

Supplementary Information **Constitution Changes**

**HAVANT BOROUGH COUNCIL
COUNCIL
10 July 2019**

Dear Councillor

I am now able to enclose, for consideration at next 10 July 2019 meeting of the Council, the following supplementary information that was unavailable when the agenda was printed.

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NON-EXEMPT

HAVANT BOROUGH COUNCIL

Council

10 July 2019

POLICY APPROVAL FOR A PROPOSED REVISION OF HAVANT BOROUGH COUNCIL'S CONSTITUTION, AND TO IMPROVE EFFICIENCY BY THE ALIGNMENT OF THE CONSTITUTIONS OF HAVANT BOROUGH COUNCIL AND EAST HAMPSHIRE DISTRICT COUNCIL.

Report by: Head of Legal Services

FOR DECISION

REPORT OF: Chairman of Governance, Audit & Finance Board

Director: Lydia Morrison

1.0 Purpose of the paper

- 1.1 This paper is similar to papers submitted to East Hampshire District Council for approval of approach and outline policy. Havant Borough Council is asked:
- 1.2 To consider the policy principles for a proposed review of the Havant Borough Council constitution and to consider the benefit of closer alignment to achieve consistency in approach and process efficiency; and
- 1.3 The paper is a mirror of the paper to each full Council and each Council will be asked to match fund the work.

2.0 Recommendations

- 2.1 Agree the review of the constitution and methodology set out in 3.2.
- 2.2 Approve the policy principles in Appendix 1.

- 2.3 Approve the creation of a single purpose joint subcommittee with Havant Borough Council of 8 Members.
- 2.4 Appoint 4 Members from Havant Borough Council to the subcommittee.
- 2.5 Invite the Sub-Committee to report to full Councils in October 2019.
- 2.6 Approve the budget to a maximum of £20,000 from Havant Borough Council General Reserve.

3.0 Executive summary

- 3.1 The constitutions of both Havant and East Hampshire authorities are based on the standard model constitution. Over time the model constitution has been amended to reflect specific local need or an individual presenting issue. This has resulted in constitutional drift that gives rise to internal conflicts and inconsistencies within each constitution. The creation of short-term fixes become long term anomalies which are embedded in the document. As the constitution is the rule book for the organisation a rationalisation and periodic 'declutter' and revision is required to keep them fit for purpose.
- 3.2 The suggested process to be adopted is:
 - a) Joint sub-committee of both Councils comprising 8 Councillors (4 Councillors from each authority). The Chairman to be elected by the committee and the Vice chair form the other council. (Terms of Reference Appendix 2)
 - b) Review and redraft of the constitutions with policy clarification and input from the sub-committee when required.
 - c) Sub-committee reports back to both Councils in October with a report setting out:
 - i) the proposed draft of the revised constitution and any recommendations for further work
 - ii) any recommendations for any policy clarification which the sub-committee has been unable to resolve
 - iii) the proposals and timetable for implementation of the new constitution
 - d) Provide to each Councils Scrutiny Committee/Board a draft constitution for consideration by March 2020.
 - e) Recommend a new constitution for each Council in April 2020 prior to annual Council in May 2020.

4.0 Additional budgetary implications

4.1 Havant Borough Council:

2019/20	Annual Recurring
£20,000	£0

The Chief Finance Officer has confirmed that this funding can be released from the General reserves.

4.2 East Hampshire District Council:

2019/20	Annual Recurring
£20,000	£0

The Chief Finance Officer has confirmed that this funding can be released from the Business Transformation reserves.

5.0 Background and corporate strategy and directorate business plan(s)

- 5.1 Each Council has run a shared service arrangement over many years. These arrangements involve sharing resources and staff across both authorities. The constitutional ‘rule book’ for each authority is different. Each authority has different processes, policy approaches and committee structures.
- 5.2 It is suggested that greater efficiency may be obtained by alignment of the ‘rule book’. If there are similar process and structures in each Council, there is an obvious saving that results from the adoption of the same approach. Officers will be working to one set of rules, albeit rules of different organisations, there will be clarity on committee delegation and decision making. It is important that officers have the same scheme of delegation. Currently, an officer in one authority carryout a role across both organisations may have different delegated authority. This creates an inherent risk for errors, conflict of interests and so on.
- 5.3 A digital constitution is also far more accessible to officers and members, although care must be taken to retain access to non-computer or internet users, the use of a digital constitution with Mod Gov should considerably reduce the paper requirement in the Democratic Core.
- 5.4 If each Council agrees the same policy principles the development of local policy framework may also be aligned. For example, each licencing committee may well adopt the same gambling framework policy or licensing policy. This will give the public and service users greater certainty over far wider area on the approach to certain activities. Business communities may

consider a similar approach helpful to them, and subsequent consultations may be undertaken together.

- 5.5 Alignment of the constitution will also aid in the alignment of the work force. If both sets of employees are carrying out similar roles with similar delegations the complexity of workforce alignment may be simplified. The final alignment of the constitution and workforces will reflect the outcome of the shared service arrangement agreed by each Council.
- 5.6 If the alignment of the constitution, structure and workforce is achieved both Councils will be free to consider if the benefits realised adequately reflect the outcomes desired. The Councils would then be able to consider any remedial action to improve performance and reduce cost or consider further or alternative steps.

6.0 Options and reasons for recommending relevant option

- 6.1 Option 1: Do Nothing. This option is the simplest and requires no effort and little resource. However, it means the authorities will remain static, and lacking the ability to change and meet new challenges. Most importantly the current constitutional limitations remain, and the existing inefficiencies will remain.
- 6.2 Option 2: This will provide a complete refresh of each constitution, remove errors and omissions, inconsistencies and statutory shortfalls. It will also consolidate the short-term amendments in respect of the desire for increased transparency and accountability in decision making and align these changes with clear policy proposals.
- 6.3 RISK:

OPTION	FOR	AGAINST
1	No/Little cost. Easy Makes no contribution to meeting the goals of the organisation.	Stagnation of the authority no acknowledgment of the need to change increasingly outdated approach to public sector constitution and corporate governance. This leads to increased risk of failure of governance and finance.
2	Reduced risk of challenge as systems updated and in line with statutory requirements. Improved governance should lead to better evidence led decision making that has a	Some resource impact, including training and increased engagement and ownership by members.

	greater chance of improved outcome. Reduced risk of poor, or financially unsound decision making. Increased transparency and possibility for public engagement.	Will require Officer resource to amend constitution, proof read, maintain the digital integrity.
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6.4 Quality & Equality Impact Assessment

None. However, care must be taken at implementation to ensure equality of access to the digital constitution irrespective of physical or digital access limitations.

7.0 Resource implications

7.1 Financial implications:

This proposal falls outside of the current budget and would require a commitment up to £20,000 from each Council from reserves; The Chief Finance Officer has confirmed that the EHDC funding can be released from the Business Transformation reserves, and the HBC funding can be released from the General reserves. The potential savings are all system and process based and it is not possible to accurately anticipate the full impact. The digital impact will likely be represented by a cost incurred through Capita. This cost will not be incurred unless the revised constitution is implemented therefore that cost is not sought at this time, any underspend from the main work stream will be used to offset this cost.

7.2 Human Resource implications:

There will be additional resource required externally to assist in drafting and ensuring we are updated to all current legislation. The internal legal support will be met from existing resources. The further impact on the digital services is likely to be represented in financial terms through Capita.

7.3 Information Governance implications:

The review will update the need to know and information sharing sections of the constitution. The digitisation of paperwork allows embedded tracking on exempt information, to help prevent deliberate or improper disclosure.

7.4 Other resource implications:

Members time for the committee and full Council.

8.0 Legal implications

The proposed amendments will reduce the risk of legal noncompliance. Correct the current omissions in the constitution and provide for a general updating. The model constitution is based on a pre-Localism Act 2011 model and some of the newer statutory provisions have yet to be incorporated. Similarly, the impact of the general power of competence and the greater flexibility now required of Councils, e.g. potential investment or development strategy etc. may be enhanced through the review.

9.0 Significant risks

The do-nothing option risks future challenge. The risk of challenge increases over time as the gulf between the minimum statutory provisions and the wording widens. Equally the risk of officers failing to realise any omission will increase in time. Although many provisions are not in daily use over time it is inevitable some of the outdated provision will need to be relied upon and a reputational risk to the authority may occur.

10.0 Consultation

This proposal has arisen following the interim Head of Legal Service initial review. Cabinet has been consulted. This matter was considered at the Governance Audit and Finance Committee. A full briefing has been provided to East Hampshire's Scrutiny Committee and the Committee has considered the proposal and are recommending a similar approach to East Hampshire Council.

11.0 Communication

This will be implemented as soon as reasonably practicable on the amendment to the constitution.

The constitution will be republished in its amended form.

Appendix 1 - 2

Appendix 1 – Policy
Appendix 2 – Terms of Reference Sub Committee

Agreed and Signed off by:

S151 Officer: 24 June 2019
Portfolio Holder: 3 July 2019

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APPENDIX 1

Social Policy & Political Policy Considerations

Constitutional review

Purpose	Key Issue	Impact and examples	Cost Impact
Make the document digitally accessible	It is proposed we should make the constitution as accessible as possible. The approach to drafting is to make the constitution 'digitally' compatible so that it can be easily read on screen and that wherever possible appendices and none core documents are cross referenced to digital media sources e.g. hyperlinks etc	This will confirm a policy of digital working for Members and Officers. There are constitutional and legal requirements that will be primarily digital which will include, declarations of interests, notifications, codes of conduct etc. This will then clearly cross reference to mod.gov for digital copies of papers and agendas. Reduce printed waste.	Improve accessibility for the public. Reduced print costs
Promote Digital First Agenda	Capturing information from Members and Officers, in a straight to digital format.	Online procedure for recording and publishing gifts, declarations etc.	Streamline process and reduce cost
Align as practicable the Constitutions of Havant Borough Council and East Hampshire District Council	To give consistency and efficiency in the governance process of both authorities. Similar committee structures, and ToR's delegations and financial limits	Efficiency in standardised process across both authorities. Common understanding of process. Reduced opportunity for officer/member confusion. Provide methodology for creation of joint committees as required. Consistency in training and induction of new members.	Reduce unnecessary administration costs and improve resilience in decision making
Alignment of Non-Executive decision making structures.	Review Terms of Reference and numbers of non- executive or regulatory Committees.	This will provide a mechanism for training and delivery of members and committees to be aligned. Similar Committees may then wish to assess their policies and where appropriate consider alignment.	Reduce administrative burdens and non-productive officer support and remove duplication of officer serviced groups.
Improve clarity of delegation for Non-Executive functions	Provide clear authority by officer/role and route for delegation to other officers on regulatory and other non-executive functions.	Allow for rapid decision making for regulatory services such as Fly tipping/Antisocial behaviour or revocation of licences. Remove the risk of different delegations coming into play at different times in each authority	Quicker and more timely decisions at less cost. Easier for officer to evidence following the correct procedure
Improve Transparency and	Clarity on Policy frameworks and delegations to the executive function.	Increase delegation for Chief Officers/Directors on issues that are clearly within the policy	Control and improve the number

Accountability, Reduce unnecessary administration costs associated with decision making.	Increase clarity of all officer delegations. Key decision definition to be reviewed. Review need for Articles and define the policies included in the framework documents. Clarify the status of policy or resolutions in the chamber.	framework. Outside funding bids and business cases etc. to be clearly delegated to Officer/Cabinet Member. Clarify the distinctions between the roles of cabinet and council.	and consistency of decision papers. Ensure the decision making is undertaken in the correct forum.
Improve speed, flexibility and resilience in decision making.	Focus Member involvement to policy issues where they can best add value and make decisions.	Clear distinction between Member policy decisions and operational and officer decision.	Quicker and more timely decisions at less cost and administration, more likely to have followed correct procedures
Improve speed, flexibility and resilience in decision making	Update to contract procedure rules to ensure a streamlined value for money and best value process. Reduce the detail in the constitution and provide secondary guidance to cover process issues	Provide the ability to update process as needed whilst constitutional authority is retained.	Quicker and more timely decisions at less cost and administration, more likely to have followed correct procedures
Improve speed, flexibility and resilience in decision making	Align all the financial values and review delegation limits across the Council's Financial Regulations, including the Contract Procedure Rules, and the Treasury Management Framework	Make effective decisions at lower cost align delegations to ensure decisions are made at the correct level. Align process. Similar methodology across both council will allow for potential future shared procurement.	Quicker decisions at lower cost being made at the correct level with respect to financial limit and risk
Improve performance and efficiency.	Similar approach and training to staff and approach to delegations. Gives officer certainty, and reduces risk of errors arising through non-operational differences.	Help facilitate fully integrated workforce with officers undertaking like of like roles and responsibilities in both organisations.	Consistently trained staff following one process across both authorities.
Improve performance and efficiency.	Member training on governance, decision making, budget, financial and service resilience.	Compulsory training to be completed for members of all committees. On line training through a learning portal where possible. This should support effectiveness of appointments to outside bodies. Publish members training attendance.	Ensure public funds achieve value for money
Improve Transparency and	Update to the media engagement policy, to ensure adequate social media	Policy to sit alongside constitution with other codes of conduct	Improved more efficient and transparent

Accountability, performance and efficiency	guidance for Members.		communications with citizens
Transparency and Accountability	Improved rules for sharing of information by cabinet with the scrutiny function. Review procedures for O & S and call in. Create methodology for transparent pre-scrutiny process and align scrutiny with guidance issued May 2019	To better inform scrutiny and avoid unnecessary call in. Improve the understanding of O & S critical friend function. To improve the quality and focus of debate. Consider resource allocation to O & S	Value for money Improved outcomes efficient use o member time
Transparency and Accountability	Review the procedure rules for council. Improve the quality and focus of debate and citizen engagement. Ensure the Chamber is a fit place for members to debate issues.	Reduce procedural delay and reduce cost of meetings enhance engagement with public. Provide for motions on notice to have an officer briefing note to explain impact on the authority.	Improved more efficient and transparent communications with citizens
Transparency and Accountability	Provide mechanism for early engagement with members on policy development.	Encourage early questioning and attendance at briefing sessions by members. Maintain the debate at political policy level and avoid detailed operational decision questions and the consequential lengthy explanation being prepared by officers for full council. The chamber is the members' opportunity to hold members to account.	Value for money Improved outcomes efficient use o member time

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Appendix 2

Joint Constitutional Sub-Committee

Composition: 6 Councillors comprising 3 councillors from East Hampshire District Council and 3 Councillors from Havant Borough Council.

Chair elected by the Committee.

The Committee will dissolve on no later than the annual council of each authority in May 2020

Terms of Reference

- 1.1 To assist each Council in developing and drafting a revised fit for purpose constitution in accordance with the policy principles approved at full Council.
- 1.2 To advise each Council on the progress of the redrafted Constitution.
- 1.3 To monitor and advise the Council on the best construction of the draft constitution in the light of best practice and any changes in the law.
- 1.4 To decide on, and provide clarity on any policy issue raised during the drafting of the new constitution
- 1.5 To advise each Council on any policy development decision they have recommended to be incorporated into the draft constitution.
- 1.6 To consider and make recommendations to each Council on any other matter that may be referred to the Joint Sub-Committee relating to the redrafting of the Constitution
- 1.7 To advise, facilitate and assist in the expeditious progress of the drafting of the new constitutions and to deliver a final report by 31 May 2020.

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