

BRECKLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Governance

To: Overview & Scrutiny Commission – 17 December 2015
Council – 21 January 2016

(Author: Mark Stinson – Executive Manager – Governance)

Subject: Constitution Review

Purpose: To consider the outcome of a review of the Constitution and recommendations arising therefrom.

Recommendation(s):

- 1) That the draft Constitution, at Appendix A, be recommended to Council for adoption
- 2) That Council be recommended to agree that an abridged version of the adopted Constitution be prepared by officers and circulated to members and relevant officers

1.0 BACKGROUND

- 1.1 On 11 April 2013, the Council agreed that a Constitution Review Working Group would be established to work jointly with South Holland District Council to review the current constitutional arrangements of both authorities. The Working Group met a number of times and approved draft Constitutions which were aligned structurally (but which nevertheless continued to reflect the differences between the authorities). Final approval of an amended Constitution rests with Full Council.
- 1.2 The draft Constitution was considered by the Commission on 19 June 2014. The Commission approved the draft. A revised draft was submitted to external lawyers (DAC Beachcroft LLP) for an independent check as to robustness and lawfulness. DAC Beachcroft gave the revised draft a clean bill of health whilst suggesting a number of tweaks/improvements.
- 1.3 Work on the Constitution was suspended in September 2014, with a view to recommencing after the local elections in May of this year. Work did recommence after the local elections, but a number of factors slowed progress: the senior management restructure; abortive work in respect of committee structures; and some very recent/significant legal changes to Standing Orders.
- 1.4 Since the draft Constitution was considered by the Commission, there have been a number of changes to the environment in which the Constitution operates. These are too numerous to list in full, but in short there have been changes in the law; changes in portfolios; the senior management restructure; and changes in how we work with partners (such as the new Shared Management Agreement with South Holland District Council).
- 1.5 Members will recall that the draft Constitution previously submitted to the Panel was based upon the 'Exari' model. The Exari model was produced by the Association of Council Secretaries and Solicitors in conjunction with Dickinson Dees. As such, we can be

confident that the basis of the revised Constitution is robust. The draft Constitution that is attached at Appendix A is a clean copy of the version agreed by the Commission last year. It also incorporates any subsequent changes that have already been approved by Full Council (such as the new rules on appointment of and disciplinary action against statutory officers) – these are not highlighted. New amendments that are substantive in nature are explained in this report and are highlighted so far as possible in Appendix A. A small number of constitutions showing all track changes will be available at the meeting. The amendments are as:

- suggested by DAC Beachcroft LLP
- suggested by officers in order to incorporate provisions that were not complete when the draft Constitution was considered by the Commission (such as the delegations at Section 3 Part F)
- suggested by officers to reflect changes in the law
- suggested by officers to improve consistency and to correct minor errors

1.6 In order to make the Constitution as accessible as possible it is proposed that, once adopted by the Council, officers prepare an abridged version with the key parts that are most relevant to decision-making processes (such as procedural standing orders).

1.7 As members will note, there are a number of amendments in the latest draft. A large number of these are minor in nature. I therefore set out below a summary of the more significant changes:

- i. Glossary of Terms – This has been added for clarity.
- ii. Article 3 (Citizens and the Council) Constitution page 10, paragraph 1.3.1- we have deleted most of the text as this information is available in the Access to Information rules
- iii. Article 4 (The Full Council), page 11, paragraph 4 – Policy Framework – we have listed the local choice plans and strategies that are relevant and have ensured that the list reflects only those local choice plans and strategies that are still in existence. Page 12, paragraph 6 – Functions of the Full Council - To avoid duplication, we have deleted the list of specific Council functions and instead cross-referenced Part 3 of the Constitution which lists these in full.
- iv. Article 6 (Overview and Scrutiny), pages 14 – deletions, duplication (Part 3 Delegations) and/or unnecessary.
- v. Article 7 (The Cabinet), page 15, paragraph 3 – section has been shortened and unnecessary text deleted (the rules are set out in legislation).
- vi. Article 8 (Regulatory and other Committees), page 17, paragraphs 1 & 2 – text deleted as duplicated in Part 3 terms of reference and/or Standing Orders
- vii. Article 13 (Finance, Contracts and Legal Matters), page 27, – text around authentication of documents and the common seal removed as duplicated in new Standing Orders (SO. 50 & 51 Page 93-94). Authorities to institute legal proceedings and authorise officers to appear in court have been brought into line with the proposed delegations in Section 3 Part F
- viii. Section 3, Part C (Responsibility for Executive Functions), page 31 – appointments to outside bodies has been removed and has been placed in Council Functions and Cabinet Functions later in Section 3, as the Cabinet can

make such appointments in respect of Executive Functions, and Council is responsible for appointments related to Non-Executive Functions.

- ix. Section 3, Part D (Council Functions), pages 32-34 – a number of additions have been made to the Council’s functions – some for clarity but most to reflect the allocation of functions under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- x. Section 3, Part D3 (Delegations to the Cabinet), pages 36-37 – a number of additions (and one deletion) have been made to the Cabinet’s functions – some for clarity but most to reflect the allocation of functions under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- xi. Section 3 (Planning Committee), pages 38-39 – Requisitions for information have been moved from Cabinet as they were incorrectly included in the Cabinet terms of reference (the law allocates them as non-executive). Functions relating to Trees have been moved from the Appeals Committee to the Planning Committee.
- xii. Section 3 (Joint Appointments and Disciplinary Committee), page 40 - terms of reference extended to include responsibility for approving staffing policies in respect of redundancy, early retirement and discretionary compensation. This was recommended by DAC Beachcroft LLP
- xiii. Section 3 (Overview & Scrutiny Commission), page 44, paragraph 4 - wording deleted to provide clarity and to avoid Commission not being properly constituted. Paragraph 7 removed and replaced with Paragraphs 8 -10 to bring into line with s9F Local Government Act 2000. Pages 45-47, paragraphs 20-21 deleted and replaced with new paragraphs 20-26. This was recommended by DAC Beachcroft LLP
- xiv. Removed
- xv. Section F (Officer Delegations), page 56-69 this is a new section that did not appear in the draft Constitution previously submitted to the Working Group or the Commission. Our practice to date has been to maintain only a high level list of delegations in the Constitution. This, however, presents a risk should a more specific power be needed. The Section proposes a number of general delegations that will provide the flexibility and legal comfort that will enable action to be taken efficiently and effectively whilst minimising the risk of legal challenge for lack of powers. We propose to maintain, alongside this, a separate log of specific delegations but these will not be included in the Constitution. Key changes include:
 - a. Where a power has been delegated, it automatically includes delegation for action that is incidental to that power
 - b. The delegations can in future be amended by the Monitoring Officer to reflect staffing and legal changes (where there is no material change to the delegated power itself)
 - c. Officers in the Executive Management Team will be able to exercise any of the powers delegated to other officers of the Executive Management Team in that officer’s absence unless the officer concerned directs otherwise
 - d. DAC Beachcroft has produced a full list of all statutory references to ‘Proper Officer’ appointments. That list will be populated for approval and the list will be maintained by the Executive Manager – Governance. A

- number of the Proper Officer appointments are allocated to the Chief Executive under F2 of the delegations.
- e. Officers are able to increase the staffing establishment (by using temporary appointments) provided that the costs are within the overall existing budget of the Council.
 - f. Officers are authorised to approve settlement agreements with a maximum value of £30,000.
 - g. Other staffing delegations changes ensure that they are in line with other parts of the Constitution and with the Council's employment policies.
- xvi. Standing Order 4 (Quorum and order of business), page 70, has been amended on the advice of DAC Beachcroft LLP (how the quorum is calculated when there are vacancies in office).
 - xvii. Standing Order 5 (The Order of Business) pages 71-74 has been updated in accordance with DAC Beachcroft LLP and current law and practice. The introduction of 'Question on Notice' and 'Questions without Notice' was recommended at the Commission's meeting on 19 June 2014.
 - xviii. Standing Order 15 (Voting on appointments), page 82 – the Standing Order has been amended to overcome any deadlock by giving the Chairman a casting vote after two deadlock votes
 - xix. Standing Order 16 (Record of Attendance), page 82 – the Standing Order has been amended to reflect the current practice
 - xx. Former Standing Order 18 (Definitions), pages 82 – the Standing Order has been deleted and moved to the Glossary
 - xxi. Standing Order 25 (Urgent Action), page 85 – the Standing Order gave the Cabinet authority, where urgent action is required, to make decisions falling outside of the policy framework and budget. On the advice of DAC Beachcroft LLP, this has been made conditional upon advice being taken from the statutory officers.
 - xxii. Standing Order 26 (Minor amendments to Policy Framework), page 85 – this Standing Order previously allowed the Cabinet to make minor amendments to the policy framework in limited circumstances and subject to subsequent ratification by Council. On the advice of DAC Beachcroft LLP this has been changed to a requirement only to report to Council (rather than seek ratification).
 - xxiii. Former Standing Order 29 (Application of Standing Orders to Executive Functions), pages 86 – deleted as it is unnecessary and is not comprehensive; on the advice of DAC Beachcroft LLP
 - xxiv. Former Standing Order 32 (Constitution and Terms of Reference of Committees), page 87 – was just a list of standing committees and has been deleted on the advice of DAC Beachcroft LLP as unnecessary and Standing Orders would need changing on each occasion that there are committee changes
 - xxv. Standing Order 41 (Standing Orders to apply to Committees and Sub-Committees) – page 89 & 90 Updated based on legal advice.

- xxvi. Standing Order 42 (Public Speaking), page 90 – on the advice of DAC Beachcroft LLP, the Chairman of any committee, working party, etc. now has discretion at any time to invite a member of the public to speak
- xxvii. Standing Order 54, page 94 (Variation and revocation of Standing Orders) – the Standing Order provides that any motion to add to, vary or revoke standing orders must stand adjourned until the next meeting of the Council. This has been amended to make it clear that a formal report from the Monitoring Officer, proposing to add to, vary or revoke any Standing Order, need not stand adjourned (to enable the Constitution to be amended when needed)
- xxviii. Standing Order 57, page 95 (Vacation of Office by failure to attend meetings) – this has been amended to reflect the fact that, in law, meetings of outside bodies to which a member is appointed by the Council count as attendance for the purposes of calculating the six month disqualification period. The Standing Order has also been amended to reflect current practice – which is that officers deal with the initial stages informally and report to full Council before expiry of the six months only if this becomes necessary.
- xxix. Standing Order 61, page 97 (Disciplinary Action against Protected Officers) – on the advice of DAC Beachcroft, we have added in reference to capability. Members may recall that the Standing Order was approved recently by the Council as a requirement of law.
- xxx. Three new Standing Orders 64-66 Pages 99 - 101 have been added to comply with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001. These deal with the procedures for approving plans, strategies and the Council Tax/budget, as well as the recording of budget decisions.
- xxxi. Standing Order 67, pages 101-102 (Filming/Audio recording of meetings) – introduced to reflect new openness obligations set out in the Openness of Local Government Bodies Regulations 2014.
- xxxii. Financial Procedure Rules page 103 – former paragraph 1.1.4 (definitions) deleted and moved to glossary
- xxxiii. Financial Procedure Rules, page 110 – former paragraph 3.4.6 (requirement to report virements to Cabinet) has been deleted on the advice of colleagues in Finance to reflect current practice
- xxxiv. Financial Procedure Rules, page 112, paragraph 3.7.3 – figures amended to bring into line with the summary limits and controls.
- xxxv. Contract Procedure Rules, page 119, paragraph 2.1.4 – we have included reference to the Council accessing framework agreements let by other public bodies to allow as much flexibility as possible in procurement. This did not appear in the earlier draft but was incorporated in the existing Constitution by Council last year.
- xxxvi. Contract Procedure Rules, pages 126-127, paragraph 9 (and summary table) thresholds have been changed and tendering procedures adjusted to reflect the fact that the new Public Contracts Regulations 2015 now allow contracting authorities to improve access for local suppliers/providers. A detailed review of the procurement regime is being undertaken by the Corporate Improvement and

Performance Team, though it will be some time before this is complete. It is likely that there will then be a need to make further amendments to the Contract Procedure Rules.

- xxxvii. Financial Management Standards, page 156, the value of an item that must be included in an inventory has been increased to £10,000 to bring it into line with accounting policies.
- xxxviii. Access to Information Rules have been included in the draft Constitution – these were not included in the previous draft considered by the Commission. They set out the legal requirements in respect of access to meetings, agenda papers, etc.

1.9 Parts 5 to 8 of the Constitution were not brought before members with the rest of the Constitution in 2014, as they are not the core Constitutional rules. These have now been reviewed and a summary of the changes (or otherwise) is shown below:

- a. Part 5 (Codes and Protocols) – The Members’ Code of Conduct and the Protocol on Officer/Member Relations are the only items that need to be retained in Part 5 of the Constitution. As a consequence, a number of other codes and protocols, such as the Protocol on Planning, have been removed (but will be maintained separately from the Constitution).
- b. Part 6 (Payments to Members) – will be updated in line with the current scheme approved by the Independent Remuneration Panel and Council
- c. Part 7 (Management Structure) – will be updated with the new senior management structure
- d. Part 8 (Glossary) – has been deleted as this is now incorporated in the main body of the Constitution.

1.10 Subject to any comments that the Commission may wish to make, a final version of the Constitution will be submitted to Council for approval in January. Members may be interested to note that the Constitution is likely to be well below 200 pages in length and that the size of other Norfolk Councils’ constitutions range in size from 175 pages to 372 pages.

2.0 **OPTIONS**

2.1 Members may recommend that Council approves the Constitution as amended, approves the Constitution with further amendments or does nothing (in which case the current Constitution will remain in force). The do nothing option is not recommended as a number of changes are proposed in order to comply with legal requirements or are as a result of legal advice.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 To ensure that the Council’s Constitutional rules (i) remain lawful and reflect current practice; (ii) are effective and efficient, thereby enabling a flexible and responsive decision-making process; (iii) do not contain unnecessary content, and (iv) are structured in such a way as to ensure that shared managers can navigate the different constitutions more intuitively.

4.0 **EXPECTED BENEFITS**

4.1 Adoption of the revised Constitution will improve clarity for officers and members and will reduce legal risk in terms of potential challenge to decisions. Changes to Council, Committee, Cabinet and Officer decision-making powers ensure clarity as to which part of

the authority is responsible for which decisions. Those changes will also enable faster decision-making, ensuring that the Council is 'fleet of foot'.

5.0 **IMPLICATIONS**

5.2 **Constitution & Legal**

5.2.1 The Council operates a Leader and Cabinet governance model pursuant to the Local Government Act 2000. The requirement for a Constitution and the minimum content of that Constitution are also set out in the Local Government Act 2000 and various Regulations made thereunder. As part of the review of the Constitution, those officers working on the draft have checked its content against Regulations and Government Guidance. The 'Exari' model itself has been produced by the Association of Council Secretaries and Solicitors in conjunction with Dickinson Dees. The draft constitution has also been inspected by external lawyers, the Democratic Services Managers of both authorities and the Executive Manager – Governance.

5.2.3 In revising the Constitution, officers have also had regard to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 in respect of the allocation of functions between the Council and the Executive. Regard has also been had to various other statutory provisions and Regulations/Orders/Guidance in respect of specific parts of the Constitution.

5.4 **Corporate Priorities**

5.4.1 Lawful and effective decision-making underpins everything that the Council does, including its corporate priorities.

5.7 **Financial**

5.7.1 It is the opinion of the Report Author that there are no direct implications. However, efficient decision-making and reduced risk of challenge does represent an opportunity cost saving that is impossible to quantify.

5.9 **Risk Management**

5.9.1 Failure to have up-to-date and robust decision-making procedures (as set out in the Constitution) puts the Council at risk of legal challenge in respect of decisions. Whilst such risks cannot be eliminated, a robust Constitution that officers and members are better able to navigate reduces that risk considerably.

5.11 **Stakeholders / Consultation / Timescales**

5.12.1 Members of the Council have been consulted at various stages – through the work of the Constitution Working Group and through the Scrutiny Commission Meetings of 19 June 2014 and 17 December 2015.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All wards are potentially affected by the content of this report

Background papers:- None

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A – draft Constitution