

EAST HERTS COUNCIL

ANNUAL COUNCIL – 18 MAY 2016

REPORT BY CHIEF EXECUTIVE

CHANGES TO THE CONSTITUTION

WARD(S) AFFECTED: NONE

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**Purpose/Summary of Report**

- This report presents to Members the Annual Review of the Constitution and seeks Members approval.

<b><u>RECOMMENDATIONS FOR ANNUAL COUNCIL: That:</u></b>	
<b>(A)</b>	<b>the revised Constitution, as now submitted, for the civic year 2016-17, be approved;</b>
<b>(B)</b>	<b>the specific changes set out in paragraphs 3 to 7 of the report submitted, be approved; and</b>
<b>(C)</b>	<b>the revised Constitution be referred to the Executive for approval of changes relating to Executive Functions.</b>

1.0 Background

1.1 The Constitution is the document which 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. Some of these processes are required by law, while others are a matter for the Council to choose. At its annual meeting the Council considers any changes to the Constitution necessitated by changes to legislation or internal changes which impact on the Constitution. The revised constitution is attached at **Essential Reference Paper B**. The implications of this report are set out at **Essential Reference Paper A**.

## 2.0 Report

2.1 There have been a number of internal changes to the Management Structure which have had a direct impact on the operation of the Constitution. There are also changes in law which have occurred which must be reflected in the provisions and the document should be regularly reviewed to ensure that it reflects current law. There are in addition some issues of practice which better reflect the stated purpose of the constitution set out in Article 1.

The purpose of the Constitution is to:

- Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations
- Support the active involvement of citizens in the process of local authority decision making
- Help councillors represent their constituents more effectively
- Enable decisions to be taken efficiently and effectively
- Create a powerful and effective means of holding decision-makers to public account
- Ensure that no one will review or scrutinise a decision which they were directly involved in taking;
- Ensure that those responsible for decision making are clearly identifiable to local people and they the explain the reasons for decisions; and
- Provide a means of improving the delivery of services to the community.

## 3.0 Management Changes

3.1 The Council has put in place a revised management structure which provides for two Directors, seven Heads of Service and two shared Heads of Service with revised remits for all posts within the Leadership Team.

### Scheme of Delegation

3.2 The revised remits require a review of the Scheme of Delegation to Officers in Part 3 of the Constitution to enable the scheme to reflect new responsibilities and enable officers to carry out the day to day business of running the authority on behalf of the elected members. There are also a number of deletions and additions to reflect changes in legislation which had not previously been

reflected in the scheme. The amendments to the scheme are such that it is not possible to provide a readable tracked change version, however the following represents a summary of the changes:

- 3.3 A new introductory section has been added, this provides a series of reservations from the powers given to officers in particular it requires officers to consider before exercising a power whether it should be referred to Members. It requires compliance with law and other limitations on exercise of delegations and it also provides general authority for officers to operate within their areas of responsibility in relation to core responsibilities such as management of staff, property and contracting, financial management and taking legal action. These powers encourage officers to operate effectively within their given areas of responsibility. The scheme also includes a list of areas of responsibility to provide greater transparency for Members and the community.
- 3.4 A principal of accountability is that no two officers should have the power to make the same decision so it is always clear who was responsible for any decision. There were a number of areas of overlap in the existing constitution and the new scheme aims to eliminate these, allowing for one officer to consult another before reaching a decision, whilst retaining the accountability for the decision.
- 3.5 It is recognised that in the interests of efficiency and effective services the best point of delivery is closest to the community and customers. Therefore the new scheme provides an overall permission for all decisions to be delegated by Heads of Service within their service area. Delegations cannot be made to other service areas as this would blur accountability as between Heads of Service, however there is scope for the Chief Executive to take any decision on behalf of a Head of Service and this will mean that accountability will sit with the Chief Executive where it crosses more than one service area.
- 3.6 Additional powers have been granted to the Chief Executive to incur expenditure in times of emergency and urgency powers to act where the needs of delivery demand, in consultation with the Leader of the Council.
- 3.7 The new structure outlines two director roles without specific service responsibilities. These roles do not have specific

delegations because of the absence of service responsibilities but in the absence of the Chief Executive one or other will be nominated as the acting Chief Executive and will carry out the powers and duties in her absence.

- 3.8 All Heads of Service responsibilities have been realigned. Only those posts with a specific requirement for delegation over and above the broad powers outlined in the introductory section of the scheme, have been named. These include those carrying out roles as or on behalf of the statutory officers ie Human Resources, Legal and Finance. It also includes those areas of responsibility which sit within a prescribed legal framework including, Planning, Licensing, Environmental Health and Revenues and Benefits. The scheme has not granted additional powers to officers other than those listed but has re-aligned existing powers to give effect to the Management Structure.

#### Proper Officer Functions

- 3.9 The changes to the Management Structure have also necessitated a review of the Proper Officer Functions. The list is currently out of date with Proper Officer Functions in the Local Government Acts from 2000 onwards not reflected in the list. A number of additions have been made to the current list. In addition a description for each proper officer responsibility has been provided in more depth to enable the officer and anyone else to understand what the legislative proper officer function refers to. The alternate is also removed as this can be done through the deputies available to the particular roles in the organisations which allows flexibility for more than one deputy to accommodate leave etc.

#### Structure Chart

- 3.10 Changes to the Management Structure also require a new structure to be included in the Constitution in Part 7. A number of changes have also been made throughout the document to reflect changes to title and responsibility in accordance with the revised management structure.

#### 4.0 The Policy Framework

- 4.1 The Constitution sets out (as it is obliged to do by regulations) the procedure which must be followed for approving a policy which sits within the Council's policy framework. This procedure

requires that Scrutiny is consulted in the development of the policy, that the Executive considers and approves the policy and refers it to Council and that if Council wishes to alter the policy it must be referred back to the Executive to enable them to consider whether to recommend an amended policy before any final decision can be made on approving the policy. This may be suitable for broad overarching policy like the Local Planning policies, the Corporate Strategic Plan and the Pay Policy. At the current time however the policy framework in the Constitution has a number of internal documents which have little discretion such as the Data Protection Policy, the Health and Safety Policy and Anti-Fraud and Anti-Corruption Strategy. It is proposed that it does not reflect the overall aim of the Constitution to operate efficiently if these administrative policies are required to go through the approval process. It is therefore proposed to remove a number of policies from the Constitution and these are set out in Article 4 of the amended version of the constitution with the deletions marked.

## 5.0 Legislative Changes

- 5.1 The political arrangements for local authorities which were brought into law by Local Government Act 2000 set out a broad overview role for Council with day to day decision making being carried out by the Executive. This was subsequently strengthened to create a Leader and Cabinet model in which the Leader, elected for four years by the Council, can exercise powers extensively on their own or with an Executive of senior members. This model whilst enacted in law has not always worked well within Councils who envisage a wider role for other Members. Whilst the law sets out where the ultimate powers lie the operation within the authority can reflect a different approach, however it is important that this is done within the statutory structure. It is particularly important that those seeking to challenge the Council are not able to undermine decision making.
- 5.2 The Constitution is currently approved by Council and the Executive Procedure Rules provide that the scheme of delegation 'may only be amended by Council'. The Constitution must exist within the legal framework for local authority decision making. It is important that all Executive matters are delegated by the Executive because delegation is only effective where it is from the body or person with the power to delegate. It is for this reason that if approved by Council, it is recommended that the scheme of delegation be referred to the Executive for approval to ensure

effective delegation of Executive functions and the Executive Procedure Rules, within the draft, have been amended to reflect this position.

5.3 Other changes which reflect the legislative framework include changes to reflect the revised standards framework introduced by the Localism Act 2011 (Summary para 3.2); changes to reflect that the Deputy Leader must be appointed by the Leader (Summary 4.1); changes to the Glossary which better reflect the revised legal framework for Standards and Executive Arrangements; changes to Article 2 which reflect the abolition of the Boundary Commission; Article 7 in relation to the maximum number of Executive members; Article 9 to reflect legislative changes and the report regarding the merging of Standards and Audit elsewhere on the agenda; changes in the Council Procedure Rules to reflect the repeal of Chapter 2 Local Authority, Economic Development and Construction Act 2009 in relation to petitions. The authority is free to develop a less onerous process for dealing with petitions or to respond as a petition is received which enables a more tailored approach to each petition.

## 6.0 The Constitution

6.1 The Constitution is currently amended annually by Council and in year changes are not made to the Constitution. The purpose of the constitution is to make decision making accessible. For example the appointment in November of the Monitoring Officer, was a decision of Council but it will not be reflected in the Constitution. The Monitoring Officer continues to be recorded as Director of Neighbourhood Services despite his retirement from the authority in January. The Constitution states that complaints should be referred to the Monitoring Officer and provides contact details. It is not transparent if the public cannot find details of the current Monitoring Officer within the Constitution or that the Constitution is inconsistent with the Council's website. The Procurement Rules had been removed from the Constitution because of the need to ensure they are consistent with current legislation which is enacted mid-year.

6.2 The Constitution needs to be a live document which reflects the current position, responding to legislative change and decisions by Council and the Executive which are lawfully made. The Council can continue to receive an annual report about changes to the Constitution and deal with any significant changes at Annual Council. It is recommended however that the Monitoring

Officer is authorised to make ‘consequential amendments’ – ie changes which arise from a valid decision of Council or the Executive to change responsibilities and delegations. If this is approved it is also recommended that the Procurement Regulations which appear separately on the Council’s website be included again in the Council’s Constitution as an essential element of the rules which govern how the Council reaches procurement decisions. These will appear in the Constitution immediately after the Financial Regulations.

## 7.0 Committee Changes

7.1 In addition to Management Changes there are a number of proposed changes to committees. These are as follows:

- Audit Committee currently 7 Members and Standards Committee currently 5 Members to be replaced with  
Audit and Governance Committee 10 Members
- Licensing Committee currently 15 Members to reduce to 12 Members
- The addition of 6 substitutes to Development Management Committee.
- The addition of 6 substitutes to operate in relation to the four Scrutiny Committees

These changes have been reflected in the revised constitution referred to Members.

## 8.0 Implications/Consultations

8.1 Consultation has taken place with Leadership Team and the Leader in relation to various changes across the Constitution.

### Background Papers:

None

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