

Report of Head of Legal and Democratic Services

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To: COUNCIL

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Review of the constitution

Recommendations

That Council:

1. notes the further work done by the Joint Constitution Review Group and the intention to bring forward further revisions of the council's constitution for consideration by Council;
2. notes the ongoing overall approach of the review group to develop "mirror" constitutions with South Oxfordshire District Council and commonality of wording where possible;
3. approves the revised contracts procedure rules attached as appendix one to this report for inclusion in the constitution with effect from 1 August 2016;
4. approves the revised scheme of delegation to officers attached as appendix three to this report, including the proposed changes to the planning scheme of delegation, for inclusion in the constitution with effect from 1 August 2016;
5. authorises the Head of Legal and Democratic Services to update the proper officer and authorised officer appointments section of the constitution to reflect the revised scheme of delegation;
6. approves the councillors' planning code of practice attached as appendix four to this report for inclusion in the constitution with effect from 1 August 2016;
7. approves the revised petition scheme attached as appendix five to this report for inclusion in the constitution with effect from 1 August 2016;
8. authorises the Head of Legal and Democratic Services to make any minor or consequential amendments to the constitution for consistency and to reflect the councils' style guide.

Purpose of Report

1. To consider proposed amendments to the constitution and amendments to the contracts procedure rules, scheme of delegation (including planning delegations), planning code of good practice and petition scheme.

Strategic Objectives

2. The constitution underpins all of the council's areas of activities and, therefore, contributes to the achievement of all its strategic objectives.

Background

3. A full constitution review is currently being undertaken in pursuance of the requirements of Section 37 of the Local Government Act 2000 to keep the constitution under review. The purpose of this review is to make the constitution more user-friendly and accessible, bring it up to date and to achieve, as far as possible, "mirror" constitutions for this council and South Oxfordshire District Council for the benefit of users who operate in or with both councils.
4. Where there are no political issues or essential differences, wording will be the same at both councils. Differences will be found under "mirror" sections. This will enable both councils to retain their own political priorities and local flavours whilst improving the user-friendliness of the documents. The approach will affect the order and structure of both constitutions and will be in a new format. Sections on committees will become self-contained, a particular benefit to councillors, officers and public users. The full constitution will come to Council for consideration later in the year, but there are some more time critical items which will be brought to Council as required.
5. The Joint Constitution Review Group meets regularly to consider issues. This group comprises councillors Yvonne Constance, Stuart Davenport and Debby Hallett, plus three South Oxfordshire district councillors. Officers from legal and democratic services support and advise the group. Additional councillors (e.g. chairmen and Cabinet members) together with specialist officers, attend the group as required. Items within this report have been agreed by the Review Group and group members have also consulted within their own political groups
6. At its meeting in December 2015, Council approved revised scrutiny call-in arrangements and revised Officer Employment Procedure Rules which came into effect on 1 January 2016. Since December the Review Group has reviewed the contracts procedure rules, scheme of delegation, planning code of good practice and petition scheme. Further work is underway on a summary and explanation of the constitution, the Council and committee procedure rules and the

remaining elements of the constitution and recommendations on these will be brought to a future Council meeting.

Contracts procedure rules

7. The Review Group has considered updated contracts procedure rules that take into account increased use of electronic forms of tendering and an online portal for procurement. They also allow officers or a “validator” (a person independent from the purchasing or audit process on the procurement, for example an employee in Capita’s procurement team) to open tenders. There are no fundamental changes. The Review Group recommends Council to approve the revised contracts procedure rules attached as appendix one to this report for inclusion in the constitution with effect from 1 August 2016.

Planning issues

8. The Review Group has reviewed the planning scheme of delegation, involving the Cabinet member for planning, the chairman of the Planning Committee and planning officers. It has sought to streamline, harmonise and create efficiency where possible to improve the service and the reputation of the council. The review has sought to address the frequency and length of Planning Committee meetings by reducing the number of items referred to committee. This would reduce costs, improve performance, improve the public participation experience (reducing very late meetings) and enable a greater focus on a smaller number of significant applications.
9. At present, the scheme of delegation allows for a considerable number of smaller applications going to committee which could be delegated to the head of planning, thus currently costing the council time and money. The main proposed changes to the scheme of delegation are:
 - Changes to parish council referrals to committee (see paragraph 10 of this report and section 1.1 of the delegations to the head of planning at appendix two to this report)
 - Revisions to the ward councillor call-in process to incorporate ward councillors whose parish has been consulted
 - Updating of the treatment of applications where the council is landowner or which involve staff or councillors
 - Full delegation to deal with conditions and certificates of lawfulness
 - Full delegation in relation to planning enforcement
 - Simplification of delegated authority in tree enforcement

10. At the end of May, the head of legal and democratic services wrote to all parish councils and parish meetings explaining the proposed changes to the planning scheme of delegation and the proposals for training for parishes. The letter set out the national context and proposals for enhanced dialogue between planning officers and parish councils. The revised scheme specifies the circumstances in which automatic referral to the Planning Committee will continue, those which will be referred to committee where the view of the parish council is contrary to the officer's recommendation and cannot be resolved by condition or negotiation and the circumstances in which an application can be called in to committee by a ward councillor, the chairman of the committee or the head of planning. A briefing on the proposed changes was given at the Town and Parish Forum on 7 July and training sessions are planned for the last week in July at three locations around the district. A summary of the feedback received from parish councils is set out in appendix two to this report.
11. The Review Group recommends Council to approve the revised scheme of delegation to officers attached as appendix three to this report, including the proposed changes to the planning scheme of delegation, for inclusion in the constitution with effect from 1 August 2016.
12. In 2014 the council's constitution task group considered a councillors' planning code of practice which was prepared by the Oxfordshire monitoring officers and reflected the councillors' code of conduct and guidance in respect of bias and predetermination. Since then further changes have been made to reflect the comments of that task group and the current Review Group and to reflect changes included in a revised code issued by the Lawyers in Local Government Group.
13. The existence of such a code is designed to guide councillors and officers in the discharge of planning functions. It would also inform developers and the public generally of the high standards of ethical conduct adopted by the council in the exercise of its planning powers. Once in place it would be important that both councillors and officers adhere to the code; if they do not, planning decisions may be vulnerable to legal challenge and/or a complaint to the Local Government Ombudsman.
14. The proposed councillors' planning code of practice is attached as appendix four to this report and the Review Group recommends Council to approve it for inclusion in the constitution with effect from 1 August 2016.
15. The Review Group has also considered revised Planning Committee procedure rules but these will be brought to a future meeting along with revised procedure rules for Council and other committee meetings.

Scheme of delegation to officers

16. The Review Group has also reviewed the scheme of delegation to officers. The proposed changes include the changes to the planning scheme of delegation referred to above. Other changes include updates to legislation, changes for clarification, harmonisation of uncontentious processes across both councils and reallocation of duties arising from changes in responsibilities of heads of service.
17. The Review Group recommends Council to approve the revised scheme of delegation to officers attached as appendix three to this report, including the proposed changes to the planning scheme of delegation, for inclusion in the constitution with effect from 1 August 2016. Council is also asked to authorise the Head of Legal and Democratic Services to update the proper officer and authorised officer appointments section of the constitution to reflect the revised scheme of delegation.

Petition scheme

18. The Review Group has reviewed the council's petition scheme. It considered that the council should continue to offer a petition scheme but asked officers to simplify the scheme and delete reference to officers being held to account.
19. The Review Group considered whether the councils could operate a joint petition scheme but felt that this could be confusing for the public. It therefore recommends that there is a separate scheme for each council, both based on the same wording apart from contact details. Both schemes will be included in the constitution document but this council's website page on petitions will include details of the Vale's scheme only.
20. The Review Group recommends Council to approve the revised petition scheme attached as appendix five to this report for inclusion in the constitution with effect from 1 August 2016.

Financial Implications

21. The democratic services budget for printing will meet the costs of producing copies of the amended constitution.

Legal Implications

22. Section 37 of the Local Government Act 2000 requires the Council to keep its constitution under review. Section 135 of the Local Government Act 1972 also requires the council to adopt standing orders relating to contracts and these need to be kept up to date.

Conclusion

23. This report sets out proposals to amend the constitution. Officers and the Review Group recommend Council to approve the proposed changes for implementation from 1 August 2016 and to authorise the head of legal and democratic services to make these changes and any further minor or consequential amendments.

Background Papers

- Letter to parish councils and parish council responses