

BRECKLAND DISTRICT COUNCIL

Report of: Councillor Ian Sherwood, Executive Member for People Communications and Governance, and Rob Walker, Executive Director Place and Delivery, and Monitoring Officer

To: Full Council – 8 July 2021

Author: Jacqui Berridge – Lawyer

Subject: Constitution – variations

Purpose: To consider proposed variations to (a) the glossary of terms relating to staff, and references to senior officers; (b) variations which may be made by the Monitoring Officer and/or the Senior Legal Officer; (c) Article 11; (d) delegations to specified officers; (e) the types of full Council meeting; (f) Standing Order no. 29; (g) Standing Order relating to independent persons; (h) terms of reference of full Council; (i) Financial Procedure Rules as they relate to virements and grants; and (j) amendments previously made by the Monitoring Officer

Recommendations:

- (1) That, with a view to reducing the necessity for multiple Constitutional amendments following any future structure reviews, the following generic definitions be added to the Glossary of Terms (Definitions relating to Staff):
 - *"Directors" means tier 2 officers (immediately below the post of Chief Executive, whether or not a Chief Executive is actually in post). Currently the Executive Directors.*
 - *"Assistant Directors" means tier 3 officers (immediately below the Directors). Currently the Assistant Directors.*
 - *"Service Managers" means tier 4 officers (immediately below the Assistant Directors) who manage each service unit. Currently the Service Managers.*
- (2) That all references to "Executive Directors(s)" within the Constitution be amended to read "Director(s)"; and
- (3) That all references to "Executive Manager(s)" within the Constitution be amended to read "Assistant Director(s)"; and
- (4) That all references to "Senior Managers" within the Constitution be amended to read "Service Manager(s)"; and
- (5) That, for clarification, the following definitions be added to the Glossary of Terms (Definitions relating to Staff):
 - *"Electoral Registration Officer" means the officer appointed under section 8 of the Representation of the People Act 1983. The Electoral Registration Officer is currently [name] the [post]*
 - *"Returning Officer" means the officer appointed under section 35 of the Representation of the People Act 1983. The Electoral Registration Officer is currently [name] the [post]*

- (6) That the Constitution be amended so as to clarify the circumstances in which the Monitoring Officer and/or the Senior Legal Officer may amend the Constitution, as detailed in Appendix A; and
- (7) That the statutory officer references at paragraph 1.4 of Article 11 of the Constitution be amended in accordance with the details included in Appendix B to this report; and
- (8) That the Heading to Part 3 Section F4 be amended to read as follows:
- Delegations to the Senior Legal officer, Solicitor to the Council and the ~~Legal Services Manager~~ **responsible for legal services***
- (9) That the Heading to Part 3 Section F5 be amended to read as follows:
- Delegations to the ~~Executive Manager Growth~~ **Assistant Director responsible for strategic growth***
- (10) That the Constitution be amended to clarify the four types of full Council meetings in accordance with the details shown at Appendix C of this report; and
- (11) That Standing Order No. 29 (conflict between Council and Executive) be deleted as the issue is repeated more fully in Standing Order no. 63 and 64, and that Standing Order no. 29A be renumbered No. 29; and
- (12) That the Constitution be amended so as to add reference to a statutory Standing Order relating to independent persons, as detailed in Appendix D; and
- (13) That paragraphs (e) and (f) of terms of reference number 3 of the full Council at Part 3 of the Constitution be deleted; and
- (14) That the Financial Procedure Rules be amended as shown in Appendix E; and
- (15) That all references in the Financial Procedure Rules to “EMT”, “Executive Management team”, and “Corporate Management team” be standardised to refer to the “Corporate Management Team” and that the following definition be added to the “Glossary of Terms – Definitions relating to staff”:
- “Corporate Management Team – comprises the Chief Executive, Executive Directors and Assistant Directors.”*
- (16) That the minor changes made by the Monitoring Officer detailed in paragraph 4 be approved.

1.0 BACKGROUND

- 1.2 The Council’s Constitution was approved by full Council at its meeting on 21 January 2016. Under Article 14 of the Constitution (as amended) any proposed changes may be approved only by full Council unless the change is:
- a minor variation; or
 - required to be made to remove any inconsistency or ambiguity; or
 - required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

- 1.3 In such circumstances the variation may be made by the Monitoring Officer and comes into force with immediate effect, but must (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible. Any change only continues to have effect if full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of full Council.
- 1.4 All other variations must be submitted to full Council for approval. This report contains proposed variations for consideration, and details amendments which have already been made by the Monitoring Officer.
- 1.5 The Governance and Audit Committee considered this report at its meeting on 24 June 2021 and agreed some minor amendments which have been incorporated within the Appendices.

2.0 OTHER PROPOSED VARIATIONS TO THE CONSTITUTION

Glossary of Terms - Definitions relating to Staff

- 2.1 The Constitution currently refers throughout to "Executive Directors" and "Executive Managers", however the new structure which took effect on 1 May 2021 now refers instead to "Executive Directors" and "Assistant Directors". The Constitution also refers variously to Senior Managers and Service Managers, where both references relate to the same tier of officers. It is proposed to refer to these posts generically within the glossary of terms as follows, so that any future amendments to the post titles can be dealt with by amending the glossary only:
- "Directors" means tier 2 officers (immediately below the post of Chief Executive, whether or not a Chief Executive is actually in post). Currently the Executive Directors.
 - "Assistant Directors" means tier 3 officers (immediately below the Directors). Currently the Assistant Directors.
 - "Service Managers" means tier 4 officers (immediately below the Assistant Directors) who manage each service unit. Currently the Service Managers.
- 2.2 It is then proposed that:
- All references to "Executive Directors(s)" within the Constitution be amended to read "Director(s)"
 - All references to "Executive Manager(s)" within the Constitution be amended to read "Assistant Director(s)"
 - All references to "Senior Managers" within the Constitution be amended to read "Service Manager(s)".
- 2.3 It is also recommended that the following definitions be added to the "Glossary of Terms - Definitions Relating to Staff" in order to define posts which are referred to within the Constitution:
- "Electoral Registration Officer" means the officer appointed under section 8 of the Representation of the People Act 1983. The Electoral Registration Officer is currently the [xx].
 - "Returning Officer" means the officer appointed under section 35 of the Representation of the People Act 1983. The Electoral Registration Officer is currently the [xx]

Monitoring Officer/Senior Legal Officer – authorisation to amend Constitution (Appendix A refers)

- 2.4 There are a number of definitions within the glossary of terms where reference is made (for example) to a definition of an officer post, and then the glossary explains which officers currently fill that post. This is done so that future management changes require only minor amendments to the glossary of terms rather than numerous changes within the main body of the Constitution.
- 2.5 There are various authorisations within the Constitution allowing the Monitoring Officer and/or the Senior Legal Officer to amend the Constitution in defined circumstances. None of these circumstances include amending the glossary in the circumstances anticipated in the previous paragraph, where the changes are essentially administrative. In addition, the various authorisations are not compatible. In order to clarify these issues it is recommended that the Constitution be amended to allow changes to be made to the Constitution which are essentially administrative, as shown in Appendix A.
- 2.6 Paragraph 3.0 of this report also proposes administrative variations which are intended to come within the terms of the amended Appendix A.

Article 11 - Statutory Officers (Appendix B refers)

- 2.7 The Council is required by law to designate officers as:
- Section 151 Officer (section 151 Local Government Act 1972)
 - Head of the Paid Service (section 4 Local Government and Housing Act 1989)
 - Monitoring Officer (section 5 Local Government and Housing Act 1989)
- 2.8 These designations, which were last made at full Council on 29 April 2021, are known as "statutory officers" and are referred to in Article 11 of the Constitution. Paragraph 1.4 of Article 11 currently includes a table which states which officers are designated as the 3 statutory officers. This table is misleading as the statutory appointments do not attach to any specific posts; rather, it is for full Council to determine which officers are designated. It is therefore proposed that the table be removed, and that paragraph 1.4 of Article 11 be amended as detailed in Appendix B.

Part 3 Section F - Delegations to Officers

- 2.9 Part 3 Section F of the Constitution contains delegations to officers. It is recommended that the following minor amendments to Part 3 of the Constitution be approved, which should avoid any need to amend these references further when any future structural changes are approved:

(a) The heading to Part 3 Section F4 be amended to read:

Delegations to the Senior Legal officer, Solicitor to the Council and the *Legal Services Manager* **responsible for legal services**

(b) The heading to Part 3 Section F5 be amended to read:

Delegations to the ~~*Executive Manager Growth*~~ **Assistant Director responsible for strategic growth**

Full Council Meetings (Appendix C refers)

2.10 There are essentially 4 types of meetings of the full Council as follows:

- meetings which must be held by law ie the annual meeting
- meetings which are held in accordance with the timetable of meetings fixed by the Council
- meetings which are called by the Chairman, or by 5 members of the Council upon requisition. These are called extraordinary meetings
- meetings which are otherwise called for a special purpose. These are called special meetings.

2.11 There are a number of references within the Constitution to the various types of meeting, but the references are not consistent. It is therefore recommended that the Constitution be amended in accordance with the details shown in Appendix C.

Standing Order no. 29 – Policy Framework and Budget

2.12 Standing Order no. 29 details the process that must be followed when any policy that comprises part of the Policy Framework, or any element of the budget, is submitted by the Cabinet to full Council for approval, but full Council objects. This Standing Order is not necessary, as it is dealt with more fully in Standing Order nos. 63 and 64 which are statutory Standing Orders (ie required by law).

2.13 It is therefore recommended that Standing Order No. 29 be deleted, and that Standing Order no. 29A be renumbered No. 29.

Independent persons (Appendix D refers)

2.14 One statutory Standing Order does not currently appear within the Constitution. This is contained at Schedule 3 paragraph 9 of the Local Authorities (Standing Order) (England) Regulations 2001 (as amended) and states as follows:

"Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."

2.15 It is recommended that the Constitution be amended as shown in Appendix D.

Part 3 - Full Council terms of reference

2.16 The terms of reference for the full Council include the following:

3. Except for Executive Functions the following are reserved to full Council:

(a) to (d) ...

(e) action which so expands or reduces the scope of an existing service as to make it materially different as a whole from that which the Council has previously provided or approved

(f) the approval of any scheme or formal proposals affecting the district as a whole or any of the Council's services and the substantial variation or the revocation of any such scheme or proposals

- 2.17 It is possible for the issues referred to at (e) and (f) to go through a process which requires Full Council to be consulted, and officers can submit a further report with proposed structure for such a procedure if members so require. However, the only issues which come within the jurisdiction of the Full Council are those matters set out at law, primarily the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Issues which come under items (e) and (f) are matters for the Cabinet except in relation to any necessary staffing amendments and any necessary budget amendments which are Full Council functions, and any specific issues which must, by law, have Full Council approval and which are already referenced within the terms of reference. Paragraphs (e) and (f) can therefore be deleted.

Financial Procedure Rules – virements and grants (Appendix E refers)

- 2.18 Financial Procedure Rules 3.4 to 3.9 deal with virements and grants.
- 2.19 Essentially, for grants, formal decisions must be made to (i) receive any grant; (ii) agree any grant conditions; and (iii) spend the grant, and the Rules state the level at which such decisions can be made. However, where the Council has no discretion about one or more of these 3 elements then no formal decision needs to be made in respect of that element. This applies, for example, where the Government issues grants to local authorities under section 31 of the Local Government Act 2003, which allows the Government to decide the amount and conditions of grant, and it is recommended that the Rules be amended to reflect this.
- 2.20 It is also recommended that the Rules be amended so that:
- the existing authority for officers to amend the capital programme and vire between capital budgets up to £100,000 be amended to refer to £68,000 in order to reflect the revenue virement figure; and
 - the requirement for full Council to approve any budget transfer in excess of 30% of a directorate gross budget, which reflected the former key decision definition, be amended so that it refers instead to budget transfers which exceed the current key decision amount.
- 2.21 All of these recommended variations are shown in Appendix E.

Financial Procedure Rules – miscellaneous

- 2.22 There are various references in the Financial Procedure Rules to EMT, Executive Management team, and Corporate Management team. It is recommended that all such references be standardised to refer to the “Corporate Management Team” and that the following definition be added to the “Glossary of Terms – Definitions relating to staff”:

“Corporate Management Team – comprises the Chief Executive, Executive Directors and Assistant Directors.”

3.0 MINOR CHANGES MADE BY THE MONITORING OFFICER

- 3.1 The Monitoring Officer has made the following minor variations to the Constitution and it is recommended that these variations be approved:
- page 54 - the Information Governance Officer is now the Data Protection Officer
 - various references to the word “shared” in relation to the former shared management arrangements have been removed

- references to Compass Point Business Services (East Coast) Limited have been removed as these relates to a South Holland company

3.2 These are essentially administrative changes, and Appendix A anticipates that such variations can be made in future without further Council approval.

4.0 OPTIONS

4.1 Members have the option to approve or not approve the variations, or to require alternative variations.

5.0 REASONS FOR RECOMMENDATION(S)

5.1 Some of the amendments are required following the introduction of the amended structure on 1 May 2021. Proposed variations are also recommended to ensure that fewer variations to the body of the Constitution are necessary following any future structure changes and to ensure that the Constitution remains fit for purpose.

6.0 EXPECTED BENEFITS

6.1 The Constitution will be fit for purpose, and amendments will ensure that fewer variations are required following any further structure changes.

7.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

Constitution & Legal

7.1 Amending the Constitution is a function reserved to full Council.

8.0 WARDS/COMMUNITIES AFFECTED

8.1.1 None

9.0 ACRONYMS

9.1 None.

Background papers:- The Council's Constitution which can be found online

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Key Decision: N

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

APPENDIX A Proposed amendments to clarify when the Constitution can be amended by officers

APPENDIX B Proposed amendments to Paragraph 1.4 of Article 11 as it relates to statutory posts

APPENDIX C Proposed amendments to clarify issues regarding special meetings

APPENDIX D Proposed amendments to include reference to the statutory standing order relating to independent persons

APPENDIX E Proposed amendments to Financial Procedure Rules relating to virements and grants

APPENDIX A - Proposed amendments to clarify when the Constitution can be amended by officers

Amendment 1

ARTICLE 14 – REVIEW AND REVISION OF THE CONSTITUTION

2.0 Changes to the Constitution

2.1 Approval - ~~2.1.1~~ Subject to 2.2 below, changes to the Constitution will only be approved by the full Council. The Council may if it considers necessary appoint a special committee to make recommendations for that purpose currently the Governance & Audit Committee. ~~Where the table of Chief Officers in Article 11 or the Management Structure section of the Constitution needs to be updated~~

2.2 Minor Changes

(a) **Where any part of the Constitution, including the Log of Delegations to Officers, needs to be varied following an approved review of the Council's structure, the Monitoring Officer or** the Senior Legal Officer may, **without further Council approval,** make the necessary changes upon receipt of notification from the Chief Executive, Head of the Paid Service or a Director acting in the absence of either that he/she has made changes to these structures following Council or relevant committee approval of such changes.

~~2.2 Minor Changes~~

~~2.2.1 (b)~~ If, in the reasonable opinion of the Monitoring Officer, a change is:

- ~~(a) (i)~~ A minor **administrative** variation; or
- ~~(b) (ii)~~ Required to be made to remove any inconsistency or ambiguity; or
- ~~(c) (iii)~~ Required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

then the Monitoring Officer may make such a change. Any such change made by the Monitoring Officer shall come into force with immediate effect but shall (unless a **minor administrative variation which may, for example, include** typographical, referencing or numbering changes) be referred to full Council as soon as is reasonably possible and shall continue to have effect only if full Council agrees. Minor administrative variations ~~typographical, referencing and numbering changes~~ shall not require the approval of full Council. Changes required to the Constitution as a result of a report already approved by Council shall come into immediate effect.

~~2.3 Legislative Change~~

~~2.3.1 (c)~~ Any part of the Constitution may be amended by the Monitoring Officer **or the Senior Legal Officer** where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer **or the Senior Legal Officer** so decides or the legislation (where relevant) so provides. Such changes shall be reported to the next Council meeting **only where the changes constitute more than variations to the name of an Act or Regulation etc.**

Amendment 2

PART 3 SECTION F - OFFICER DELEGATIONS

9. **In accordance with Article 14,** the Council's Monitoring Officer is **and the Senior Legal Officer are** authorised to amend these delegations and the log of specific delegations as and when

necessary in order to update the same in respect of staffing establishment changes (including changes to post titles) and changes to statutory references. Such amendments shall not require further authorisation **unless (where the amendment relates to a change in legislation) the changes constitute more than variations to the name of an Act or Regulation etc.**

APPENDIX B - proposed amendments to Paragraph 1.4 of Article 11 as it relates to statutory posts

The following wording shall be deleted:

~~1.4.1 The Council will designate the following statutory posts as shown:~~

~~1.4.2 Such posts will have the functions described below.~~

<i>Designation</i>	<i>Post</i>
Head of Paid Service	Chief Executive (except during any period where the Council decides not to appoint a Chief Executive at which time a Head of the Paid Service will be appointed separately)
Monitoring Officer	Shared Executive Director Strategy & Governance
S151 Officer (Section 151 Officer)	Shared Executive Director Commercialisation

The following wording shall be added:

1.4.1 The Council must, by law, designate:

- **an officer as Head of Paid Service**
- **an officer as Monitoring Officer**
- **an officer as Section 151 Officer**

The glossary of terms (definitions relating to staff) states which officers are currently designated.

APPENDIX C - Proposed amendments to clarify issues regarding special meetings

Amendment 1

Article 4

7.0 Council Meetings

7.1 There are ~~three~~ **four** types of Council meeting:

- the annual meeting;
- ordinary meetings; ~~and~~
- extraordinary meetings; **and**
- **special meetings**

and they will be conducted in accordance with the procedural standing orders in Part 4 of this Constitution.

Amendment 2

STANDING ORDER NO 1

Meetings of the Council

1.1 The annual meeting of the Council and other meetings of the Council shall be held at such places, on such dates and at such times as may be fixed by the Council.

1.2 Extraordinary meetings of the Council may be called at any time, **in accordance with paragraph 3 of Schedule 12 to the Local Government Act 1972**, by:

(a) the Chairman of the Council, either on his/her own initiative or following receipt of a requisition from five members of the Council calling for an extraordinary meeting; or (b) by 5 members of the Council if the Chairman refuses to call a meeting after receipt of a requisition or if, without so refusing, the Chairman does not issue, within 7 days after the requisition has been presented, a notice and summons to a meeting.

~~alternatively by the Chief Executive or, in the absence of the Chief Executive, the Director responsible for Democratic Services if he/she receives request in writing for one to be held from five or more members of the Council.~~

1.3 Those listed below may call a special meeting of the Council after consultation with the Chairman of the Council, or instruct the Chief Executive or in his/her absence the Chief Officer responsible for Democratic Services after consultation with the Chairman of the Council, to call a special meeting of the Council:

- a) The Council by resolution;
- b) The Head of the Paid Service;
- c) The Monitoring Officer;
- d) The S151 Officer.
- e) The Leader

Amendment 3

STANDING ORDER NO.10

Minutes

10.1 Signing the Minutes:

10.1.1 Unless the next paragraph applies, the Chairman will sign the minutes of the proceedings at the next suitable meeting (including the annual meeting of the Council). The Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

At a virtual meeting the Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record and the minutes will be signed as soon as practicable thereafter. The only part of the minutes that can be discussed is their accuracy.

10.2 **There is** no requirement to sign minutes of previous meeting at extraordinary or special meeting. ~~10.2.1~~ Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of Schedule 12 to the 1972 Act (an Extraordinary Meeting), **or a special meeting**, then the next following meeting (being **an ordinary or annual** meeting ~~called otherwise than under that paragraph~~) will be treated as a suitable meeting for the purposes of ~~paragraph 41 (1) and (2) of schedule 12 relating to~~ signing of minutes.

APPENDIX D - Proposed amendments to include reference to the statutory standing order relating to independent persons

The following Standing Order be added:

STANDING ORDER NO. 67

Remuneration of independent person

Any remuneration, allowances or fees paid by the Council to an independent person appointed to a committee appointed by the Council to advise on matters relating to the dismissal of the Head of the Paid Service, the Chief Finance Officer (also called the Section 151 Officer) or the Monitoring Officer must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as an independent person under the Localism Act 2011.

The following wording be added as note (d) after the terms of reference of the Appointment and Disciplinary Committee:

In accordance with Standing Order no. 67, any remuneration, allowances or fees paid to an independent person appointed to this Committee must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the Localism Act 2011.

APPENDIX E – Proposed amendments to Financial Procedure Rules relating to virements and grants

3.4.4 The following limits have been approved for the authorisation of Budget transfers (Virements) and grants. All references to "up to" an amount include that amount:

3.6 Chief Officers/Deputy Chief Officers

(b) Up to £68,000.00, between any one Budget head to another (Standard groupings) for which they are responsible, during the financial year with written approval of the Section 151 Officer.

(c) Up to £68,000.00 in relation to grant funding, where the Chief Officer/Deputy Chief Officer will have the power, subject to consultation with the Section 151 Officer and any directions given by the Cabinet Member, to agree to any terms or restrictions applied by the grant funding and to approve the receipt and spend of that grant funding (**NOTE: no formal approval is required for receipt, and/or conditions, and/or spend of grant where the Council has no discretion eg the Council has no discretion to refuse grants, or the conditions of grants, made under section 31 Local Government Act 2003, but may have discretion how to spend such grants.**)

(d) Up to £68,000.00 in relation to expenditure which generates additional income, where the Chief Officer/Deputy Chief Officer will have the power, subject to consultation with the Section 151 Officer and any directions given by the relevant Cabinet Members, approve additional expenditure that leads to the generation of a net surplus within the financial year.

(e) The Section 151 Officer shall have power to amend the capital programme and vire between capital budgets up to ~~£100,000~~ **£68,000** (without the need to submit the matter to Cabinet under paragraph 3.7 below) following consultation with the responsible Chief Officer/Deputy Chief Officer and subject to no written directions to the contrary from the Leader.

3.7 Cabinet

(f) Individual transfers between Budget heads in excess of £68,000 following a joint report by the Section 151 Officer and the responsible Chief Officer/Deputy Chief Officer. The joint report must explain the implications in the current and future financial year.

(g) In relation to grants in excess of £68,000, to agree to any terms or restrictions applied by the funder and to approve the receipt (except where reserved to full Council) and spend of that grant funding (**NOTE: no formal approval is required for receipt, and/or conditions, and/or spend of grant where the Council has no discretion eg the Council has no discretion to refuse grants, or the conditions of grants, made under section 31 Local Government Act 2003, but may have discretion how to spend such grants.**)

3.8 Full Council

(h) Except where the s151 Officer certifies that there is no material impact on the Council's budget, to approve receipt of any grant funding in excess of £100,000 and any necessary budget amendment." An example of where funding will be considered to have no material impact on the budget would be a payment **of a grant** under s31 of the Local Government Act 2003 where the Council has no discretion to refuse the funding and any associated conditions.

(i) Any transfer ~~which results in an excess of 30% of a directorate gross Budget~~ **which exceeds the current key decision amount.**