

# **Executive Committee 1 November 2016 Update to Constitution**

## **For Recommendation To Council**

### **Portfolio Holder(s)**

Cllr Peter Barrowcliff

**Senior Leadership Team Contact:**S Caundle, Assistant Chief Executive

**Report Author: Corporate Manager – Legal; Monitoring Officer**

### **Statutory Authority**

Local Government Act 1972 including in particular section 101, 102; Local Government Act 2000, including in particular section 9P and for councils operating executive model section 9E

### **Purpose of Report**

- 1 To update the Constitutions of the Councils of the Dorset Councils Partnership

### **Officer Recommendations**

- 2 In so far as Members have power so to do:
  - (a) agree but otherwise support the updates to the Constitution as set out in Appendices 1 to 4 attached to this report;
    - (i) agree but otherwise support updating the Constitution to incorporate a uniform delegation relating to planning applications as set out in Appendix 5, Part 1 of this report; but if that cannot be agreed / supported,
  - (b) delegate to the Monitoring Officer power to make such further consequential changes to the Constitution as are necessary to reflect the changes set out in the appendices

### **Reason for Decision**

- 3 To introduce changes to the Constitutions to reflect variations to legislative requirements, seek to secure the better alignment of various existing policies and powers within the different Constitutions, develop a clearer interaction between existing provisions within the Constitution and give further clarity to officer powers and responsibilities.

## Background and Reason Decision Needed

4. Between April and June 2016 Members considered and approved various changes to the Constitutions of the Councils to seek to deliver an improved convergence of democratic issues across the partnership. At that time Members were informed that further changes to the Constitution would be necessary to gradually begin to seek to facilitate the better alignment of provisions.
5. This report brings in a number of changes many of which will help to deliver a standardised position across all three partner councils. The changes are set out in detail in Appendices 1 to 5. Reasons for many of the alterations identified are captured below the relevant proposal as set out in the Appendices. Generally, the changes can be summarised as follows:
  - Appendix 1:
    - add provision to WDDC constitution only to reflect legal requirements on having a Deputy Leader;
    - amend various other articles of all the Constitutions to reflect various updates to the Officer Employment Appointment and Dismissal Rules (see Appendix 3) and facilitates/clarifies power of Monitoring Officer to make various changes to the Constitution and to report direct to Full Council on other changes where he considers this appropriate;
    - make various changes to the Officer Scheme of Delegations to clarify certain interactions between different parts of the Constitution, help facilitate other changes captured elsewhere in the Constitution, clarify various financial powers of the section 151 officer and generally to try and better align the exercise of various Officer powers across the DCP;
    - update various existing delegations to seek to better align them with existing/emerging practices;
    - seek to introduce a standard definition of a key decision across the DCP;
    - provide an updated introduction to the Financial Regulations to better clarify their interaction with the Officer Scheme of Delegations;
  - Appendix 2: updates and aligns the existing Code of Conduct for Members and Officers dealing with Planning Matters;
  - Appendix 3: updates and secures across the DCP a standard Employment and Dismissal Procedure Rules; in particular now reflects new legislative requirements relating to disciplinary/dismissal action against statutory chief officers and makes clear a zero tolerance approach to bribery / fraud issues;
  - Appendix 4: updates and aligns across the DCP a standard Code of Conduct for Employees; in particular clarifies position regarding declaring any gifts / hospitality;
  - Appendix 5: proposes a single delegation focusing on planning (and similar) applications across the whole of the partnership.
6. Members should note that some of the changes above e.g. in relation to the Employee Code of Conduct inevitably has an impact on all Officers of the Council including the authors of this report; to that extent therefore all Officers have an interest to a greater or lesser extent in them.

7. The content of Appendix 5 has been separated from the other provisions as it seeks to introduce a single delegation relating to planning (and similar) applications across all three of the councils of the partnership (Part 1 of Appendix 5). However, if this was not acceptable, then changes to the existing delegations are still considered necessary to better reflect current/emerging practices. Consequently, Part 2 of Appendix 5 contains alternative wording of specific relevance to West Dorset which Members are asked to agree if the delegation in Part 1 was considered unacceptable.
8. Whilst it is not necessarily fatal if all 3 Councils do not completely adopt all the changes identified, a number of changes do need to be delivered to secure compliance with various legal requirements. Further, as the officer core that serves the Dorset Councils Partnership becomes increasingly converged, the risk of error or confusion in operating different arrangements across all three Councils will increase. Most of the changes set out in the appendices are reflective in whole or part of arrangements, processes or procedures that have already been in operation across one or more Councils of the Dorset Councils Partnership. Ultimately, if in practice any of the changes give rise to issues which are found to be unacceptable to any of the partner Councils, there is nothing to prevent Members seeking further revisions to address such issues at a later stage.
9. In due course it will be necessary to revise the West Dorset District Council to reflect the recent referendum decision to move from an executive/leader model to a committee model. All of the proposed alignment changes would potentially be beneficial in simplifying this particular exercise.
10. Members should also note that a bit of wording in Appendix 5 regarding scope to appoint nominees has been tidied up from previous iterations to make it quite clear the intentions regarding the scope to appoint alternatives. Members will see that it therefore now reads as follows:

*“The Chairman, Vice Chairman and Ward Member(s) can all be substituted by any other Member(s) of the Planning Committee if any are unavailable / absent at the time that the Consultation is being undertaken. The Head of Planning (Development Management and Building Control) can be substituted by any planning officer(s) nominated by the Head of Planning (Development Management and Building Control) for such a purpose.”*

## **Implications**

### **Corporate Plan**

11. The proposals set out generally fit with the overarching priority of Developing a Successful Partnership.

### **Financial**

12. No direct financial implications have been identified with making the proposed changes to the Council's Constitution. Some of the alterations could potentially give rise to financial implications depending on circumstances e.g. changes to officer delegations such as the powers of the section 151 officer may result in decisions being taken that might have financial implications.

## **Equalities**

13. None of the proposed changes have been identified as giving rise to any specific equality issues.

## **Environmental**

14. No direct environmental implications have been identified with making the proposed changes to the Councils' Constitutions. Some of the alterations could potentially give rise to environmental implications depending on circumstances e.g. changes to officer delegations such as some of the planning powers may give rise to decisions being taken that might have environmental implications.

## **Economic Development**

15. No direct economic development implications have been identified with making the proposed changes to the Councils' Constitutions. Some of the alterations could potentially give rise to environmental implications depending on circumstances e.g. changes to officer delegations such as some of the planning powers may give rise to decisions being taken that might have economic development implications.

## **Risk Management (including Health & Safety)**

16. Other than identified above, a number of the changes identified seek to better reflect existing legislative requirements and/or deliver clarity of alignment of internal processes and procedures across the Dorset Councils Partnership. Failure to adopt such provisions could render a Council more liable to legal challenge and/or expose the Councils to a greater risk of legal challenge as a result of confusion or inadvertent error.

## **Human Resources**

17. The attention of the union has been brought to both appendix 3 and appendix 4.

## **Consultation and Engagement**

18. All planning portfolio holders, chairs and vice-chairs were given the opportunity in advance to comment on various iterations of the revised Code of Conduct relating to Planning Matters and also the proposed standard planning application delegation. All group leaders have had the opportunity to consider in advance the full extent of changes proposed. The Unions have had opportunity to comment on appendices 3 and 4.

## **Appendices**

Appendix 1 – various textual changes to the Articles, Officer Scheme of Delegations, Procedural Rules and Codes and Protocols.

Appendix 2 – Code of Conduct for Members and Officers Dealing with Planning Matters;

Appendix 3 – Employment and Dismissal Procedure Rules

Appendix 4 – Code of Conduct for Employees

Appendix 5 – proposed revision to planning application delegation

## **Background Papers**

Constitutions of the Dorset Councils Partnership

## **Footnote**

Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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