

Report to: **Audit Committee**

Date: **12 March 2019**

Title: **Review of the Council's Constitution: Rules of Procedure, Members' Planning Code of Practice and Petition Scheme**

Portfolio Area: **Resources and Performance (Cllr Edmonds)**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **The Committee recommendations will be presented to the Council meeting on 26 March 2019**

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RECOMMENDATION

That the Audit Committee RECOMMEND to Council that:

- 1. the amendments to Part 4 (Rules of Procedure) of the West Devon Borough Council Constitution (as summarised in paragraph 2.5 of the report and fully outlined at Appendix A) be approved and formally adopted;**
- 2. the draft Members' Code of Good Practice - Planning (as attached at Appendix B) be adopted; and**
- 3. the amended Rules for the Petition Scheme (as attached at Appendix C) be adopted.**

1. Executive summary

1.1 The Council is required to formally adopt its Constitution.

1.2 The Audit Committee is responsible for '*maintaining an overview of the Council's Constitution*' and for making any necessary recommendations to the Council.

- 1.3 This report seeks to ensure that Part 4: 'Rules of Procedure' of the Constitution is amended to reflect the changes that have either occurred in the Council over the previous year, or to implement any necessary changes to ensure that it is up to date, lawful and reflects the Council's current practices and priorities.
- 1.4 This report also presents a draft Members' Code of Good Practice - Planning (Appendix B refers) for the consideration of the Committee.
- 1.5 Finally, Appendix C sets out the revised rules in relation to the Petition Scheme, which has been amended in light of the Localism Act 2011.
- 1.6 The Committee will recall that the Constitution Review was presented to its last meeting on 22 January 2019. When the recommendations were subsequently presented to the Council on 12 February 2019, it was agreed that further revisions were required and the decision was therefore taken to defer for further consideration at the next Audit Committee meeting on 12 March 2019.

2. Background

- 2.1 In order that the Audit Committee can make informed recommendations to the Council on the adoption of the Constitution, the Committee is required to undertake regular reviews;
- 2.2 Changes to the Constitution are made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes and are effective from the date of approval (unless otherwise agreed by Council). Examples over the past year include:
 - Revisions to the Development Management and Licensing Public Participation Scheme;
 - Adoption of the Discretionary Powers contained within the Animal Welfare Act 2006 and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018;
 - Approval of a revised Planning Scheme of Delegation; and
 - The establishment and appointment of additional Member Bodies (e.g. the Tavistock BID).
- 2.3 In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. The changes that have been made under these powers this year mainly relate to minor amendments to officer job titles and format and style;
- 2.4 Members will recall that the first part of the Review was undertaken last year and this report presents the second part of the Review that focuses on Part 4 (Rules of Procedure) and the establishment of a Members' Planning Code of Practice. The intention is for the Committee to review

the Rules of Procedure and the Code of Practice before then making its recommendations to the Council.

2.5 Whilst the proposed changes are not extensive (and are fully outlined at Appendix A), the key amendments to the Rules of Procedure are summarised as follows:-

- The creation of a standalone set of Procedure Rules for the Hub Committee;
- The inclusion of a separate set of Procedure Rules for 'Other Bodies' that includes the Audit Committee; Development Management & Licensing Committee; and Council Tax Setting Panel;
- In line with the recent DM Peer Review, to make it a constitutional requirement whereby the role of the Chairman of the Development Management and Licensing Committee cannot be held by the Leader of the Council (NB. if approved by the Council, it is recommended that this amendment does not come into effect until the 2019/20 Municipal Year); and
- Changes to the Access to Information Procedure Rules to reflect the fact that the Council membership now operates a 'paperless agenda' way of working.

Since there are no proposed revisions to the Council Procedure Rules, these have not been appended to this report.

Members' Code of Good Practice - Planning

2.6 At its meeting on 24 July 2018, the Council approved the formation of a Members' Planning Code of Practice Working Group (Minute CM 26 refers) and appointed Cllrs Cheadle, Lamb, Mott, Parker, Pearce and Roberts to serve on this Group;

2.7 The primary purpose of the Working Group was to develop a draft Members' Code of Good Practice - Planning for the ultimate adoption of Council;

2.8 The Group has since met formally on two separate occasions. During the meetings, the Group considered example Codes of Practice and took into account the 'Probity in Planning' guidance issued by the Local Government Association. At its last meeting, the Group recommended approval of a draft Code (as attached at Appendix B).

Petition Scheme

2.9 The Localism Act 2011 has repealed the rules on petitions, and therefore the requirement to have a petition scheme no longer applies. The Localism Act makes petitions a local issue and therefore the Council can decide whether it wants provisions for petitions and if so what rules it wants to reasonably apply.

2.10 The Monitoring Officer has suggested wording for revising the Council's Petition Rules and these are set out at Appendix C.

3. Outcomes/outputs

3.1 The Council is required to have an up to date Constitution which reflects the law, its working practices together with best practice to ensure that it delivers efficient services and lawful decisions. The Constitution is a living document and changes are made throughout the year when necessary.

4. Options available and consideration of risk

4.1 The options are limited as the Council has a statutory duty to adopt its Constitution annually and to review that document to ensure that it is fit for purpose and reflects both statutory requirements and the Council's working practices;

4.2 If the Council does not review the Constitution there is a risk that the Council may make unlawful decisions with a consequent risk of challenge;

4.3 Senior Officers have been consulted on the Constitution and any necessary amendments incorporated.

5. Proposed Way Forward

5.1 The Audit Committee is asked to review these parts of the Constitution and make any necessary recommendations to Council in order that the Constitution can be adopted in time for the May 2019 local elections.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Local Government Act 2000 requires the Council to have (and to maintain) a Constitution. The Monitoring Officer must review the Constitution annually and make recommendations to the Audit Committee, who in turn must recommend its adoption to full Council. Only the Council can approve and adopt the Council's Constitution.
Financial	N	There are no financial implications to this report
Risk	Y	There is a risk arising from a failure to review the Constitution and approve the necessary changes because it may lead to unlawful decisions being taken by the Council. By undertaking an annual review of the Constitution the Council mitigates this risk by ensuring that the

		Constitution is up to date and reflects current practice and law.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None arising from this report
Safeguarding		n/a
Community Safety, Crime and Disorder		n/a
Health, Safety and Wellbeing		n/a
Other implications		n/a

Supporting Information

Appendices:

- A: Revised Draft Procedure Rules;
- B: Draft Members' Planning Code of Practice;
- C: Petition Rules

Background Documents:

Constitution Reviews 2017 and 2018 (Part 1).