

Executive Committee

14 March 2017

WDDC Constitution

FOR DECISION/FOR RECOMMENDATION TO COUNCIL

Portfolio Holder(s):

Councillor P Barrowcliff

Senior Leadership Team Contact:

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Report Author:

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Statutory Authority

Section 101, 102 Local Government Act 1972; Sections 9E, 9JA; 9KA,9KC, 9MC
Local Government Act 2000; regulation 18 Local Authorities
(Referendums)(Petitions)(England) Regulations 2011

Purpose of Report

1. To provide Members with an opportunity to comment on the draft new West Dorset District Council constitution.

Officer Recommendations

2. That in so far as they have power to do so Members resolve to agree, but otherwise recommend the following:
 - (a) the Council implements a change in its governance arrangements from a leader / executive to committee model to take effect at the start of the first annual meeting of the Council following a decision by Full Council to adopt this resolution;
 - (b) that save as provided for in (c) below the Council adopt a new Constitution to take effect at the start of the first annual meeting of Council the content of which shall in the first instance be as provided for in Appendix 4 of this report;
 - (c) to the extent that any further change is necessary to the draft Constitution following consideration by the Executive Committee, power is delegated to the Monitoring Officer to identify and make such changes subject to final approval by Full Council;
 - (d) that the Council as part of its committee governance arrangements establish an Overview and Scrutiny Committee;

- (e) power is delegated to the Corporate Manager – Democratic Services and Elections to undertake all action in connection with any publicity requirements relating to the introduction of new governance arrangements;
- (f) that to the extent it is not covered by any other report considered by Full Council at its annual meeting or previously or in the Financial Regulations of the Council, at the same time as the coming into force of the new governance arrangements, the budget approved by Full Council for that financial year be amended so far as is necessary to reflect the new constitutional arrangements including in particular (but without prejudice to the generality of the foregoing) that the Strategy Committee and Officers be given access to the same finances as was available to the Executive Committee and Officers (as the case may be) under the existing arrangements and in this respect power be delegated to the Section 151 Officer to determine and implement the extent of those changes subject to consultation with the Member appointed to be Chairman of the Strategy Committee. Details of any substantive changes not set out in any report as identified above and / or the emerging Financial Regulations to be reported to a suitable Full Council meeting; and
- (g) for the avoidance of doubt, agree that all existing joint arrangements entered into by the Council be carried over and continue in full force and effect upon the coming into effect of the new committee governance arrangements.

Reasons for Decision

3.
 - (a) to meet legal requirements to such an extent as may be required to give effect to a new governance model to commence at the next annual meeting of Council;
 - (b) to put in place a new Constitution reflecting changes previously endorsed by Members that support new committee governance arrangements subject to any necessary subsequent revisions;
 - (c) to enable further changes to the draft Constitution prior to its final adoption including in relation to the Member scheme of allowances;
 - (d) to accord with statutory requirements requiring a formal resolution to appoint an Overview and Scrutiny Committee for the purposes of committee governance arrangements;
 - (e) for the avoidance of doubt to empower the Corporate Manager – Democratic and Electoral Services to perform various publication requirements arising from a resolution to adopt new governance arrangements; and
 - (f) to seek to ensure that arrangements are put in place to enable the budget adopted by Full Council to reflect the introduction of new governance arrangements; and

- (g) to provide clarification of the continuance of all joint arrangements entered into by the Council upon the new committee governance arrangements coming into effect.

Background and Reasons

4. Members will be aware that following a petition and subsequent referendum in 2016 the Council is required to change its governance arrangements from a Leader / Executive to a Committee model.
5. This report seeks to address a number of procedural matters relating to the introduction of new governance arrangements.

Bringing in new governance arrangements

6. There are various legal requirements which arise when a Council changes its governance arrangements. Amongst other things,
 - 6.1 the Council is required to resolve to implement such a change; and
 - 6.2 to publicise certain matters as a consequence of such a resolution.

The recommendations seek to facilitate these matters.

7. There are also inevitably some practical / clarification issues that result from such a significant change. These include the need to ensure that adopted budgets reflect the new arrangements and that there is clarity that the Council wishes for any existing joint arrangements to continue after the coming into effect of the new governance arrangements. The recommendations again seek to address these matters.
8. The introduction of new committee governance arrangements also necessitates the introduction of a new Constitution. As a result of timing issues, it is not possible to produce a fully complete new constitution at this time. The scope to identify further changes is therefore addressed in the recommendations.

The new Constitution

9. In February 2016 when considering proposals as to what a new Committee governance arrangement might look like Members resolved:
that Option 1 be adopted as the broad principles for a new governance structure based on a committee system.
A copy of Option 1 is reproduced as Appendix 1.
10. In January 2017 following various workshops and endorsement by Executive Committee, Full Council resolved to support certain more detailed principles in relation to constitution issues. A copy of those more detailed principles is set out in Appendix 2.
11. A draft new Constitution has been prepared. The draft has been considered by the Audit and Governance Committee and any comments by that committee will be tabled / verbally reported to this Committee.

Reproduced as Appendix 3 is a short description of the main features of change that the new draft Constitution identifies. Appendix 4 contains the full extent of the draft of the proposed Constitution. So far as practicable, all reasonable efforts have been made to reflect the broad principles of what was decided by Members in February and January. The following points are worth highlighting.

February principles

- 11.1 The powers of Full Council are set out in Article 4 – Part A of the draft Constitution. This includes power to determine terms of reference of committees (paragraph 4.06), and identifies what is in any event a matter of law, namely that delegation of a matter by Full Council does not prevent Full Council from also determining such matters (paragraph 4.01). The draft Constitution sets out terms of reference for every committee based on what it is currently understood Members may determine. These would obviously have to be changed if Full Council resolved something different.
- 11.2 The proposals for a new Strategy Committee are set out in Article 7 – Part A of the draft Constitution. It identifies a membership of nine and specifies that the Chairman of Strategy Committee who will be appointed by Full Council will be known as the Leader.
- 11.3 The law requires Full Council to annually review arrangements relating to political group representations. The Constitution does not therefore seek to prescribe that every committee will have political balance (as this may or may not be case depending on the view of Full Council) but does in the summary section – Part A, note that appointment to committees is by way of nomination from political groups unless a decision was taken to dis-apply political balance rules.
- 11.4 Provisions relating to a new Audit Committee are set out in Article 8 of the Constitution. Existing functions relating to governance matters have been removed to reflect the general principles agreed in February 2016, although power to provide input into future constitution changes still remain.
- 11.5 Since the initial proposals were determined in February 2016, a number of changes have been made to existing committee arrangements. In particular, this included the variation of what were by and large two overview and scrutiny committees in the form of the Efficiency Scrutiny Committee and the Policy Development Committee to create the Overview and Scrutiny Committee and the Joint Advisory Overview and Scrutiny Committee. The draft Constitution keeps the most recent names that have been given to committees (rather than those which existed in February 2016 when possible proposals were first considered) but maintains the broad principle of two Overview and Scrutiny Committees (as per current arrangements and those existing in February). As the principles identify that it is ultimately for Full Council to determine the powers of the committees, the draft Constitution seeks to reflect existing Overview and Scrutiny Committee delegated and referred powers

on the assumption that best reflects the likely decision of Full Council in April. Details relating to the Overview and Scrutiny Committees are set out in Articles 6 and 11 – Part A of the draft Constitution.

- 11.6 Since February 2016, the Officer Scheme of Delegation has (almost inevitably) been subject to various tweaks, partly to reflect legislative change. Nevertheless, it is considered that it can still reasonably be seen to follow the broad principles of that which existed following the creation of the Dorset Councils Partnership. The Officer Scheme contained in the draft Constitution largely replicates that which exists at present but has captured some minor further changes primarily to address matters arising from the draft new Constitution but also to correct outstanding errors that were identified in carrying out this exercise. Key changes can be summarised as:
- 11.6.1 wording changes to reflect new committee names and arrangements;
 - 11.6.2 addition of new power to Head of Economy, Leisure and Tourism to better reflect existing powers in relation to harbours;
 - 11.6.3 adjustment to RIPA provisions to reflect new emerging policy; and
 - 11.6.4 adjustment to proper officer lists to reflect new post names and clarify appointment of range of officers to posts to provide cover in the event of absence.

January principles

- 11.7 Rather than seek to predetermine the number of meetings of a committee which Full Council will determine on an annual basis, the draft Constitution simply recognises for each committee that Full Council will determine the ordinary number of meetings.
- 11.8 The powers of the Strategy Committee are set out in Article 7 – paragraph 7.09, Part A of the new draft Constitution. To seek to avoid uncertainty issues arising from the need to reword delegations to committees to facilitate the new constitutional arrangements, Strategy Committee is given the power to make decisions on any matters other than those reserved to Full Council; however, the draft Constitution makes clear that in the event of any overlap on delegations to committees and Strategy Committee the normal intention is for decisions to go to the committee with primary responsibility for such matters.
- 11.9 The Council Procedure Rules are set out in Part B of the new draft Constitution. Provisions relating to the ability of the public to ask questions, make statements, present petitions and have deputations are all clearly set out in those Rules along with Members' rights relating to questions and motions.

- 11.10 The Strategy Committee Procedure Rules, the Access to Information Procedure Rules, the Overview and Scrutiny Procedure Rules and the Budget and Policy Procedure Rules can all be found in Part B of the Constitution and the relevant principles are all reflected therein.
- 11.11 The proposed new Audit Committee contains provision requiring the Chairman to be from the largest party that is different to the Chairman of Strategy Committee (paragraph 8.20). The Joint Advisory Accounts and Audit Committee which was created in 2016 is retained – see Article 11. In relation to other Committees, the current proposals suggest the creation of two standing Licensing Sub-Committees.
12. Where changes have been adopted by Members in the last eight months to the existing Constitution, so far as possible, no material alterations have been made to those matters in the proposed new Constitution and they have therefore been rolled over into the new document. However, in preparing the new draft Constitution, the opportunity has been taken to tidy up certain other elements of the existing Constitution particularly in relation to some protocols. For example, the Joint Protocol for Crime and Disorder has now been removed as it is understood that the arrangements identified within it have now ceased. However, where appropriate, the draft new Constitution now incorporates elsewhere within it relevant elements relating to such protocols e.g. Article 6 – Overview and Scrutiny which now includes more detailed provisions relating to crime and disorder. To the extent that such references had previously been standardised across all three Councils of the partnership, it is intended to take reports to the other Council partners to seek agreement to further amend their constitutions to reflect these changes.
13. Members will note that a few elements of the draft Constitution have yet to be completed (in particular the section relating to Member allowances). This is because such matters can only be determined once there is clarity on Member wishes in relation to the final format of the Constitution. These will therefore be the subject of further update closer to final implementation of the new governance arrangements. Further tweaks may also be needed in the event of additional information becoming available of relevance to the provisions in the draft. In particular, clarity is still awaited regarding current and future arrangements concerning the Joint Staff Appeals Committee.
14. Members should note that some parts of the new draft Constitution e.g. in relation to the Employee Code of Conduct, inevitably has an impact on all Officers of the Council including the author of this report; to that extent therefore all Officers have an interest to a greater or lesser extent in them.
15. There is only very limited time for further material changes to be made to the draft Constitution prior to its consideration by Full Council in April. Full Council will need to have adopted a new Constitution and agreed new governance arrangements prior to the proposals taking effect at annual council.

Implications

Corporate Plan

16. The Council has an objective of *creating a leaner and more focused organisation to protect the delivery of local services* to which the adoption of a new governance model and constitution potentially has some relevance.

Financial

17. There are no financial implications directly associated with the recommendations of this report. However, the ultimate adoption of a new Constitution will create a new governance model with bodies within it which are likely to have access to financial expenditure.

Risk Management

18. In so far as limited time and resources have allowed, all reasonable efforts have been made to deliver a new draft Constitution which is fit for purpose and reasonably reflects the principles identified by Members. However, there do remain uncertainties that cannot be clearly resolved.
19. For example, no attempt has been made to fundamentally review all aspects of the current constitution; as a consequence any issue existing in provisions that have not been reviewed but have been carried forward into the new draft proposal will still remain in the new constitution. Further, there has inevitably been elements of interpretation that have been applied in creating the new draft constitution both in relation to Members' intentions in setting the principles upon which the new constitution has been based and in relation to legal issues which apply when introducing a new governance model (in respect of the latter, the extent of relevant case law is limited as this is not something that happens with any regularity). As a consequence, it is always possible that certain intentions have not been properly reflected and / or there are matters of legal interpretation which ultimately will only be clarified through consideration by the courts. Finally, in a document of such size and complexity there is always the risk that not all issues have been comprehensively addressed and/or there are interactions which have not been identified but which may give rise to matters going forward.
20. Ultimately, any issues that do arise will have to be dealt with as and when they occur; however, there is nothing to prevent the Council from further amending the Constitution at a later date to accommodate required changes.

Consultation and Engagement

19. Consultation has been undertaken with Members through workshops, reports and discussions with the portfolio holder.

Appendices

Appendix 1 – general principles identified in February 2016

Appendix 2 – further principles identified in January 2017

Appendix 3 – description of main features of change

Appendix 4 – draft new constitution.

(This appendix is a large document, 390 pages, and therefore has not been printed with the agenda, the document is available to view on line. Alternatively hard copies are available by contacting Democratic Services)

Background Papers

Existing constitution

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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Appendix 1

Proposals for a committee system in the event that the result of the governance referendum favours the adoption of a committee system for West Dorset District Council:

1. Full Council will have the power to set terms of reference within which each committee is to operate;
2. The current Executive Committee will be replaced by a **Strategy Committee**. Size of committee to be determined by Full Council and may have a membership larger than the current 7. Allocation of committee seats will be based on political proportionality.

Full Council will establish new terms of reference for this committee setting out delegated powers and matters to be referred to Full Council.

3. The following existing committees of the council will continue, including the scrutiny function, which can be retained under a committee system. The committees will retain their existing responsibility for functions (with the exception of Audit Committee which will not have a governance function) and will have the authority to take decisions as established by Full Council. Political proportionality will continue to be applied as set out in the current arrangements for the allocation of committee seats.

Audit Committee

Efficiency Scrutiny Committee

Policy Development Committee

Development Control Committee

Licensing & Appeals Committee

Shared Services Joint Committee (joint committee with WPBC & NDDC)

Gryphon Sports Centre Management Committee

Dorchester Markets Joint Panel

4. There will be the ability for Full Council to take any function it has delegated to a Committee, in place of that Committee: and a Committee may refer or recommend a decision in respect of a delegated function to be taken by Full Council
5. The level of delegation to officers will continue in line with the existing Scheme of Officer Delegations.
6. The appointment of a Leader of the Council will continue, to be appointed by Full Council.

Appendix 2

Article 4 – Full Council (FC)

1. Retain existing Policy Documents for decision by Full Council save for relevant statutory changes
2. Full Council to appoint Chairman and Vice Chairman of Strategy Committee who will also be known as Leader and Deputy Leader

Article 6 – Overview and Scrutiny Committee (O&S)

1. Retain a single O&S Committee.
2. O&S to have 17 members.
3. Keep quorum at 4.
4. Exclude Strategy Committee members from sitting on O&S.
5. O&S members to have same rights regarding sitting in to hear Strategy Committee meetings as other Member
6. O&S to have 6 ordinary meetings a year unless FC determine otherwise
7. No scope to exist to appoint substitutes
8. Sub-Committee quorum to be minimum of three

Article 7 – Strategy Committee (SC)

1. SC to have power to carry out all Council functions other than those reserved to FC or delegated to another committee
2. SC to have 9 members with quorum of 5
3. No scope to exist for SC to appoint substitutes
4. SC to have power to create sub-committees
5. SC to have same ordinary meetings as now unless FC determine otherwise
6. Have section that identifies powers and duties of Portfolio Holders
7. SC to create portfolios and allocate portfolio holders to those portfolios

Council Procedure Rules

1. Have sections which give scope for members of the public to put forward questions, statements, petitions and deputations
2. Annual Council order of business to also include scope for questions, statements, petitions and deputations.
3. Rules to contain clear provisions to enable Members to submit on-notice questions and motions/issues subject to appropriate restrictions
4. Provisions to be included to provide scope for each committee to present an annual update
5. Number of questions Members can ask of various specific areas as of right generally limited to 2 plus certain supplemental questions
6. Maximum of 3 questions /statements from public per meeting
7. Provisions to be incorporated for Portfolio Holder / Leader to present regular reports to which questions can be asked
8. No provisions to be included for Chairman / Vice-Chairman of Council or the Leader to speak as of right at any committee.
9. Incorporate Petition Scheme

Strategy Committee Procedure Rules

1. Maintain Forward Plan but no need for any other further type of Action Plan
2. Provisions in Council Procedure Rules to place items on SC to be the same as other committees with additional recognition of scope to approach Chair to request items
3. Maintain a Key Decision provision which can apply to SC decisions and various Officer decisions as well (see Access to Information Procedure Rules)
4. In relation to both the Forward Plan and Key Decisions incorporate appropriate provisions relating to urgent decisions and other caveats to secure appropriate legal protections for the Council

Access to Information Procedure Rules

1. No need for provision requiring production of Annual Report on urgent key decisions
2. Incorporate identification of rights of O&S to access various documents / reports
3. Incorporate publicity protocol
4. Incorporate provisions that follow government guidance regarding the production of decision records

Overview and Scrutiny Procedure Rules

1. Incorporate Call In procedure Rules to supplement statutory powers of O&S
2. Call in rule to apply to decisions of both SC and its sub-committees
3. Call in rule to provide scope for (a) Chairman of O&S; (b) O&S committee by way of resolution; and (c) 10 non Members of O&S (who are also not all from the same political party) to require the Chairman to call in a decision.
4. Call in rule to incorporate appropriate provisions relating to urgent decisions and other caveats to secure appropriate legal protections for the Council

Budget and Policy Procedure Rules

1. Incorporate appropriate indicative timetabling provisions including scope for SC to potentially revisit decision of FC regarding annual budget issues.
2. Incorporate appropriate provisions / caveats to secure appropriate legal protections for the Council in the event of need to deviate from indicative procedures.

Other

Audit and governance

1. Audit and Governance Chairman to be from different party to majority political party of Council
2. Retain sovereign Audit and Governance Committee and Joint Audit Advisory Committee – do not have remove sovereign Audit and Governance Committee and replace it with joint Audit and Governance Committee

Appendix 3

The change to the governance arrangements of West Dorset District Council will mean that rather than operating a leader/executive model the Council will operate a committee model. Under the leader/executive model various “executive” powers rest with an appointed Leader of the Council and these are delegated down to executive committees, officers etc. The new committee model means that Full Council has all the powers of the Council. A number of these powers will be delegated to committees created by or with the agreement of the Council and to officers.

The proposals for the new committee arrangements are for the Council to have a new Strategy Committee which will take the lead on a number of the most significant issues concerning the Council. The Council will retain various other committees which will perform a variety of its functions including those of a “quasi-judicial” nature such as in relation to planning and licensing. The intention is for the Council to operate a sovereign Overview and Scrutiny Committee and also a joint advisory Overview and Scrutiny Committee which will operate in conjunction with some other Councils. The proposals do not seek to alter existing joint arrangements that the Council has entered into.

The Council will adopt a new Constitution to reflect changes to governance arrangements. Procedure Rules within the Constitution identify various rights that the Council proposes to give to members of the public to ask questions, make statements, present petitions and attend before the Council as a deputation.