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**Subject:** REVIEW OF THE CONSTITUTION 2016

**Meeting and Date:** Governance Committee – 1 December 2016  
Council – 25 January 2017  
Planning Committee – 23 February 2017

**Report of:** David Randall, Director of Governance

**Classification:** Unrestricted

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**Purpose of the report:** Article 15 of the Constitution requires the Monitoring Officer to conduct regular reviews of the Constitution. A 2016 review has been undertaken proposing changes to Part 3 – Responsibility for Functions at Section 1, 2 and 6.

Article 15, paragraph 15.02 (a) requires that amendments to the Constitution will only be approved by Council (or its committees) after consideration of the proposal by the Governance Committee.

Article 15, paragraph 15.02 (d) enables proposed changes to the Constitution relating to the amendment of the title of an officer to be approved by the Monitoring Officer.

Part 3, Section 6, Sub section A Paragraph 12 of the Constitution allows for the Scheme of Officer Delegations (Part 3, Section 6) to be amended from time to time by the Council.

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**Recommendation:**

**Governance  
Committee:**

That it be recommended to Council:

- (1) That it be recommend to Council that the proposed changes in the Review of the Constitution 2016, specifically relating to Part 3, Responsibility for Functions, Section 1 (Responsibility for Local Choice Functions), Section 2 (Responsibility for Council Functions) and Section 6, Sub Section C (Scheme of Officer Delegations) that relate to Council functions be approved and incorporated into the Council's Constitution, issue no. 20
- (2) That it be recommend to Council that the proposed changes in the Review of the Constitution 2016, specifically relating to Part 3, Section 6, Sub Section C (Scheme of Officer Delegations) that relate to executive functions be approved.

**Council:**

- (1) That that the proposed changes in the Review of the Constitution 2016, specifically relating to Part 3, Responsibility for Functions, Section 1 (Responsibility for Local Choice Functions), Section 2 (Responsibility for Council Functions) and Section 6, Sub Section C (Scheme of Officer Delegations) that relate to Council functions be approved and incorporated into the Council's Constitution,
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- (2) That the proposed changes in the Review of the Constitution 2016, specifically relating to Part 3, Section 6, Sub Section C (Scheme of Officer Delegations) that relate to executive functions be approved

Note: The Leader of the Council will be asked separately to approve any changes relating to executive functions but the Council is asked to approve the Scheme of Officer Delegations in its totality in the event that there has been an erroneous misclassification of functions.)

**Planning Committee:**

That Committee note the proposed changes in the Review of the Constitution 2016 issue no. 20, specifically relating to Part 3, Responsibility for Functions, Section 1 (Responsibility for Local Choice Functions), Section 2 (Responsibility for Council Functions) and Section 6, Sub Section C (Scheme of Officer Delegations) which are planning functions.

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**1. Summary**

- 1.1 Article 15 of the Council's Constitution makes provision for the regular review of the Constitution by the Monitoring Officer on an annual and ad-hoc basis. This 2016 review incorporates a number of changes to the functions of the Planning Committee (Part 3, Responsibility for Functions, Sections 1 and 2) and to the Scheme of Officer Delegations (Part 3, Section 6, Sub Section C).
- 1.2 The purpose of the proposed changes to Sections 1 and 2 are to make the functions more transparent and easy to understand and don't attempt to change the balance of power between the Planning Committee and those delegated to the officers through the Scheme of Officer Delegations. They are intended to make the document more accessible.
- 1.3 The purpose of the proposed changes within Sections 6 are to mirror the changes in sections 1 and 2 and also to reflect changes in structures and responsibilities within the Council. They are also intended to make the document more accessible.

**2. Introduction and Background**

- 2.1 Since the introduction of the first version of the Constitution in 2002, the Council has revised the Constitution nineteen times. The Review of the Constitution 2016, which has been undertaken by the Director of Governance / Monitoring Officer in conjunction with the Solicitor to the Council and the Team Leader - Democratic Services, will be the twentieth revision resulting in the proposed draft version 20.
- 2.2 Due to the size of the Council's Constitution, it is not practical to conduct a detailed analysis of nearly 500 pages on an annual basis and instead specific areas are selected each year for review. This year's review has concerned itself with improving transparency and accessibility, reflecting structural changes to the Council's organisational structure and the collation of changes made by decision-making bodies such as the Cabinet or Council during the course of the previous year.
- 2.3 The focus of the 2016 review was as follows:

- (a) Part 3 Responsibility for Functions.
- (b) Part 9 Appendix 1(Proper Officer Appointments)

### 3. **Approval of Amendments to the Constitution**

3.1 The changes to the Constitution come in three types – changes requiring Executive approval, changes delegated to the Monitoring Officer to approve and changes requiring Council approval.

3.2 The detail of the changes are set out below:

- (a) **Part 3, Sections 1 and 2.** Changes to Sections 1 and 2 intend to make the Responsibility for Local Choice and Council Functions more transparent and easy to understand Delegations. Changes within Sections 6 mirror the changes in sections 1 and 2 and also to reflect changes in structures and responsibilities within the Council. The changes are intended to make the document more accessible, without significantly affecting distribution of functions between the Planning Committee and those delegated to the officers through the Scheme of Officer Delegation.

It should be noted that the Leader of the Council will be asked separately to approve any changes to the Scheme of Officer Delegations relating to the powers of the executive as the Council is not legally able to do this. Notwithstanding this, the Council is asked to approve the Scheme of Officer Delegations in its' entirety (including those delegations relating to executive functions). This is because the classification of functions between executive and non-executive functions is not entirely straightforward and we now know from decided legal cases that if a delegation is approved by the wrong body it is likely to be of no legal effect. If the entire Scheme of Officer Delegations is approved by both the Council and the executive Leader, the Council should be better placed to answer any legal challenge that the individual delegations have not been properly approved.

**Part 9, Appendix 1.** Proper Officer Appointments for Specified Statutory Purposes and for Specified Purposes. These changes relate to the amendment of the title of two proper officers and has been approved by the Monitoring Officer.

### 4. **Identification of Options**

- 4.1 Option 1 - To approve the 2016 Review of the Constitution as submitted.
- 4.2 Option 2 – To not approve the 2016 Review of the Constitution as submitted.
- 4.3 Option 3 – To amend the Constitution in some other way

### 5. **Evaluation of Options**

- 5.1 Option 1 is the preferred option as it enables the efficient operation of the authority to continue.

5.2 Option 2 is not the preferred option as it will significantly impede the day-to-day operation of the authority as the Constitution will no longer be able to operate as a definitive reference for officers.

5.3 Option 3 is not recommended as it will not be possible for the Governance Committee or the Council to make any significant changes to the proposals at their meeting. Should members be minded to pursue this option they would need to instruct the Director of Governance/Monitoring Officer as to their wishes and require him to report to future meetings of the Governance Committee and the Council.

6. **Resource Implications**

There are no resource implications arising from the Review of the Constitution.

7. **Appendices**

Appendix A – Draft Constitution of the Council (Version 20) - *Due to its size, this Appendix has been published as a supplement to the main Planning agenda*

8. **Background Papers**

Local Government Act 2000 and the regulations made under that Act.

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