

Report to the Governance Committee

Monday 14th December 2020

By the Monitoring Officer

FOR NOTING / DECISION



**Horsham
District
Council**

Not Exempt

<p>REVIEW OF KEY DECISIONS AS REQUIRED THROUGH A MOTION OF FULL COUNCIL DATED 14 OCTOBER 2020</p>
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Executive Summary

A report to the Governance Committee following a motion instructing the Monitoring Officer to review the effects of a Constitutional change that would make any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, a Key Decision.

RECOMMENDATION:

That the Governance Committee notes the findings of the Monitoring Officer and make no changes to the Council's existing Key Decision Framework.

REASON FOR RECOMMENDATION:

To comply with Article 13, Review and Revision of the Constitution.

Background Papers (not included)

Horsham District Council Constitution (amended August 2020)

Minutes of Full Council held on 14 October 2020

Wards affected:

ALL

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Background Information

1 Introduction and Background

- 1.1 At a meeting of Full Council on 14 October 2020, an amended motion ('the Motion') worded '*This Council instructs the Monitoring Officer, in line with Article 13 of the Constitution, to review the effects of a Constitutional change that would make any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, a Key Decision. This review to be done within three months and to report those findings to the Governance Committee which will then consider any changes it might recommend to Full Council*' was carried.

2 Relevant Council policy

- 2.1 Key Decisions and how they are operated are set out in Article 11.5 of the Constitution.

3 Details

- 3.1 The Motion seeks a review of the effects of a change to the Council's Constitution that would make any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000 a Key Decision, an additional definition to the existing definition at Article 11.5.
- 3.2 Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, a Key decision is defined in Regulation 8 as 'an executive decision, which is likely —
- (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority’.

3.3 At present, Key Decisions at Horsham District Council are set out at Article 11.5 of the Council’s Constitution and a ‘Key Decision’ means a Cabinet decision which is likely:

a) To involve expenditure or savings of £250,000 or more as well as otherwise being significant having regard to the Council’s budget for the service or function to which the decision relates; or

b) To be significant in terms of its effects on communities living or working in an area comprising two or more wards in the district.

In accordance with section 38 of the Local Government Act 2000, in determining the meaning of “significant” regard will be given to any guidance for the time being issued by the Secretary of State.

3.4 The Cabinet may only make a Key Decision in accordance with the requirements of the Access to Information Procedure Rules and the Cabinet Procedure Rules set out in Part 4 of the Council’s Constitution. Subject to Article 7, the Cabinet meeting will follow the Cabinet Procedures Rules set out in Part 4 of the Council’s Constitution when considering any matter.

3.5 Under Part 4 (Rules of Procedure), 4c 14 (Overview and scrutiny procedure rules), the Council’s Call-in procedure is available to the Chairman or, if absent, the Vice-Chairman, of the Overview and Scrutiny Committee; or any five non-Cabinet Members of the Council may request that the decision be called in.

3.6 Article 4b. 12 Consultation b) of the Constitution states that reports on Key and Cabinet Member non-key decisions will detail the views of the Policy Development Advisory Group that considered the matter and will set out the details and outcome of any consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

- 3.7 Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, it is up to each Council to consider the expenditure or the making of savings and whether they are significant having regard to the budget and set the threshold it considers appropriate as a Key decision. As a comparison, Appendix A shows the different thresholds considered in the key decision making process and the criteria used by neighbouring District / Borough Councils in West Sussex of similar size to Horsham (where the data has been publicly available). The varying levels of expenditure and savings for a key decision for the neighbouring Councils ranging from £100,000 to £500,000.
- 3.8 Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires that where a decision maker intends to make a Key Decision, a document must be published at least 28 clear days and available for inspection by members of the Public.
- 3.9 This Council has a concise and practical definition of what a Key Decision is, many Councils have a much higher threshold than £250,000 including two local Councils identified in Appendix A.
- 3.10 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 took effect from 10 September 2012 and the Council has adopted a definition very closely based on Regulation 8 (referred to in paragraph 3.2 above).
- 3.11 By adding to and amending the Council's current definition of Key Decision to include any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, is likely to delay and hinder the current decision making process for Key and non-Key Decisions as the potential Key Decision is being duplicated through an investigation in the form of a feasibility study and then the same Key Decision process will have to be undertaken again, giving the final detail, if the project proposed is to be implemented.

- 3.12 It is unlikely to be a good use of Council resources simply if the undertaking of research and preparation for a project could be considered a Key Decision based on the proposed criteria due to the proposed amendment. It is not until the research and investigation has taken place, and therefore armed with all the facts and details, that a decision is ready for consideration. The Motion is also capable of hampering the operational function of the Council due to the additional timeframe that would need to be anticipated to fit in with the forward plan, to publish reports, allow for the consultation with Policy Advisory Groups and the extra Cabinet meetings. This would all need to be worked into the initial project process. This could also hamper the flexibility and creativity that both officers and members need to be able to exercise at the initial stages of project planning.
- 3.13 In the event that the proposed change is adopted, there is potential for many more projects to be considered under the Key Decision Framework which could put the Council of risk at challenge if they were later found not to be a Key Decision. This would be due to adding an extra step into the decision process that was later deemed to be unnecessary.
- 3.14 Having reviewed the Council's Constitution in line with the Motion of 14 October 2020 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the Council's existing threshold for Key Decisions remains adequate for the purposes of the Cabinet to make Key decisions which involve a Policy Development Advisory Group and is subject to the Council's Call-in procedure.
- 3.15 It is therefore recommended that no changes are made to Article 11.5 of the Constitution and the Governance Committee notes the contents of this report.

4 Next Steps

- 4.1 Any proposed change to the Council's policy in relation to Key Decisions within the Constitution are not considered to fall within the delegations of the Monitoring Officer to make minor changes to the Constitution. If the Governance Committee were minded to change the Constitution, against the opinion of the Monitoring Officer, as proposed by the Motion, they would have to make a Recommendation to Full Council to make the changes that would reflect that. Following approval by Full

Council the Monitoring Officer will publish the amendments on the Council's website.

- 4.2 As it is not recommended that the current criteria for a Key Decision is amended, the Committee is asked to note the contents of this report.

5 **Outcome of Consultations**

- 5.1 The Motion at Full Council was passed to undertake this investigation. Consultation has taken place with the S151 Officer and the Chief Executive.

6 **Other Courses of Action Considered but Rejected**

- 6.1 The Constitution requires to be updated for effective governance, it needs to be treated as a 'living' document with the need for frequent amendments to ensure it remains up to date and reflects the operation of the Council if needed. In this case, the existing framework for Key Decisions is adequate and has served the Council well since it's inception in September 2012.

7 **Resource Consequences**

- 7.1 There are no direct cost implications arising from not amending the Constitution.
- 7.2 As above at paragraph 3.8, the Council must comply with the requirements of Regulation 9 with regard to Key Decisions. By adding amending the Council's current definition of Key Decision to include any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, as stated above it is likely to impact on Council resources and delay and hinder the current decision making process for Key and non-Key Decisions as the potential Key Decision process is being duplicated through an investigation in the form or a feasibility study and then for the decision itself.
- 7.3 As a consequence of the proposed criteria within the Motion if adopted, any subsequent proposal could be considered a Key Decision despite not meeting the current criteria and will require the publication and preparation of reports not ordinarily required under the current process.

8 Legal Considerations and Implications

- 8.1 It is a legal requirement for the Council to comply with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and have a Constitution. It is the responsibility of the Monitoring Officer to monitor and review the operation of the Council's Constitution to ensure that the aims and principles of it are given full effect and to make recommendations for ways in which the Constitution could be amended in order to enable decision to be taken efficiently and effectively.

9 Risk Assessment

- 9.1 The recommendation within this report is part of mitigating corporate risk by ensuring that the Constitution remains consistent, fit for purpose and user friendly and not amended unnecessarily.

10 Other Considerations

- 10.1 The Constitution and its Procedures, Rules and Codes act as an enabling tool in helping the Council meet its obligations under the Human Rights Act 1998 and the Equality Act 2010.
- 10.2 Consideration of how projects and proposals can secure environmental, social and economic benefits and reduce negative consequences should be an integral part of decision-making and the Constitution will facilitate such considerations.