shall ensure that the debate is concise and focused upon the topic at hand. The flowchart shall ensure that Officers, Members and residents understand the process of the meeting.

A matter which arose in the feedback sessions was the length of meetings. Historically, some meetings have continued for several hours. A 3.5 hour optional cut off point to the meeting has now been included.

Following significant feedback in respect of this area of consideration. The new Constitution provides for Members to remain seated to speak and to continue to wear business dress (dress code shall be managed by Group Leaders).

It is proposed that all speeches are to be no more than five minutes long (at the Mayors discretion). This would make managing the meeting easier for Officers but would also focus debate. It is rare that moving a motion/amendment or a right of reply extends longer than five minutes.

There are also a number of drafting/modernising changes which have been included. One of which is to simply state which provisions of Full Council apply to its Committee and which do not.

The conventions section has been removed from the Constitution. These sections can now be found in other areas of the Constitution. It is considered that having conventions which are not rules provides a level of uncertainty and as such they should be avoided.

The Budget and Policy Framework document has been reviewed and minor amendments proposed.

The Council is currently considering the development of its procurement service, it is proposed that the Council's Contract Standing Orders are reviewed as part of the service redesign to ensure they remain fit for purpose.

The Executive Procedure Rules and Access to Information Rules have been reviewed and minor changes have been made.

The Council's Scrutiny Officer and Kuldip Channa, Legal Adviser to the Overview and Scrutiny Committee, have reviewed the Overview and Scrutiny Committee Procedures Rules. The proposed changes are marked as tracked changes.

Part 5 – Codes of Protocols

The Members Code of Conduct, Standards Protocols, and Arrangements for Dealing with Allegations of Misconduct have not been considered as part of this review as these have been recently updated and remain consistent with best practice.

It is proposed that the Members Allowance Scheme is considered separately, and the Financial Regulations be reviewed once the new s151 Officer has been appointed.

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The Code of Corporate Governance which accompanied the Annual Governance Statement shall be inserted into this section. It is commonplace to have an agreed protocol in respect of Councillor and Officer relations. As such a protocol has been drafted to be adopted and included as part of the new Constitution.

The employment procedures and code of conduct for employees have been reviewed with HR colleagues. There are no significant changes however they propose the establishment of an Appointments Committee to recruitment of Members of the Corporate Leadership Team, referring appointments of Statutory Officers to Full Council for ratification. The Terms of Reference can be found in the new Constitution.

The confidentiality protocol shall be removed from the Constitution and the provisions shall no longer apply. On an operational level the protocol is impractical and overly burdensome. It also stipulates the duties which form part of the statutory Monitoring Officer role. It is proposed to introduce a Monitoring Officer Protocol to explain the role of the Monitoring Officer which would provide some clarity of the role but be less restrictive than the protocol. It is commonplace to have a Monitoring Officer protocol included in the Constitution.

Part 6 – Group Company

This section was recently introduced following the review of Company Governance and as such I have not revisited it.