

Council

27 April 2016

By the Leader of the Council

DECISION REQUIRED



**Horsham
District
Council**

Not Exempt

Appointment of a Constitution Review Group

Executive Summary

The Council is required under section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011) to prepare and keep up to date its Constitution. This report establishes a Constitution Review Group of nine Members to undertake the first comprehensive review of the Constitution since the Constitution was adopted in 2001.

Recommendations

That the Council is recommended:

- i) To form a Constitution Review Group of nine Members.

Reasons for Recommendations

- i) To satisfy provisions contained within Articles 4 and 16 of the constitution and section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011)
- ii) To facilitate member engagement in the review of the Constitution.

Background Papers

None.

Wards affected: All Wards.

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Background Information

1 Introduction and Background

- 1.1 The current Constitution of Horsham District Council was first approved by the Council pursuant to the Local Government Act 2000 Section 37, the Local Government Act 1972 sections 101, 102, 106 and 135 Schedule 12 paragraph 42 and all other enabling powers on 2nd May 2001 and became operative on 23rd May 2001. The Constitution has been subject to amendment since then in response to legislative and regulatory requirements.
- 1.2 Article 16 of the Constitution provides that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Leader and Director of Corporate Resources responsible for monitoring and reviewing constitutional matters.
- 1.3 Following the election of a new council in May 2015, the Leader set up a member group to look at the Council's future governance arrangements. Its primary focus was to make conclusions and recommendations regarding retaining the executive (cabinet) model or whether to change governance arrangements - that is the subject of a separate report to council. However, the Governance Group also concluded that a pro-active comprehensive review of all other aspects of the Constitution would be timely.
- 1.4 The outcome should be a modern, agile constitution which is flexible, permissive, well understood, and realigned to a model constitution in an accessible single-document format.
- 1.5 Prior to such the proposals being considered by the Leader and Director of Corporate Resources and then being taken to full council - as under Article 16 of the Constitution - the Governance Group proposes that Horsham adopts an approach involving more members forming a Constitution Review Group.
- 1.6 This review will involve a series of meetings post Annual Council 2016 and knowledge will need to be gained by those participating. The creation of a group of members is proposed as follows:
 - Chairman of the Council
 - The Leader of the Council
 - The Deputy Leader of the Council
 - The Leader of the minority group
 - The Chairman of the Scrutiny and Overview Committee
 - The Vice-Chairman of the Scrutiny and Overview Committee
 - The Chairman of the Standards Committee
 - The Chairman of the Accounts, Audit and Governance Committee
 - A Cabinet Member
- 1.7 There is no conferment of delegated powers to the Constitution Review Group and as such there is no requirement that the membership be politically balanced. This preserves Article 4.2 which provides that only the Council will exercise the function of adopting and changing the Constitution.

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 is flexible, permissive, well understood, and realigned to a model constitution in an accessible single-document format.

3 Details

Background

- 3.1 In 2000 the then Department for the Environment, Transport and the Regions, issued a model constitution and associated guidance to all councils to enable the provisions of the Local Government Act 2000 which introduced executive arrangements to local government in England. Councils such as Horsham adopted a Constitution based on that model and the guidance provided. Since 2000, there have been a range of Acts and associated regulations that have required adjustment to the Constitution. Such Acts include (but are not limited to) the Local Government Act 2003, the Local Government and Public Involvement in Health Act 2007, the Local Democracy, Economic Development and Construction Act 2009 and the Localism Act 2011. During 2015 alone, seven consequential amendments to parts 3A, 3F, 4H, 5C, 6, 7 and 8 of the constitution were made, subject to the resolution of Council.
- 3.2 Councils have proceeded to amend their constitutions as required, often introducing local nuances and inconsistencies due to drafting. No further model constitution has been issued by successive governments.
- 3.3 Consequent to the Localism Act 2011 and in response to a request of Monitoring Officers nationally to address councils' constitutional inconsistencies, the Association of Chartered Secretaries and Solicitors (now known as Lawyers in Local Government) commissioned Dickinson Dees (now Bond Dickinson) to produce a new 'model local authority constitution' to provide a consistent template, already fully legally compliant for local authorities to use (if they so choose).
- 3.4 As part of its conclusions, the Governance Group proposed that the Constitution should be reviewed and included that conclusion (which was supported) in its briefing to members on 29 March and its report to Council on 27 April. The Monitoring Officer and the Director of Corporate Resources endorse the need for a review.
- 3.5 The Constitution must contain
- a copy of the Council's standing orders for the time being;
 - a copy of the Council's Members' Code of Conduct for the time being under section 28 of the Localism Act 2011;
 - such information as the Secretary of State may direct, and
 - such other information (if any) the Council considers appropriate.
- 3.5 Take-up of the new model local authority constitution has been good. A sample of the councils utilising the model fully include: Breckland, South Holland, Sefton, Oadby and Wigston, and North Hertfordshire. Many other councils, such as Dover, Gedling and Sevenoaks have utilised the model partially.

- 3.6 Alignment to the model local authority constitution will be sought to ensure that the constitution enables Horsham District Council to achieve its ambitions.

Terms of reference

- 3.7 The proposed terms of reference for the Constitution Review Group are to:
- i. be guided by the Monitoring Officer and to seek alignment with the Model Constitution,
 - ii. understand current statutory and regulatory requirements,
 - iii. propose amendments or updates to bring the document into line with legislative requirements,
 - iv. identify and propose how to address any duplication or contradictory provisions within and across the various sections of the document to ensure consistency,
 - v. address where successive revisions and additions may have affected coherence,
 - vi. review the method by which the constitution is amended (Articles 4 and 16)
 - vii. not negate any recent (2014 -16) amendments agreed by Full Council,
 - viii. bring forward suggested revisions to consolidate and improve presentation into a single document and;
 - ix. Make a report to Council in September 2016 with recommendations in order that Council may consider those recommendations in exercising the function provided by Article 4.2

4 Next Steps

- 4.1 The requirement to make recommendations to Council on 7 September 2016 enables a timeline to be set to guide the review. A cycle of weekly meetings would be necessary and members should note the commitment involved. The group will start the review after Annual Council 2016 and be comprised of the post holders stated at 1.6 above. Once the review group has concluded, Article 16 requires the proposals to be considered by the Leader and the Director of Corporate Resources before being recommended to Council for approval.

5 Outcome of Consultations

- 5.1 Support and endorsement for this proposal was received from the Governance Group (including the Leader and Chairman of the Council) whom were involved in the development of this proposal and from the Senior Leadership Team who had been consulted in February 2016. Considerations from the Monitoring Officer and Director of Corporate Resources are incorporated within this report.
- 5.2 This proposal was supported at a third briefing on governance for all members held on 29 March 2016 and the issue was subsequently included on the published Forward Plan.

6 Other Courses of Action Considered but Rejected

- 6.1 A Scrutiny 'task and finish' group approach was considered but not proposed as the membership of such a group would preclude executive members. An Advisory Group approach was also considered (notwithstanding the recommendations in favour of a clearer structure with Policy Development Advisory Groups). It was however concluded that such a Constitution Group should be representative of the relevant council committees and be consistent with the Governance Group.

7 Financial Consequences

- 7.1 The Council needs to have well-understood financial and associated regulations to meet the ambitions set out in the Corporate Plan and this report enables Member engagement in the review process.
- 7.2 There is no cost associated with using the new model constitution.

8 Legal Consequences

- 8.1 The Council is required to keep its Constitution under review pursuant to section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011). The constitution in its entirety has not been reviewed for a number of years and this revision will ensure that the Constitution will enable Horsham to achieve its ambitions. The revised Constitution will further strengthen the legitimacy of the Councils actions and will provide mitigation against Corporate Risk 08 (below).

9 Staffing Consequences

- 9.1 The review of the constitution will be undertaken within existing resources by the Monitoring Officer and his staff.

10 Risk Assessment

- 10.1 The recommendations within this report are part of mitigating a Corporate Risk described in the Corporate Risk Register presented to the Accounts, Audit and Governance Committee, March 2016. The risk is CRR08 Governance, *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 in the register are: opportunities lost, complaints / claims / litigation, financial losses and lack of openness and transparency.

Appendix 1

Consequences of the Proposed Action

<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>Section 17 of the Crime and Disorder Act 1998 requires the Council to do all that it reasonably can to reduce crime and disorder. The Constitution is one of the enabling tools in meeting that duty. There are no crime and disorder implications as a result of this report.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>The Human Rights Act 1998 requires not only that the Council shall not infringe the convention rights but also (by inference) promotes the convention rights. The Constitution is one of the enabling tools in meeting that duty.</p>
<p>What is the impact of the proposal on Equality and Diversity?</p>	<p>The Equality Act 2010 brings about an obligation upon the Council as a public authority to have due regard to the need to:</p> <ul style="list-style-type: none">a) Eliminate unlawful discrimination, harassment and victimisation;b) Advance equality of opportunity between different groups; andc) Foster good relations between different groups. <p>The Constitution is one of the enabling tools in meeting that obligation.</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>There are certain activities where the need to consider environmental and social impacts alongside traditional economic/financial considerations is a legal requirement:-</p> <ul style="list-style-type: none">• if the report relates to procuring and/or commissioning the Social Value Act 2012 applies (regard must be given to economic, social and environmental well-being),• Climate Change Act 2009 includes legally binding targets to reduce carbon dioxide emissions and for public sector organisation to prepare for changes to the climate, such as increase incidence of flooding and heatwaves,• Significant plans and programmes might require a Strategic Environmental Assessment/Sustainability Appraisal to be completed (there are limited instances where this would apply). <p>Beyond these legal requirements 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. The Constitution is one of the enabling tools in meeting such considerations.</p>