

Report to Governance Committee

16 August 2017

By the Interim Monitoring Officer

DECISION REQUIRED



**Horsham
District
Council**

Not Exempt

Changes to the Constitution of Horsham District Council

Executive Summary

The Governance Committee was created by Council on 7 December 2016. One of the functions of the Governance Committee is to receive reports from the Monitoring Officer on amendments to the Constitution and make any consequent recommendation to Full Council.

The report sets out a number of proposed variations to the Constitution in respect of the discharge of planning functions delegated to the Planning Committees and minor changes to the Scheme of Delegation to Officers (Director of Planning, Economic Development and Property). The reason for the proposed changes are that a number of ambiguities have arisen regarding the delegation to the planning committees regarding the determination of applications under the Town and Country Planning Act 1990 and related Regulations, these ambiguities have arisen as a consequence of the introduction of a new streamlined Constitution. The effect being that Applications under the scheme of delegation to the Planning Committee are not defined. The report fully explains the context of this with reference to the Old and New Constitution and recommends changes to address the ambiguities. The Committee are to decide whether to recommend the amendments to Full Council for approval.

Recommendations

That the Committee is recommended to consider the proposed amendments to the Constitution as set out in Appendix 2 and if agreed to recommend approval of changes to the Constitution to the Full Council.

Reasons for Recommendations

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

Background Papers

The Constitution of Horsham District Council 7 December 2016 (Amended April 2017).

Wards affected: All

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Background Information

1 Introduction and Background

- 1.1 It is a legal requirement for the Council to have a Constitution under Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011).
- 1.2 The Council undertook a major review of the Constitution in 2016 resulting in the adoption of a revised Constitution by Full Council on 7 December 2016. At the same time as the adoption of a revised Constitution, Full Council created a Governance Committee.
- 1.3 One of the functions of the Governance Committee is to ensure that the Council's Constitution is kept up to date and fit for purpose. This includes receiving reports from the Monitoring Officer to amend the Constitution and to make recommendations to Full Council on any changes that are not covered by the Monitoring Officer's delegated powers.
- 1.4 The discharge of planning functions are delegated to the Planning Committees of the Council (Planning Committee North and South). These are currently set out in Part 3 of the Constitution (Responsibility for and delegation of functions), Delegation of Functions 3:2:2 a) – c). The determination of Applications to the Committee are set out in 3.2.2 c) i. – vii. Further under the Council's Scheme of Delegation to Officers, the Director of Planning, Economic Development and Property under Part 3 of the Constitution at paragraph 3:6:2 has delegated authority for all operational and administrative matters relating to the discharge of functions of the Council relating to Town and Country Planning matters including development management **except for** those matters reserved to Planning Committee.
- 1.5 It is considered that there are a number of ambiguities currently set out in the Scheme of Delegation to the Planning Committee regarding the determination of applications under the Town and Country Planning Act 1990 and related Regulations. To explain this, reference is made to the Council's former Constitution. In the old Constitution (prior to December 2016) there was no mention of the type of application which would be determined by the respective Planning Committees. The description of the applications to be determined was set out in the Scheme of Delegation to Officers Part 3F (Article 13) of the Constitution, October 2015 and in particular paragraph 10 Powers delegated to the Head of Planning and Environmental Services. Under the old Constitution and Scheme of Delegation to Officers paragraph 10.6 referred to applications for planning permission, 10.7 referred to applications for consent, whilst paragraph 10.8 referred to planning consultations and opinions. Paragraph 10.9 specified those matters that were not delegated to an Officer, they included the determination of applications referred to in paragraphs 10.6, 10.7 and 10.8 i.e. applications for planning permission, application for consent, that were departure applications, those that needed to be referred to the Secretary of State (SOS), those made by the Council, by a Member, Officer or their family or where the Committee directed otherwise, where a Member of the Committee requests it, where the Head of Service considers it should go to Committee or where the Parish or neighbourhood Council request it. In the new Constitution which was adopted in December 2016, this level of detail was removed from the delegation to Officers but was included in

the delegation to the Planning Committee. However, the context in which it was read i.e. 10.6 and 10.7 planning permissions and consent was not carried over. . The ambiguity that has arisen is that the term “Applications” which is referred in the delegation of planning functions to the Planning Committee in paragraph 3.2.2 of the Constitution is not defined in any way.

The effect of the wording in the current Constitution is that the term “application” would seem to cover everything i.e. variation of condition application, minor material amendment application, non-material amendment, discharge of condition application with the effect that all such minor applications falling within 3:2:2.(c).(i) – (vii) would have to be considered by the Planning Committee.

For ease of reference, Appendix 1 shows as a comparison the delegations to the Planning Committee(s) and officers under the Old Constitution compared to the current delegations to the Planning Committee(s) and to officers under the Council’s current Constitution approved in December 2016.

- 1.6 To enable the efficient discharge of planning functions, changes have been made to the Delegation of Planning functions to the Planning Committee and to the Scheme of Delegation to Officers (Director of Planning, Economic Development and Property) in order to address the ambiguities that have arisen. These draft changes to Part 3 paragraph 3:2:2 Functions of the Planning Committees are set out in Appendix 2, these changes will replace the current delegation of Functions of the Planning Committees relating to the determination of applications as set out in 3.2.2 (c) i. - vii. New wording is highlighted in **bold** and **underlined**. Appendix 2 also includes additional wording in paragraph 3:6:2 of the Constitution Delegation to the Director of Planning, Economic Development and Property this additional wording is also set out in **bold and underlined** in Appendix 2

2 Relevant Council policy

- 2.1 The Corporate Plan 2016-19 heading Efficiency – Great value services will be better enabled by a modern, agile constitution which if flexible, permissive, well-understood, and realigned to a model constitution in an accessible single-document format.

3 Details of the Proposed Variations and Amendments

- 3.1 The draft changes to the delegation of planning functions to the Planning Committee under Part 3 paragraph 3:2:2 and paragraph 3:6:2 of the Constitution Delegation to the Director of Planning, Economic Development and Property are set out in Bold and underlined in Appendix 2 attached to this Report.

4 Next Steps

- 4.1 These changes are not considered to fall within the delegations of the Monitoring Officer to make minor changes to the Constitution, if approved the Governance Committee will make a Recommendation to Full Council to make the changes to the

Constitution. Following approval by Full Council the Monitoring Officer will publish the amendments on the Council's website.

5 Outcome of Consultation

- 5.1 Consultation has taken place with the Director of Planning, Economic Development and Property and Service Managers.

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.

7 Resource Consequences

- 7.1 There are no cost implications arising from these changes.

8 Legal Consequences

- 8.1 Under Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011), it is a legal requirement for the Council to 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 decisions to be taken efficiently and effectively.

9 Risk Assessment

- 9.1 The recommendations within this report are part of mitigating corporate risk CRR08 described in the Corporate Risk Register. The risk source: The Council's decision-making processes are based on Constitution that is overly bureaucratic and unnecessarily complicated. Event: Non-compliance with the Constitution and delays in decision-making. The potential consequences described are: opportunities lost, complaints/claims/litigation/financial losses and lack of openness and transparency.

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.