

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

6 JUNE 2018

Report of the Director of Central Services & Monitoring Officer

Part 1 - Public

For recommendation to Council

1 REVIEW OF CONSTITUTION

Summary

This report updates Members on a review of the Council's constitution

1.1 Introduction

- 1.1.1 On 19 April 2018 the Overview & Scrutiny Committee considered a review of the Council's adopted Constitution. The report outlined proposed revisions to the Council's constitution which arose from a detailed review carried out with the aim of ensuring that all parts of the constitution are up-to-date and fit for purpose.
- 1.1.2 The review also provided an opportunity to re-examine the format of the Constitution in order to avoid duplication and present its contents in a more usable and understandable way to those who read it, including not only Members but also members of the public who may wish to participate in Council business e.g. by attending meetings, making representations etc.
- 1.1.3 The review has been carried out by or in consultation with a number of officers across the Council, including the 3 Statutory Officers (Head of Paid Service, Monitoring Officer and Chief Financial Officer), Management Team, Committee Services, Legal Services and any Officer to whom powers are delegated through the Constitution.
- 1.1.4 Subject to a number of further queries and amendments raised by Members of the Overview and Scrutiny Committee, it was recommended to Cabinet & Council that
- (a) the amended constitution be adopted; and
 - (b) authority be delegated to the Director of Central Services & Monitoring Officer to make any further changes to the formatting of the constitution as he considers appropriate
- 1.1.5 Where the proposed amendments are typographical, appropriate changes have been made to the draft Constitution appearing at **Annexes 1 to 6** of this report. The remaining queries are addressed at paragraph 1.6 below.

1.2 Legal requirements

1.2.1 Section 9P of the Local Government Act 2000 requires that the Borough Council shall prepare and keep up-to-date a constitution containing

- A copy of its standing orders/ procedure rules;
- A copy of its code of conduct for members;
- Any information directed by the Secretary of State;
- Any other information considered appropriate by the local authority;
- In the case of a local authority operating the committee system, the constitution must also contain a statement as to whether it has an overview and scrutiny committee.

1.2.2 A local authority's constitution must be made available at its principal office to members of the public to inspect, and on request for a reasonable fee as determined by the local authority.

1.2.3 A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, including members' allowances schemes, details of procedures for meetings and details of joint arrangements with other local authorities. A copy of that Direction is attached as **Annex 7**.

1.2.4 The Constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure business is carried out in a lawful, transparent and accountable manner. Some of the content of the Constitution is required by law, the remainder is for the Council itself to determine. However, if the Constitution does not follow the law, the law prevails.

1.3 The Constitution of Tonbridge & Malling Borough Council

1.3.1 The present Constitution of Tonbridge & Malling Borough Council took effect on 1 January 2002. It has been modified on numerous occasions since e.g. when there have been legislative changes or changes in personnel/ departmental responsibility. However, a fundamental 'root and branch' review of the Constitution has not previously been undertaken.

1.3.2 The Monitoring Officer has a duty to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. He also has delegated authority to make any necessary amendments to the Constitution to give effect to any decision of Council, Cabinet or a Committee, or consequential upon changes to operational arrangements. Any other amendments to the Constitution may only be approved by full Council.

1.3.3 The present Constitution consists of 7 main parts. These are as follows

Part 1 – Summary and Explanation

This part provides a short summary of the Constitution and how the Council operates.

Part 2 – Articles of the Constitution

This part sets out the 16 Articles of the Constitution, which deal with a variety of matters including the composition of the Council, the Executive and the Overview & Scrutiny Committee. It also sets out how decisions are made and how the Constitution may be reviewed.

Part 3 – Responsibility for Functions

This part sets out the division of responsibilities between the Executive and Full Council, the portfolios of Cabinet Members, the terms of reference for Committees & Advisory Boards and the powers delegated to Officers.

Part 4 – Procedure Rules

This part sets out 9 sets of detailed rules governing how the Council operates e.g. Council and Committee Procedure Rules, Financial Procedure Rules, together with the adopted Petition Scheme.

Part 5 – Codes and Protocols

This part comprises the Members' Code of Conduct and associated protocols, the Officers' Code of Conduct and 3 protocols (Member/ Officer Relations, Responding to external consultations and Overview & Scrutiny Co-operation).

Part 6 – Scheme of Members' Allowances

This part contains the Scheme of Members' Allowances and is reviewed annually to reflect any changes agreed by full Council.

Part 7 – Management Structure

This part sets out the structure of the Council's Management Team, together with a breakdown of service responsibilities within each Directorate.

1.4 Scope of review

1.4.1 As stated above, the review has been carried out by, or in consultation with, a number of officers across the Council. The review has sought to look at a number of key questions, such as

- What works well?
- What could be improved?

- Does it facilitate the efficient conduct of Council business?
- Is the structure right?
- Are decisions taken at the right level?
- Is the constitution sufficiently public facing?
- Is it up to date? i.e. new legislation, proper officer functions?

1.4.2 A copy of each revised Part of the Constitution is attached to the report as **Annexes 1 to 6** respectively and should be read in conjunction with the following summary of key changes that are proposed.

1.4.3 Further amendments to the formatting of the document may be required prior to producing a final version, in order to ensure that the constitution is accessible to the public and Members alike. It was therefore proposed (and agreed by the Overview & Scrutiny Committee) that authority be delegated to the Director of Central Services to make any further amendments to the formatting of the constitution as he considers appropriate.

1.4.4 Members are asked to note that the review has not sought to re-evaluate the model of governance in operation at Tonbridge & Malling Borough Council.

1.5 Summary of key revisions

Part 1 – Summary and Explanation (Annex 1)

1.5.1 The changes proposed to this Part are minor, with only limited updating required.

Part 2 - Articles of the Constitution (Annex 2)

1.5.2 In order to avoid repetition across other Parts of the Constitution, and to address any inconsistencies, the Articles have been amended and reduced in number from 16 to 11. This has led to the proposed deletion from this Part of the Articles relating to the roles of the Overview and Scrutiny Committee, Regulatory Committees, the Standards Committee, the Area Committees and Officers as all of these are set out in Part 3 of the Constitution.

1.5.3 Other drafting changes made to this Part include:

- The purpose of the Constitution has been updated to reflect the vision set out in the Corporate Strategy 2017-2019.
- The list of Plans and Strategies required to be adopted by Full Council has been updated (Article 4.01). A number of the policies listed in the existing version of the constitution have been repealed or superseded so it is appropriate to review the list to reflect these changes.

- The Policies which the Council can decide as a matter of local choice should be approved by full Council has similarly been reviewed to ensure it is up to date.
- The legal position in relation to the appointment of the Leader and Cabinet has been updated (Article 7)

Part 3 - Responsibility for Functions (Annex 3)

1.5.4 This part has been extensively reviewed and updated, with the aim of ensuring that:

- All relevant information concerning the composition, terms of reference and functions of Boards & Committees can be found in one place, rather than in several Parts of the Constitution;
- The Boards and Committees are listed in alphabetical order, to make it easier for the reader to locate the information they require;
- Wherever possible the scheme of delegation has been simplified by reference to generic powers rather than specifying particular sections of legislation. For example, The Director of Central Services is authorised to exercise all functions of the Council in relation to Hackney Carriage and Private Hire licensing. Rather than specifying the legislation or specific sections thereof (which may, in time be amended or repealed), it is suggested that the constitution instead refers to broader responsibilities of the Council. This will obviate the need to update the constitution each and every time a new piece of legislation is introduced/ amended which relates to the specific service area in question and avoid situations arising where the Council is unable to act in a prompt and efficient manner simply because the constitution is silent on whether or not the authority to act fell within a specific Director's responsibilities.

Part 4 – Procedure Rules (Annex 4)

1.5.5 Council Procedure Rules - minor updating has taken place in order to remove any ambiguity between the operation of the Procedure Rules and the Petition Scheme. Some minor updating has also taken place in relation to the rules for public speaking in respect of planning applications.

1.5.6 Access to Information Procedure Rules – this section has been updated to ensure consistency with the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1.5.7 Budget & Policy Framework Procedure Rules – no changes are proposed.

1.5.8 Executive Procedure Rules – no changes are proposed.

- 1.5.9 Overview & Scrutiny Procedure Rules – no changes are proposed.
- 1.5.10 Contract Procedure Rules – this section has been updated to ensure compliance with the requirements of the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016. Minor updating has also taken place to clarify officer delegations and a rule has also been inserted to allow the suspension of CPR on the authority of the Chief Executive and Monitoring Officer where it is urgent and in the best interests of the Council which must be reported to the next meeting of the Executive. This insertion was to cover increased partnership working to ensure that due process can be followed when deadlines may become more challenging due to each partner having to follow their own administrative processes. The requirement for members to attend tender opening has also been deleted as tenders are usually returned electronically and there is an electronic record to show that due process has been followed.
- 1.5.11 Financial Procedure Rules – this section has been updated to comply with the Accounts and Audit Regulations (England) 2015. In addition new provisions have been inserted to cover issues such as granting emergency funding under statutory provisions, Partnership Working and the use of Corporate Credit cards.
- 1.5.12 Officer Employment Procedure Rules – no changes proposed. These rules were last updated on 14 July 2015 to reflect changes to the procedure for dismissal of statutory officers as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 1.5.13 Petition Scheme – the scheme has been updated to clarify the position in relation to electronic petitions and also to align the provisions relating to speaking rights at full Council with those set out in the Council and Committee Procedure Rules. Some minor updating has also taken place. Members are asked to note that the statutory requirement for the Council to have a Petition Scheme in place has now been repealed. However, it is considered appropriate to retain a scheme in order to provide a framework for the public to raise issues of local concern.

Part 5 - Codes and Protocols (Annex 5)

- 1.5.14 Protocol C (Use of Council Resources by Members) has been updated and extended to include new sections relating to Data Protection & Freedom of Information, Use of the Council Logo, Information Security and Social Media.
- 1.5.15 The Members' Planning Code of Good Practice has been updated in a number of respects. These include
- The Code has generally been updated to ensure it reflects current best practice advice e.g. LGA/ Planning Advisory Service guide 'Probity in Planning';
 - The sections on Declaration of Interests and Pre-determination have been brought up to date;

- The section on Site Inspections has been updated to bring it into line with the revised procedure.

1.5.16 The Members' Licensing Code of Good Practice has been reviewed, with the sections on Declarations of Interest and Pre-determination having been brought up to date.

Part 6 – Scheme of Members' Allowances (Annex 6)

1.5.17 No changes are proposed to this section, which is updated annually in line with the decision taken by full Council.

Part 7 – Management Structure

1.5.18 It is proposed to remove this section, as it duplicates information contained within Part 3 of the Constitution.

1.6 Queries raised at Overview & Scrutiny Committee

1.6.1 A number of specific questions were raised at the meeting of the Overview & Scrutiny Committee, which Officers agreed would be considered in further detail prior to reporting to Cabinet. These are set out below.

Part 3 (Annex 3)

(i) Call-in of planning applications

1.6.2 Concerns were raised by some Members over the proposal at Page 71 to make any ward member call-in to the Area Planning Committee subject to the agreement of the relevant Area Planning Committee Chairman. In response to these concerns, the specific delegation (DPHEH 100) has been amended so that the Area Planning Committee Chairman will instead be a consultee to any determination by the Director of Planning, Housing & Environmental Health as to whether the request for call-in is supported with a reasoned justification on planning grounds. Beyond the role of consultee, the relevant Area Planning Committee Chairman will not be required to agree with the proposed call-in.

1.6.3 Members are asked to note that the time limit for making a request for call-in has also been amended, from the 28 day period within the current version of the constitution to a 21 day period within the revised version. In both cases, the period commences on the date of notification of the application (i.e. via List B) to Members. The reason for the proposed change is to align the call-in period to the statutory period for public consultation and objections from other consultees.

(ii) Number of members required to effect call-in

1.6.4 A query was raised as to whether this number was prescribed by statute, or could be locally set. It was further suggested that the number should be lowered from 5 to 3.

- 1.6.5 There is no requirement within the Local Government Act 2000 that a minimum or set number of members be required to effect a call-in. It is instead a matter for each relevant Authority to address through their Executive Arrangements.
- 1.6.6 However, the requirement for at least 5 members set out within Part 3 is inconsistent with other requirements for call-in set out elsewhere in the Constitution (i.e. within the Overview & Scrutiny Procedure Rules in Part 4) which provide that either the Chairman or 3 other members of the Overview & Scrutiny Committee may call-in a decision of the Executive. The stipulation for at least 5 Members within this Part has therefore been amended to either the Chairman or 3 other members of the Overview & Scrutiny Committee to ensure consistency.

Part 4 (Annex 4)

(i) Quorum for Council meetings

- 1.6.7 It was suggested that the quorum for Council should be one-third of the total number of members present, not one-quarter as set out in the draft.
- 1.6.8 The quorum for Council meetings is prescribed by the Local Government Act 1972 (paragraph 6 of Schedule 12), which provides that it should be one-quarter of the whole number of members of the Council.

(ii) Time limit for debating petitions at Council

- 1.6.9 At the meeting of the Overview & Scrutiny Committee, a motion was proposed to remove the 15 minute time limit on debating petitions at full Council. The motion was defeated at the Committee, but the Leader agreed that Cabinet would give the issue further consideration when the revised constitution was submitted to it for approval. It was also agreed that further consideration would be given to the possibility for petitions to be debated in the first instance by Boards/ Committees instead of full Council, as it appeared unsatisfactory for Council to consider petitions relating to subject matters that fell within the responsibility of another decision making body e.g. Cabinet.
- 1.6.10 There is no reason in principle why petitions with over 1500 signatures could not be referred to either Council or Cabinet, depending on whether the subject matter was an executive or Council function. Nor is there any legal requirement for petitions to be considered by full Council in the first instance. Indeed, the process by which petitions are received and considered is entirely within the discretion of the Council. With this in mind, the draft petition scheme has been amended to allow for petitions with over 1500 signatures to be considered by either Council or Cabinet as appropriate.
- 1.6.11 There is similarly no legal restriction on the length of time a petition may be debated by the Council. The imposition of any time constraint and/ or the length of such a constraint is entirely within the gift of the Council. Members are therefore

invited to consider whether they wish to retain a time constraint on petition debates and if so, how long such a period should be.

Part 5 (Annex 5)

(i) Member attendance at training

- 1.6.12 Paragraph A 1.2 of Protocol A provides that any member who fails to attend licensing or planning training without reasonable excuse may not participate in the determination of planning applications or the business of the licensing authority (as the case may be) until such time as they have attended alternative training approved by the General Purposes Committee.
- 1.6.13 A query was raised at the Overview & Scrutiny Committee as to the powers of the Council to exclude members in such circumstances.
- 1.6.14 Counsel's opinion was previously sought by Kent Secretaries on various powers open to Councils in dealing with errant Members under the Code of Conduct. This included advice on removal/ suspension from Committees.
- 1.6.15 The view of Counsel was that, as a matter of principle, the sanction of removing a member from a committee of a local authority would be open to the authority. The removal decision would need to be made by the local authority itself and not by a committee of that authority. However, where the appointment of a member to a committee is the decision of one of the political groups, it was envisaged that only the leader of the relevant political group could remove the member from the committee as the power of removal from a committee yields to the political balance requirements. Accordingly, it would appear that where the committees are governed by the rules of proportionality, the most that can be done in relation to members of political groups is to make a recommendation to the relevant political group that the member be removed from a particular committee or committees. As a matter of practice, the recommendation to the relevant political group should come from the full Council, or from the committee of the Council that is responsible for dealing with the relevant issue e.g. Joint Standards Committee in relation to Code of Conduct issues. Members are asked to note that the position would therefore be different in relation to Independent Members.
- 1.6.16 Members are reminded that the Area Planning Committees are not subject to political balance rules on an individual basis. The Licensing & Appeals Committee is however subject to the political balance rules.

(ii) Use of Council logo

- 1.6.17 Protocol C provides that the Council logo shall not be downloaded, adapted, modified or used other than on the approved letterhead. In order to reflect the use of social media by members, it is proposed to amend this provision to permit the use by members of the logo on social media sites.

1.6.18 Members are also asked to note that functions of the Overview and Scrutiny Committee set out in Part 3 of the Constitution have also been expanded so as to ensure that they fully reflect the functions of the Committee as set out in the current version of the Constitution.

1.7 Financial and Value for Money Considerations

1.7.1 None arising from this report.

1.8 Risk Assessment

1.8.1 As set out above.

1.9 Equality Impact Assessment

1.9.1 None arising from this report.

1.10 Recommendation

1.10.1 Members are requested to

(a) Consider whether they wish to retain a time limit on petition debates and if so, how long;

(b) Subject to any further amendments arising out of the consideration of (a) above, **APPROVE** the proposed revisions to the constitution and **RECOMMEND** to Council that

(i) the amended constitution at **Annexes 1 to 6** be adopted; and

(ii) authority be delegated to the Director of Central Services & Monitoring Officer to make any further changes to the formatting of the constitution as he considers appropriate.

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Background Papers:

Nil