

<b>Bath &amp; North East Somerset Council</b>		
MEETING	<b>Council</b>	
MEETING DATE:	<b>21 July 2022</b>	
TITLE:	<b>Constitution Refresh</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<p><b>List of attachments to this report:</b></p> <p><b>Appendix 1</b> Table summarising changes in structure to the old Constitution</p> <p><b>Appendix 2</b> Table showing the destination of the content of the Articles</p> <p><b>Appendix 3</b> LGA 2000 Direction Constitution Checklist</p> <p><b>Appendix 4</b> Draft new Constitution</p>		

## **1 THE ISSUE**

1.1 In November 2021 the Council tasked the Constitution Working Group (CWG) to review the Council's current Constitution within a set of defined parameters and in accordance with the following principles to recommend an updated Constitution that is:

- accessible and modern
- easier and simpler to understand
- streamlined by removing sections not formally required to be within the Constitution
- removes duplication
- digitally compatible & easily read across screens

- cross referenced through hyperlinks and searchable text
  - provides a summary and overview of how the Council operates
  - includes a glossary for consistent use of terminology
  - clarifies responsibility for decision making
  - ensures legislative requirements are current
  - is future proofed
- 1.2 Due to the format of the current Constitution (having a general summary, a set of Articles then substantive sections), issues are said two and three times, often in slightly different ways and it is difficult to be certain that the full or correct picture is being presented on any issue without exhaustive searching.
- 1.3 The Constitution has been re-drafted with the above in mind, along with an objective view of potential changes and streamlining of functions that ought to be clearer and thereby improve efficiency and effectiveness.
- 1.4 It is timely that the review has taken place at this point in the 4 year election cycle, as it draws on the input of experienced members, and will ensure that an updated Constitution is in place for the new intake of Councillors in 2023.
- 1.5 This review is also supported by the Council's auditors in their 2020/21 Value For Money report which stated

We noted that the Constitution is being refreshed in 2021/22 to improve accessibility, ease of use, digital compatibility, links to other Council information, and to remove duplication and clarify responsibility for decision making. We noted that the Constitution can be complicated to navigate and we endorse these proposed improvements.

## **2 RECOMMENDATION**

**The Council is asked to;**

- 2.1 Consider the changes unanimously approved and proposed by the Constitution Working Group and adopt the updated Constitution as set out at Appendix 4;**
- 2.2 Determine the date of adoption of the Updated Constitution to be the 2<sup>nd</sup> August 2022.**
- 2.3 Agree that the Constitution Working Group should continue to meet in order to advise on the further rationalisation work to be done on the Financial Regulations and Contract Standing Orders, and pick up any glitches identified.**

## **3 THE REPORT**

- 3.1 The current Constitution is over 570 pages long with 8 separate sections. The CWG have sought to reduce this considerably, by moving some non- statutory policies into an online Library (now accessible through hyper-links in the Constitution), and removing duplication of identical rules appearing in separate

sections. The draft updated Constitution currently comprises 369 pages in total and the further work proposed for stage 2 of the review (see Financial Regulations and Contract Standing Orders section later) will substantially reduce the total page count further.

- 3.2 Whilst undertaking this work, officers and the CWG were reassured that the current Constitution is fit for purpose and legislatively and corporately accurate. The work undertaken was therefore an opportunity to refine and update as issues were reviewed. The CWG have also sought to ensure that the Constitution reflects the way in which the Council currently operates.
- 3.3 Members will be aware that some areas of dispute were brought to the May Council meeting. The CWG considered comments and representations made following that meeting and their final agreed position has been incorporated in the Constitution (at paragraph 3.1.23 and 3.2.20) which they are now recommending to Council for adoption.

#### **4 FORM & STRUCTURE OF THE CONSTITUTION**

- 4.1 The CWG identified that the Council's current Constitution does not read as a modern document and could be improved significantly through the use of more modern language, web links, graphics and better presentation.
- 4.2 The Articles have been removed from the Constitution and, where appropriate, content from the Articles has been moved elsewhere in the Constitution. The aim of moving this content has been to ensure that information about specific functions/committees/officers etc appears in as few separate places as possible so that the document is easier to navigate. Some of the content from the Articles has been removed altogether as it is either duplicated elsewhere or is out of date and does not reflect how the Council operates.
- 4.3 The CWG have also removed a number of sections of the Constitution. This is for a number of reasons:
  - (1) A number of the Council's codes, protocols, policies and guidance documents do not need to be in the Council's Constitution. These can be referenced through web links which makes the whole document less daunting and unwieldy.
  - (2) Where documents are not a formal part of the Constitution, it allows them more easily to be updated/refreshed.
  - (3) Reducing the length of the Constitution makes it more accessible and understandable. This makes it easier for Councillors and Officers to refer to the Constitution in performing their duties. It also makes it more transparent to members of the public.
  - (4) Having a clear, well-structured and easily understood constitution assists members and officers with complying with the Constitution.
- 4.4 There are now 6 sections as follows:

- Part 1 - Summary and explanation
- Part 2 - Responsibility for functions
- Part 3 - Rules of Procedure

- Part 4 - Codes and Protocols
- Part 5 - Members allowances scheme
- Part 6 – Glossary

4.5 Included at Appendix 1 below is a table which summarises the changes in structure to the Current Constitution and Appendix 2 shows the destination of the content of the Articles.

## **5 ACCURACY, UPDATING & FUTURE PROOFING**

5.1 Local authority arrangements evolve and whilst this means Constitutions have to be updated, this should not be a constant exercise. The CWG have generally reduced the number of references to legislation, and to specific named individuals, to reduce the burden on the Council in keeping the Constitution updated.

5.2 The draft updated Constitution has been amended to reflect recent changes in the structure of local government. The Joint Arrangements section has been updated to reflect the relationships that the Council has with the West of England Combined Authority and Joint Committee, the Police and Crime Panel for Avon & Somerset and other joint arrangements that may change from time to time.

## **6 DECISION MAKING**

6.1 A key part of the Constitution (and one which sets the tone for the culture the Council wishes to operate) is how decisions are taken. This includes the balance between:

- Cabinet collective decision making or powers of individual portfolio holders; and
- Member decision making or officer delegation.

6.2 The sections in the Constitution dealing with Responsibility for Functions and the Terms of Reference have been changed to make this fundamental approach clearer (and also make the document more manageable and future-proof).

6.3 Delegations have been separated to make it clear what is being delegated to whom and by whom. In doing so the following approach has been adopted.

- (1) A diagram has been included at Part 2 showing the Council's decision making bodies.
- (2) The table of local choice functions has been retained.
- (3) Each committees' specific terms of reference are now referred to as Functions and have been standardised and retained.
- (4) A description of the Council's Joint Arrangements has been included in one place.

- (5) The scheme of officer delegation has been retained which sets out the general principles by which officers are authorised to act and which also includes specific delegations to the council's Chief Officers. Through the 'cascade principle', these functions may be further sub-delegated.
- (6) Detail of the Council's Proper Officer arrangements has been retained to comply with the requirements of the Constitution Direction, with the addition of a new role of designated Local Government Pensions officer.

6.4 Over time the Council has added a number of plans and strategies to the Policy Framework. This creates additional bureaucracy, including the need for both Council and Cabinet approval to such plans and strategies. Failure to follow the approvals process could render decisions on such matters more likely to be challenged. For that reason, the updated Constitution has reduced the number of documents which require the approval of full Council to the statutory minimum, as follows.

<b>Current Policy Framework</b>	<b>Updated Policy framework</b>
<ul style="list-style-type: none"> <li>• Sustainable Community Strategy</li> <li>• Local Plan/ Local Development Framework</li> <li>• Children and Young Peoples' Plan</li> <li>• Youth Justice Plan</li> <li>• Community Safety Plan</li> <li>• Corporate Plan (including Budget, Financial Plan</li> <li>• (Joint) Local Transport Plan</li> <li>• Licensing Authority Policy Statement</li> <li>• Health &amp; Wellbeing Strategy</li> <li>• Crime &amp; Disorder Reduction Strategy</li> </ul>	<ul style="list-style-type: none"> <li>• The Children and Young People's Plan;</li> <li>• Licensing Authority Policy Statement;</li> <li>• Youth Justice Plan;</li> <li>• Crime and Disorder Reduction Strategy;</li> <li>• Local Transport Plan; and</li> <li>• Development Plan Documents (including the Local Plan and any Neighbourhood Plans); and all plans and alterations which together comprise the Development Plan.</li> </ul>

6.5 There will be other plans and strategies that will be approved by Council on the recommendation of Cabinet, such as the Corporate Plan, the Medium Term Financial Plan and Budget, the Joint Health and Wellbeing Strategy etc

;however, this list now reflects the list of the plans required to be submitted to both under the Functions and Responsibilities Regulations 2000.

- 6.6 In relation to the Council and Cabinet Procedure Rules, the CWG have not made any significant suggestions for changes to the content (which are considered to be generally clear and comprehensive), save those ones already brought to the May 2022 Council meeting and described in Appendix 1.

## **7 CHANGES TO THE NON-EXECUTIVE COMMITTEES**

- 7.1 Few changes have been made to the structure of the Council's Committees, other than to bring the Responsibility for Functions up to date. A new Independent Persons Panel has been created that will link to the work of the Restructuring Implementation Committee which currently deals with the potential for recommendations to Council to deal with Chief Officer discipline, capability and grievances in line with the Terms and Conditions of Service of those statutory officers.

## **8 FINANCIAL REGULATIONS & CONTRACT STANDING ORDERS**

- 8.1 The Budget and Policy Framework Procedure Rules, the Financial Procedure Rules and the Contract Standing Orders have been included in their entirety. However, in the next stage of the review, it is proposed that these sections could be substantially reduced.
- 8.2 The following financial limits are retained on the delegation of functions to Officers:

<b>Officer</b>	<b>Limit in respect of revenue expenditure</b>	<b>Limit in respect of capital expenditure</b>
Head of Paid Service and Chief Officers in consultation with a relevant portfolio holder	£500,000	No limit where Council has approved the scheme in the budget and/or the Cabinet has agreed to progress the scheme

## **9 OTHER PROCEDURES, CODES AND PROTOCOLS**

- 9.1 A number of the Codes and Protocols have been removed from the Constitution, and placed in the Library, as detailed in **Appendix 1**. This is to reduce the administrative burden on the Council, and to create a more manageable and relevant constitution.
- 9.2 All of the documents that have been removed from this section are "operational" documents. Whilst these are important to the Council, they are not required to be part of the Constitution. As operational documents they are likely to be updated regularly and, from experience, the requirement for all amendments to be approved by Full Council can result in these documents being updated less

regularly than if there was a more streamlined procedure for reviewing and amending them.

## **10 STATUTORY CONSIDERATIONS**

10.1 A local authority is under a duty to prepare and keep up to date its Constitution under s.9P Local Government Act 2000 as amended (Localism Act 2011).

10.2 The Constitution must contain:

- the standing orders/procedure rules;
- the members' code of conduct;
- such information as the Secretary of State may direct;
- such other information (if any) as the authority considers appropriate.

10.3 A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things. The Direction is archived but remains applicable by virtue of S.17 (2) (b) of the Interpretation Act 1978. A table at Appendix 3 shows where these aspects feature in the new Constitution.

## **11 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

11.1 The Constitution refresh has only incurred staff & CWG members' time and is therefore cost neutral.

## **12 RISK MANAGEMENT**

12.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

## **13 EQUALITIES**

13.1 None

## **14 CLIMATE CHANGE**

14.1 None

## **15 OTHER OPTIONS CONSIDERED**

15.1 None

## **16 CONSULTATION**

16.1 Councillors, Political Assistants, Chief Officers, the Constitutional working group, Monitoring Officer & S.151 officer have been consulted in the drafting of this report and its recommendations; in particular, the draft updated Constitution.

16.2 Councillors have been engaged through a webinar, and encouraged to submit comments to the Constitution Working group prior to this final version. Any comments are taken into account in this version.

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<b>Background papers</b>	Report to Council 18 November 2021
<b>Please contact the report author if you need to access this report in an alternative format</b>	