

# Place & Resources Scrutiny Committee

## 21 September 2021

### Dorset Council consultation process

#### For Review and Consultation

**Portfolio Holder:** Cllr S Flower, Leader of the Council

**Executive Director:** M Prosser, Chief Executive

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**Report Status:** Public

#### **Recommendation:**

That the committee notes the information provided in this report, and shares any details of good consultation practice that they are aware of (for example from other councils) to be considered as part of the current consultation and engagement service re-design (see point 10.13 below).

#### **Reason for Recommendation:**

This report provides an overview of Dorset Council's consultation process, as requested by the Chair of Place & Resources Scrutiny Committee.

#### **1. Executive Summary**

This report provides overview briefing on Dorset Council's current consultation process, as requested by the Chair of Place & Resources Scrutiny Committee. The following information was also requested and is answered within this report.

- Does the council have draft consultations checked/audited by an independent person or body to check language, understanding and potential bias in questions?
- How do we encourage responses from all different groups e.g. range of ages, gender, ethnicity etc.?

- Which councils are good at targeting and getting responses from hard to reach groups? Examples of councils whose consultations are considered good practice

## **2. Financial Implications**

None.

## **3. Well-being and Health Implications**

None.

## **4. Climate implications**

None.

## **5. Other Implications**

None.

## **6. Risk Assessment**

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

## **7. Equalities Impact Assessment**

N/A

## **8. Appendices**

- 8.1** A summary of the consultation delivered by the council's central consultation team over the past year is provided at Appendix A.
- 8.2** A summary of the council's legal duties to consult is included at Appendix B.
- 8.3** An outline of different types of consultation and engagement activity is provided at Appendix C.

## **9. Background Papers**

- 9.1 Dorset Council's consultation and engagement policy is attached.

## **10. Dorset Council's current consultation process**

- 10.1 Dorset Council has a specialist consultation function made up of two officers, based within the Communications and Engagement service. There is a senior consultation officer mainly focusing on statutory consultations and a community engagement project officer providing support on statutory consultations and having an engagement role as well.

This team is responsible for designing and delivering many of Dorset Council's high priority statutory consultations. This work includes:

- identifying when consultation is necessary
- designing consultations (including crafting surveys to ensure questions are clear, accessible and impartial / non-leading)
- delivering the consultations (working with colleagues in the communications team) to ensure maximum response from the target audience/s
- analysing the consultation responses
- producing reports to inform policy making and for publication.

10.2 The consultation team works closely with Dorset Council's legal team to ensure consultation is carried out appropriately. It is important to avoid over consulting the public as this can result in 'consultation fatigue' and lower response rates. The team works to good practice guidelines and advice from the national professional body, The Consultation Institute, of which the council is a member.

10.3 Both members of the consultation team are fully trained and highly experienced in designing and delivering statutory consultations. They ensure the quality of the consultations is high, that they meet the legal requirements and collect useful information. The consultation team members have extensive experience in designing consultations and survey questions, using specialist software (SNAP), and delivering these surveys electronically and via hard copy. The team also works closely with the council's equality, diversity and inclusion officer to ensure the council meets its legal requirements.

10.4 Dorset Council's consultations are quite successful in securing responses from 'seldom heard' / under-represented groups. For example, the council's recent consultation on its Housing Allocation Policy was highly rated and held up as an example of national good practice by the National Practitioner Support Service, who commented favourably on the high response rate and the inclusive methodology.

10.5 There is, however, room for improvement: for example, on engaging young people in Dorset. The consultation team recognises that we have not achieved as high a level of engagement with young people over recent months (for example, on the climate emergency consultation) as we would have liked. There are two new initiatives underway which will improve how consultation and engagement reaches under-represented groups in future:

- a) A new Youth Engagement team has been established within in Children's Services which will lead engagement work with young people in Dorset. This dedicated in-house resource should improve

how Dorset Council engages with young people from all backgrounds on a wide range of subjects. The Consultation Team will work closely with the new Youth Engagement team to address this in future.

- b) A new Equalities, Diversity and Inclusion reference network will shortly be established which will give a stronger voice to a wide range of Dorset community groups representing people with protected characteristics. This network will enable Dorset Council to better engage with these communities, both for statutory consultations but also for more informal engagement and co-production work, helping to shape council policy and service design in order to best meet the needs of our diverse communities.

- 10.6 The number of responses to Dorset Council consultation surveys can be seen at Appendix A and anecdotally we believe this compares favourably to response rates seen by many other councils. An example of a successful consultation was the Public Space Protection Order for Dogs carried out last year. That consultation received a huge response (8,600 responses) and the subsequent policy and decision making was carefully informed by consultation responses on this controversial subject.
- 10.7 Consultations are not referendums. They are one element of the decision-making process. Whilst it is important to get a good numerical response, the quality of the responses, geographical spread and balanced demographic of our residents is equally important. In Dorset we have around 380,000 residents, 180,000 households and 20,000 businesses but in most cases, residents will only engage with the council on a consultation if they are personally affected. Interestingly, analysis shows the first few hundred responses will normally set the tone for the entire consultation, which rarely shifts significantly as responses come in.
- 10.8 Dorset Council consultation surveys are usually “open surveys” available to all residents, business and partners, rather than statistically controlled sample surveys. Prior to launching surveys, they are tested to ensure functionality, clarity and fairness.
- 10.9 The consultation team produces a plan for each statutory consultation and works with colleagues in the communications team on a separate communications plan. The communications plan focuses on audience and stakeholder analysis and outlines the best methods to ensure those audiences and stakeholders are engaged. Depending on the audience, consultations may include roadshows, evening sessions, online focus groups, and a range of other activity to reach and engage particular groups. Specialist clubs and groups may also be targeted to ensure we reach specific respondents. Part way through a consultation the diversity data is examined to see how representative the profile of respondents is

compared to the wider Dorset population, and to decide whether action is needed to gain more responses from a particular group. The team also monitors response rates throughout the consultation and varies communications accordingly. For example, if responses are low, targeted paid-for social media advertising can be used to reach people from particular age groups or locations.

- 10.10 The consultation team also specialises in analysing the data and publishing the results. All statutory consultations are written up and published. A consultation report is often a key element of the report going to elected members to make decisions. We understand the importance of our reports being accurate and know that we must be prepared for them to be open to scrutiny and to potential legal challenge. This is an important aspect of the team's work as a failure to consult properly and adequately can lead to a decision being overturned in the courts.
- 10.11 The analysis and reporting for statutory consultations are normally done centrally to ensure that any expectations of a service department about what the outcome of consultation should be do not influence the results. Accuracy and robustness of the results is always strongly defended. Results are not normally externally scrutinised as this would require duplication by an external agency of the analysis work done in-house and the cost of this would be financially prohibitive as well as adding significantly to project timescales. We know though that there is the potential for scrutiny by the courts as part of legal challenge to council decisions influenced by the outcome of consultation and that is part of why we follow the robust approach outlined above.
- 10.12 All consultations are publicly available via the '[consultation tracker](#)' on the council website. All findings and reports from consultations are also published on these web pages, so the whole process is fully transparent to the public.
- 10.13 Consultation and engagement work is also delivered outside the central team. The central consultation team focuses mainly on delivering most of the council's statutory consultations, including those which are likely to be particularly controversial. The team also provides advice and support on other surveys and engagement activity led by officers within directorates. An example of this supporting role is the recent Local Plan consultation which was led by the Planning Team.
- 10.14 On occasion external consultancy firms are commissioned to carry out consultation and engagement work where additional capacity is needed. For example, we commission an independent research agency to conduct the annual residents' survey which provides statistically representative

views of the population of the Dorset Council area, providing vital data for monitoring the council's performance and delivered at a cost of £24,000.

10.15 A review of all consultation and engagement activity across the council is currently underway as part of the Customer Services transformation project and the implementation of the new customer platform. The stated objective of this project is to: "Improve engagement with our external communities and demonstrate that their voice is being heard within the council, in ways which are consistent and appropriate, defining the role of the central team and responsibilities of other teams."

10.16 As part of the brief for this report, Scrutiny committee members asked "Which councils are good at targeting and getting responses from hard to reach groups? Examples of councils whose consultations are considered good practice." Good practice from other councils will be explored as part of the service re-design project.

**Footnote:**

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

**Appendix A – a list of Dorset Council consultations delivered by the central consultation team over the past year**

<b>Consultation title</b>	<b>Approx date</b>	<b>Total response</b>	<b>Audience</b>	<b>Comments</b>
Garden Waste Customer Satisfaction Survey, 2021	Aug-21	6,770	Current users of the service and previous/potential users	85% of respondents were current users of the service. Large response from right across the council area.
Broadband Survey	Aug-21	1,302	Asking residents, businesses and other stakeholders about their broadband to gain a thorough understanding of stakeholders' views on the current level of broadband provision in Dorset	Good response. Yet to be fully analysed
Household Recycling Centre Access Policy Review	Jul-21	3,289	Consultation with users of household waste sites about access for different vehicle users	Large response from across all different user types to help inform policy on access
Car Parking Permits	Jul-21	1,920	Consultation about potential long and short stay parking permits for council car parks	Wide range of ages responded, including many people of working age. 51% of respondents were employed/self employed.
St Mary's School Shaftesbury	Jun-21	1,430	Consultation with local residents and wider SEND community	Good solid response. 32% came from within 3 miles of the school. Only 15% of respondents were over retirement age compared to a Dorset figure of around 30%.
Dorset Homelessness and Rough Sleeping Strategy	May-21	106	Consultation on issues and proposed draft strategy with users, local	Low numbers but good mix of responses by respondent type and well spread over the Dorset Council area and beyond.

			residents and partners	
Park Homes License Fee Consultation	Mar-21	96	Park home residents and site owners about proposed new policy	Small response but very targeted at a particular group of residents. 12% from disabled people which reflects the target audience rather than the wider Dorset population.
Weymouth Harbourside Consultation	Feb-21	1,411	Weymouth residents were being asked to have their say on proposals to enhance the harbour area for families, hospitality, businesses and active travel	A good response number with 83% of responses from residents, 12% from visitors and 5% from business/organisations/other. 150 responses came directly from residents who lived on the harbourside.
Tourist Information Service Review 2021	Jan-21	990	Consultation on the future of Dorset TICs with users, residents and businesses	Good response across the board with 12% from local Dorset businesses
Dorset Council Climate and Ecological Emergency Strategy and Action Plan 2021	Jan-21	1,519	Major consultation on draft plan aimed at a wide audience	Scale of the response was huge with 12,000 comments from around 1,500 respondents. 46% of responses came from older people (65+). Only about 5% were aged under 35.
Blandford Waste Management Proposals	Jan-21	321	All residents but particularly in the local area of the proposed new Household Recycling Centre	Overall a good response with 64.5% of the individuals being Blandford residents.
Dorset Council Equality, Diversity and Inclusion Strategy - Consultation	Nov-20	64	All residents, staff, specialist groups and partners	An example where low numbers do not mean a poor response. Often quality of responses is as important as numbers.
Dorset Council Housing	Jul-20	766	Aimed at all residents but	Large response for this type of survey. 25% of

Allocation Policy			focused on those who need to access social housing through the council's housing allocation policy	respondents were disabled compared to a Dorset figure of around 5%. Around 60% of respondents were already on the existing housing register. Survey nationally praised for its reach and quality.
Proposed Dorset Dog related Public Space Protection Order	Apr-20	8,602	All residents, partners etc but particularly dog owners were consulted on the introduction of a Dorset wide PSPO for dogs	Very large response. 83% of responses were from local residents, 15% from visitors. Sample was large enough to focus on local areas. 64% of respondents were dog owners, giving a fairly balanced view.

## **Appendix B – Councils’ legal duties to consult**

Section 3 of the Local Government Act 1999 sets out a Duty to Consult representatives of a wide range of local persons. Authorities must consult representatives of council taxpayers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. The key question is do residents have a “legitimate expectation” of being consulted, and if they do, councils legally need to consult them.

The requirement to consult can also be a statutory requirement – for example as requirements in Planning legislation or in Public Space Protection Orders. Sometimes the legislation is quite specific and will specify who must be consulted and for how long.

### **How are consultations carried out?**

When undertaking consultation and engagement it must be carried out fairly and in accordance with the **Gunning Principles**. These are 4 fundamental principles for carrying out consultation to ensure the council is not at risk of being taken to judicial review.

The principles are:

1. Consultation must take place when the proposal is still at a formative stage.
2. Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response.
3. Adequate time must be given for consideration and response; and
4. The product of consultation must be conscientiously taken into account.

Each of these principles are explained further below;

### **Proposal at a formative stage**

A decision should not be pre-determined before consultation is undertaken. The decision maker cannot consult on a decision that it has already made. It would be unfair to do so but also pointless.

This does not mean that the decision-maker must consult on all possible options of achieving a particular objective. The decision-maker can have a ‘preferred option’ so long as it is prepared to change course if persuaded to do so subject to the outcome of consultations. The key saying is that the organisation should have “an open mind but not necessarily an empty mind”. Participants must be able to give their feedback and offer up other suggestions.

## **Sufficient reasons to allow for intelligent consideration and response**

Consultees must be given sufficient information to enable them to understand the proposal and respond to it with their feedback. Proposals must be clear and not misleading.

Consultees should be made aware how a proposal for consultation has already been considered, including any options that have been discounted and the reasons for this. Consultees should also be aware of how proposals will be considered and decisions made after the consultation process.

## **Adequate time for consideration and response**

Unless statutory time requirements are prescribed, there is no specified time frame within which the consultation must take place.

Decision-makers must form a judgement as to what period of time is appropriate for the consultation exercise in question. Where there has been prior discussion about the issue then it may reasonably decide to limit the time for formal consultation. However, where the information to be disclosed is complex, or not well known to those consulted upon, it may consider that a greater period of consultation is called for to allow for participants to be given sufficient time to have their say. Most consultations would run for 4-6 weeks but some could be for up to 12 weeks.

## **The product of consultation must be conscientiously taken into account**

The decision-maker must give genuine and conscientious consideration to the representations received. The product of the consultation exercise must be considered in finalising any proposals.

The decision-maker does not have to read personally every response provided in the consultation process. However, where a summary is provided, this will need to be comprehensive and accurate.

## **Government's Consultation Principles**

Alongside the Gunning Principles, the Government's Consultation Principles are adopted when engaging and consulting with stakeholders.

The principles state that consultations:

- should be clear and concise
- should have a purpose
- should be informative

- are only part of a process of engagement
- should last for a proportionate amount of time
- should be targeted – ensure the right people are consulted
- should take account of the groups being consulted
- should be agreed before publication
- should facilitate scrutiny
- exercises should not generally be launched during local or national election periods.

### **How residents can challenge consultations - Judicial Review**

If residents or stakeholders feel a consultation has not been carried out when required or not carried out correctly, they can challenge it through a judicial review. For councils, failure to deliver fair, robust and legal consultations carries the risk of a judicial review decision against them, which can lead to reputational damage, minimum costs of £50,000, and require the consultation in question to be conducted again in order to meet the required standards.

## **Appendix C – an outline of different types of consultation and engagement activity**

### **The difference between consultation, engagement and co-production**

Working with our residents is fundamental to Dorset Council. To be a listening council is vital to ensure residents get the services they need, provided in the best way possible. Gathering this understanding is done in several different ways including consultation, engagement and co-production.

**Engagement** is often a more informal process, without a specified format and could include everything from online meetings, surveys, workshops, discussion forums, social media discussions, roadshows etc. It is a more interactive process without any legal formal process. There is no requirement to write it up as often it is feeding into developing proposals.

**Co-production** is a much more two-way process where residents/partners will help to design services, working with the council to ensure residents' needs and requirements are met. There are good examples of co-production being undertaken currently in Children's and Adults' Services.

**Consultation** is a more formal process with legal requirements whereby the council can be challenged over how it has carried out the consultation through judicial review. Consultation can involve methods of engagement described above, but would often include a formal survey and the results would be analysed, written up and made available to the public. Consultations are not referendums; they are just one element feeding into the decision-making process.

# **Dorset Council's Consultation and Engagement Policy**

## **Introduction**

Consultation and engagement are used to seek feedback and input from the council's stakeholders, including residents, partners, communities, voluntary and community organisations and staff.

The Consultation Institute's definition of consultation is: the dynamic process of dialogue between individuals or groups, based upon a genuine exchange of views, with the objective of influencing decisions, policies or programmes of action.

Consultation and engagement can be delivered through a variety of methods including; formal or informal surveys (online, paper, telephone or face to face), workshops, focus groups, roadshows or forums.

Good consultation and engagement has many benefits and allows our service users and communities to help shape and improve our services and service delivery. This in turn can help us to deliver more efficient and effective services, designed to meet the needs of those who access them.

This policy sets a basic level of principles that all consultation and engagement taking place throughout Dorset Council will adopt.

## **Scope of the policy**

This policy applies to all consultations undertaken by or commissioned by Dorset Council with employees, councillors, customers, residents, members of the public, businesses, visitors and other external stakeholders, for example, other agencies and contractors.

Note there is a separate process led by Human Resources for employee consultation in relation to pay and conditions.

## **Why do we consult and engage?**

Section 3 of the Local Government Act 1999 sets out a Duty to Consult representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation.

As well as having a duty to consult we also should consult and engage with our stakeholders as it enables us to build, shape and deliver more well-rounded and

effective services. Seeking views and feedback can potentially offer alternative ideas and highlight impacts we may not have otherwise identified. Although it only forms part of the decision-making process it offers the ability to get first hand feedback and avoid making assumptions about impact of changes or services.

### **Principles of the policy**

When undertaking consultation and engagement it must be carried out fairly and in accordance with the Gunning principles. These are 4 fundamental principles for carrying out consultation and engagement to ensure the council is not at risk of being taken to judicial review.

The principles are:

1. Consultation must take place when the proposal is still at a formative stage;
2. Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
3. Adequate time must be given for consideration and response; and
4. The product of consultation must be conscientiously taken into account.

Each of these principles are explained further below;

### **Proposal at a formative stage**

A decision should not be pre-determined before consultation is undertaken. The decision maker cannot consult on a decision that it has already made. It would be unfair to do so but also pointless.

This does not mean that the decision-maker must consult on all possible options of achieving a particular objective. A decision-maker can consult on a 'preferred option' so long as it is prepared to change course if persuaded to do so subject to the outcome of consultations. Participants must be able to give their feedback and offer up other suggestions.

### **Sufficient reasons to allow for intelligent consideration and response**

Consultees must be given sufficient information to enable them to understand the proposal and respond to it with their feedback. Proposals must be clear and not misleading.

Consultees should be made aware how a proposal for consultation has already been considered, including any options that have been discounted and the reasons for this. Consultees should also be aware of how proposals will be considered and decisions made after the consultation process. This includes any other evidence or work that will be considered as part of the decision-making process.

If information provided to consultees is incorrect or misleading, or does not give the true reasons for putting forward the relevant proposals, then this may constitute a sufficient flaw in the consultation process to lead to a quashing of the subsequent decision.

Although there is no general obligation to disclose unpublished internal advice or representations from other consultees, that remains subject to the overarching requirement to give sufficient reasons for consultees to be able to respond intelligently. If a proposal has been informed by private representations, those representations should be made available to consultees.

Note that if a consultation is taken to Judicial Review, the powers allow for all paperwork, emails and notes around a decision to be submitted.

### **Adequate time for consideration and response**

Unless statutory time requirements are prescribed, there is no specified time frame within which the consultation must take place.

Decision-makers will have to form a judgement as to what period of time is appropriate for the consultation exercise in issue. Where there has been prior discussion about the issue then it may reasonably decide to limit the time for formal consultation. However, where the information to be disclosed is complex, or not well known to those consulted upon, it may consider that a greater period of consultation is called for to allow for participants to be given sufficient time to have their say.

Also, consideration should be given if a consultation is going to be ran over a school holiday period. Depending on the subject of the consultation it is often necessary to extend the consultation period.

### **The product of consultation must be conscientiously taken into account**

The decision-maker must give genuine and conscientious consideration to the representations received. The product of the consultation exercise must be considered in finalising any proposals. The decision-maker must embark on the consultation process prepared to change course if persuaded by that consultation process to do so.

The decision-maker does not have to read personally every response provided in the consultation process. However, where a summary is provided, this will need to be comprehensive and accurate. It is always sensible to make available to the decision-maker all the representations, so that they can access them if they wish.

### **Government's Consultation Principles**

Alongside the Gunning Principles, the Government's Consultation Principles should be adopted when engaging and consulting with stakeholders.

The principles are;

- Consultations should be clear and concise
- Consultations should have a purpose
- Consultations should be informative
- Consultations are only part of a process of engagement
- Consultations should last for a proportionate amount of time
- Consultations should be targeted – ensure the right people are consulted
- Consultations should take account of the groups being consulted
- Consultations should be agreed before publication
- Consultation should facilitate scrutiny
- Government responses to consultations should be published in a timely fashion
- Consultation exercises should not generally be launched during local or national election periods.

### **Further Support for Consultation and Engagement**

Dorset Council's Consultation and Engagement team provides support and advice on the design and delivery of any consultation and engagement activity. The team must be involved in any statutory consultation delivered by the council.

Please give the team as much advanced notice as possible of any consultation or engagement activity.