

## A.4 – APPENDIX A

Key Decision Required:	NO	In the Forward Plan:	NO
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### CABINET

18 JANUARY 2019

### REPORT OF THE FINANCE & CORPORATE RESOURCES PORTFOLIO HOLDER

#### A.4 **REVIEW OF THE COUNCIL'S CONSTITUTION – PHASE 2**

(Report prepared by Lisa Hastings)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

This report asks Cabinet to approve the recommended changes to the Constitution for referral onto Full Council following a review undertaken by the Portfolio Holder through a Working Party.

The main proposals cover a revised approach to how Motions on Notice to Full Council are dealt with, the outcome of the 6 month review on the committee structure, approval of a Member Referral Scheme for the Planning Committee and revised terms and reference to the Local Plan Committee.

The key changes to each of these documents are highlighted within the body of this Report.

##### EXECUTIVE SUMMARY

A Portfolio Holder Constitution Review Working Party (“CRWP”) was established following various matters being raised at previous meetings of Full Council to undertake:

- (i) *a light touch review of the Constitutional Rules and Procedures highlighted by Members and Officers ensuring the governance arrangements are up to date, clear and consistent, with the outcome and recommended changes being presented to Cabinet and Council in November 2018; and*
- (ii) *the 6 month review requested by Full Council on the revised Committee Structure, presenting the findings and recommendations to Council in January 2019.”*

The Portfolio Holder presented the outcome of the first phase of Constitution Review Working Party to Cabinet in November 2018. Cabinet subsequently **RECOMMENDED TO COUNCIL** that:

- (a) *the Council's Constitution be amended to reflect the proposed changes as set out in Appendices B to N attached to item A.3 of the Report of the Finance and Corporate Resources Portfolio Holder; and*

*(b) all changes to come into effect immediately following approval.*

In respect of the proposed changes to the Council Procedure Rules Cabinet **RESOLVED** that wider consultation be undertaken with all Members of the Council prior to further decisions being taken. This consultation has been carried out and a summary of the feedback is set out within Appendix F. The CRWP considered the outcome of the consultation and the Portfolio Holder's recommendations are set out in the Report.

At the meeting of Council on 26<sup>th</sup> November 2018, the CRWP were requested to:

- *provide further clarity and assurances on the Member Referral Scheme, referred to within the Planning Committee's Terms of Reference; and*
- *look at the terms of reference of the Local Plan Committee (and also its title) with a view to enabling that Committee to produce procedures, protocols and also planning conditions that could be put on every planning application that was granted approval in order to avoid any detriment to local neighbourhoods.*

The 6 month review requested by Full Council on the revised committee structure has also been completed and the findings and recommendations to Full Council in January 2019 are set out within the report.

A summary of the changes compared to the existing Parts of the Constitution are provided under each heading in the Current Position section of this report and in each case, the content has been revised to provide greater clarity, ensure effectiveness and efficient working practices for Members and Officers and checked to ensure it is in accordance with legislation, where necessary.

## RECOMMENDATION

That Cabinet recommends to Council that:

- (a) the Council's Constitution be amended to reflect the proposed changes as set out in Appendices A to E, attached hereto;**
- (b) the changes as set out in appendices A to D to come into effect immediately following approval;**
- (c) the changes as set out in Appendix E to the sizes of committees to come into effect from 1<sup>st</sup> May 2019;**
- (d) the start time of 7.30pm for Ordinary Full Council meetings remains unchanged recognising that a proportion of elected councillors are employed; and**
- (e) the alternative procedure for changes relating to dealing with Motions on Notice, as set out in the report, is agreed in principle only and that revised Council Procedure Rules be produced for approval to the next practicable meeting of Full Council, so that the same can come into effect on 1<sup>st</sup> May 2019.**

## PART 2 – IMPLICATIONS OF THE DECISION

<b>DELIVERING PRIORITIES</b>
Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities.
<b>FINANCE, OTHER RESOURCES AND RISK</b>
<b>Risk</b> <p>Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Council's overall governance arrangements.</p>
<b>LEGAL</b>
In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.
Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000 ("Functions Regulations"), as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.
Article 15 of the Council's Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance.
Article 13 of the Constitution provides the principles of Decision Making ensuring that due consideration is given of all the relevant factors and options, taking account the results of any consultation undertaken and the professional advice of Officers.
Subject matters of motions may comprise of either Executive or Non-Executive Functions as determined by the Function Regulations.
Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and best practice.
<b>OTHER IMPLICATIONS</b>
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.
<b>Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.</b>
Equality and Diversity implications were considered when taking into account the outcome of the consultation with Members on the proposed changes to the Council Procedure

Rules. One of the matters raised was what consideration had been given to the implications of the Equalities Act with regards to those members who find it difficult to stand at Council meetings?

Council Procedure Rule 23.1 states a Member must stand if possible and traditionally, the Chairman of the Council has readily granted a dispensation from the requirement to stand to those Members who would find this difficult. Research has demonstrated that the approach adopted by the Council is equality compliant and follows best practice; therefore no changes are recommended to the Council procedure Rules in respect of Rule 23.1.

## PART 3 – SUPPORTING INFORMATION

### CURRENT POSITION

(a) **Scheme of Delegation (Non-Executive Functions) – Planning Committee and HR Sub-Committee:**

(i) **Planning Committee (Part 3.15)**

Additional wording to be inserted stating that any written request received from a District Councillor requesting that an application be determined by the Planning Committee, should be in accordance with the Member Referral Scheme.

The Scheme has previously been used by the Council and would be relaunched, with the wording being agreed by Full Council ensuring consistency with the Public Speaking Scheme, Planning Protocol and accepted practice of ward councillors dealing with ward issues.

*Proposed changes to the Planning Committee's delegation, Members Referral Scheme and associated guidance is shown attached in Appendix A1 & A2.*

(ii) **Human Resources Sub-Committee (Part 3.18):**

When considering the changes to the Constitution, Full Council did not make any comments on the proposed amendments to the Human Resources Sub-Committee, however because they were contained within the same appendix as the Planning Committee's delegation, the changes have not been approved. The Panel currently comprises of 3 members including a member of Cabinet being the relevant Portfolio Holder for the service concerned. Additional wording is required to state “unless that Portfolio Holder requires the Leader to appoint a substitute for them because they will be unable to attend”.

*Proposed changes to the Human Resources Sub-Committee terms of reference are shown attached as Appendix B.*

(iii) **Local Plan Committee (Part 3.12-14)**

The Leader of the Council and Chairman of the Local Plan Committee, requested, via the Council's Monitoring Officer, that the Constitution Review Portfolio Holder Working Party look at the terms of reference of the Local Plan Committee (and also its title) with a view to enabling that Committee to produce procedures, protocols and also planning conditions that could be put on every planning application that was granted approval in order to avoid any detriment to local neighbourhoods.

The CRWP are recommending changes to the Local Plan Committee's terms of reference to make the distinction between planning policies and guidance where functions are reserved to the Cabinet and approve non-statutory planning policy and guidance in the discharge of statutory planning functions, as long as they are not contrary to the National Planning Policy Framework.

The name of the Local Plan Committee should be amended to be the Planning Policy & Local Plan Committee.

*Proposed changes to amend the Local Plan Committee to the Planning Policy & Local Plan Committee and its terms of reference are shown attached as Appendix C.*

(b) **6 month review requested by Full Council on the revised Committee Structure:**

Further to the decision taken by Full Council at its meeting held on 27 March 2018 the Working Party was requested to review the first six months' operation of the new Committee structure with a view to deciding the comments/recommendations it wished to submit to Cabinet and then Full Council in January 2019 for approval.

Such review would include considering, and making recommendations on:

- the size of the membership of Committees/Sub-Committees post the May 2019 District Elections when the number of Councillors on Tendring District Council will be reduced from 60 to 48;
- the potential cross-membership of the Planning Committee and the Local Plan Committee; and
- the potential for daytime meetings of the Planning Committee.

Formal comments submitted by the Resources and Services and Community Leadership Overview and Scrutiny Committees were considered.

One of the recommendations from the LGA Peer Review (K5) was that Housing be added to the existing strands of joined up working / Community Leadership particularly with regard to the emerging Housing Strategy and the Homelessness Strategy.

The potential cross-membership of the Planning Committee and the Local Plan Committee had previously been considered by the CRWP who recommended that the previous guidance be incorporated into the Council Procedure Rules with membership for the two committees remaining separate prior to a Local Plan being adopted.

The CRWP agreed to recommend that –

- (i) Leisure, Tourism and Housing Strategy and Homeless matters should be transferred to the terms of reference of the Community Leadership Overview & Scrutiny Committee with the proviso that the Housing Revenue Account remain with the Resources and Services Overview & Scrutiny Committee;
- (ii) guidance for the Members elected in May 2019 in the form of an Overview and

- Scrutiny Handbook should be produced to provide further detail, amongst other matters on the roles and responsibilities in undertaking Task and Finish Reviews;
- (iii) better attendance of Members at All Member Briefings should be strongly encouraged;
  - (iv) the importance of providing training on overview and scrutiny matters to those Members who have been appointed to serve on an overview and scrutiny committee immediately after the Annual Meeting of the Council in May 2019 should be reiterated;
  - (v) with effect from May 2019, the Community Leadership Overview and Scrutiny Committee should meet every two months rather than quarterly as at present;
  - (vi) the Head of Governance and Legal Services & Monitoring Officer examines the potential for daytime meetings of the Planning Committee by researching how other Councils operate their Planning Committees; and
  - (vii) with effect from May 2019, the size of the Committees and Sub-Committee listed below be as follows:-

Audit Committee = 7 members

Community Leadership Overview & Scrutiny Committee = 9 members

Human Resources & Council Tax Committee = 9 members

Licensing & Registration Committee = 9 members

\*Local Plan Committee = 11 members

Planning Committee = 9 members

Resources and Services Overview & Scrutiny Committee = 9 members

Standards Committee = 7 members

Miscellaneous Licensing Sub-Committee = 5 members

*The Proposed changes to the Overview and Committee terms of reference are shown attached as Appendix D.*

*Recommendations in respect of the sizes of the Committees and Sub-Committees post 2019 council elections are shown attached as Appendix E.*

### **(c) Council Procedure Rules – Outcome of Member Consultation**

As requested by Cabinet in November, the following All Member Briefing included an introduction to the proposed changes to the Council Procedure Rules, as recommended by the CRWP. The proposals were subsequently discussed within political groups and comments were feedback to the Monitoring Officer and captured in the Consultation Outcome, shown attached as Appendix F.

The CRWP considered the outcome of the consultation with members and after debate decided that their preferred approach to how motions should be dealt with was as set out in the proposed changes to the Council Procedure Rules contained within Appendix A1 to the Report to Cabinet in November 2018. The comments supporting the CRWP's position are as set out in Appendix F.

The purpose of a Working Party is to provide the Portfolio Holder with comments prior to any recommendations being made to Cabinet and Council and in this instance, having taken into account the views of the CRWP and the wider consultation with members, three options are available, which are set out below.

## **OPTIONS FOR DEALING WITH MOTIONS ON NOTICE:**

### **(1) Stay the same:**

The current Council Procedure Rules follows practices adopted in other local authorities to refer motions to be considered by the appropriate body, without debate at Council. This procedure allows for the appropriate body to give due consideration of all the relevant factors and options, taking into account professional advice of Officers, following which a decision is made on whether the motion is supported or not or an amendment is suggested. The CRWP felt that the current procedure does not allow any members to discuss the motion prior to referral and was considered undemocratic. With the current procedure, Tendring Council does in fact go further than some authorities, by ensuring that the motion is referred back to Full Council after consideration for a final decision and is an improvement on previous practices.

### **(2) Amend to CRWP proposals as set out in Appendix A1 to the Cabinet Report dated 9 November 2018:**

The amendments were proposed to the procedure on dealing with Motions on Notice to allow motions to be debated on the night, unless a notice of referral was received and following a vote, being referred to the appropriate body for consideration. The reasoning behind the proposals was to allow the decision to refer motions to rest with Full Council rather than rest in the hands of the Chairman. The proposals allowed a notice of referral to be submitted by an elected member prior to the meeting, if they believed the motion should be referred to an appropriate body for further consideration prior to Full Council making a final decision.

### **(3) Alternative procedure:**

At the meeting of CRWP, when reviewing the outcome of the consultation, the Portfolio Holder after consulting the Monitoring Officer suggested an alternative approach which could be summarised as the following procedure:

- (i) The Motion is moved and seconded, and thereafter the member who moved the motion would be permitted to explain their motion and give reasons why they felt it would be appropriate for it to be dealt with on the night;
- (ii) The Leader, Portfolio Holder or relevant Chairman of the Committee would be permitted to respond either agreeing with the motion being dealt with on the night or setting out reasons why it would be appropriate to stand referred to the appropriate body for further consideration;
- (iii) The Chairman after hearing both representations and receiving professional advice makes a ruling on whether the motion should be debated or referred; and
- (iv) In making the Ruling the Chairman must give consideration to Article 13 of the Constitution and the Executive Functions Regulations and provide a short explanation of the reasons for their decision.

Portfolio holders recommendations summarised:

The recommended alternative approach, as set out in Option 3 above, allows members who move motions to explain them at the meeting to which they are put and if there are no further implications to take into account, could be debated at the meeting. This provides the Chairman with flexibility which does not currently exist.

However, the alternative approach also allows the Chairman to receive representations from the Leader, relevant Portfolio Holder or Committee Chairman and if necessary professional advice prior to making a ruling on whether a matter should be referred.

The benefit of this approach is that the decision is made in an open and transparent manner, allowing members to explain their motions and give reasons why it should be considered on the night whilst protecting the Council in its wider decision making.

**(d) Council Procedure Rules – Section 2 (Committees)(Part 4.21 to 4.24):**

No comments were received through the consultation with members on the proposed changes to Section 2 of the Council Procedure Rules as shown in Appendix A2 to the November 2018 report. However, these will be recommended to Council following the decision on Section 1 in January 2019.

**BACKGROUND PAPERS**

Cabinet Report dated 9 November 2018 – Appendices A1 and A2 – proposed changes to the Council Procedure Rules.

**APPENDICES**

**A.4**

<b>APPENDIX A1</b>	<b>Part 3</b>	<b>Proposed changes to the Planning Committee's delegation</b>
<b>APPENDIX A2</b>		<b>Draft Members Referral Scheme and associated guidance for planning applications</b>
<b>APPENDIX B</b>	<b>Part 3</b>	<b>Proposed changes to the Human Resources Sub-Committee terms of reference</b>
<b>APPENDIX C</b>	<b>Part 3</b>	<b>Proposed changes to the Planning Policy &amp; Local Plan Committee terms of reference</b>
<b>APPENDIX D</b>	<b>Article 6</b>	<b>Proposed changes to Overview and Committee terms of reference</b>
<b>APPENDIX E</b>	<b>For Article 8</b>	<b>Sizes of the Committees and Sub-Committees post 2019 council elections</b>
<b>APPENDIX F</b>		<b>Consultation Outcome with Members on the Proposed Changes to Council Procedure Rules.</b>