

## Democracy Committee

28 January 2016

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

### Review of the Constitution

<b>Final Decision-Maker</b>	Democracy Committee
<b>Lead Head of Service</b>	John Scarborough, Head of Legal Partnership and Monitoring Officer
<b>Lead Officer and Report Author</b>	Estelle Culligan, Deputy Head of Legal Partnership
<b>Classification</b>	Public
<b>Wards affected</b>	All

#### **This report makes the following recommendations to this Committee:-**

1. To agree to carry out a review of the Constitution.
2. To set up a small working party to undertake the review.
3. To agree that the working party will report back to the Democracy Committee on 17 March 2016 with its recommendations on any amendments to the Constitution.

#### **This report relates to the following corporate priorities:**

- Keeping Maidstone Borough an attractive place for all -
  - Securing a successful economy for Maidstone Borough -
- This report relates to both priorities as the Constitution underpins the good governance of the Council

#### **Timetable**

<b>Meeting</b>	<b>Date</b>
Committee Democracy Committee	28 January 2016 and 17 March 2016
Council	13 April 2016

# Review of the Constitution

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The Council adopted the committee style of governance on 23 May 2015. It also adopted a new Constitution to support the committee system.
  - 1.2 When the new Constitution was adopted, it was envisaged that the Council would review its operation and effectiveness early in 2016, after it had been in use for approximately 9 months.
  - 1.3 The purpose of this report is to recommend that the committee carries out that review and reports to Council in time for those amendments to take effect from the date of the annual meeting.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Council has operated a committee form of governance since 23 May 2015.
- 2.2 Prior to the adoption of the new Constitution to support the committee system, councillors and officers worked closely with, and took advice from, Judith Barnes of Beachcrofts Solicitors. Judith is a specialist in local authority governance.
- 2.3 The Constitution produced was a simpler version than previously, due in part to the fact that the committee system of governance is a straightforward governance model. Councillors and officers also took the opportunity to tidy up some of the anomalies in the previous document.
- 2.4 On balance, the Constitution has worked quite well and it has been easier for officers and councillors to work with. However, following practical experience, there have, on occasions, been issues about which the Constitution lacks detail, or is silent altogether. This is inevitable given the major changes there have been to the Council's system of governance.
- 2.5 It was envisaged that there would be a review of the Constitution early in 2016. Paragraph 1.3.14 of the original report dated 22 April 2014 states, "It is proposed that the Democracy Committee review the operation and effectiveness of the new Constitution early in 2016, with a view to adopting and implementing appropriate changes in April/May 2016."
- 2.6 This committee is the appropriate forum to review and make recommendations about any amendments to Council. Only Council can adopt major changes to the Constitution. (The Monitoring Officer has the authority to make ongoing minor amendments from time to time).
- 2.7 It is recommended that the committee considers appointing a small working party to carry out the review and to report back to the full committee in March 2016. The full committee could make final recommendations on

amendments to Council for its consideration on 13 April. The amended Constitution would take effect from the date of the annual meeting in May 2016.

- 2.8 The Democratic Services Officer emailed all Councillors, Heads of Service and the rest of the Democratic Service team to ask for their initial views. Comments were received from the following: The Liberal Democrat Group, 3 individual councillors, the Interim Director of Planning and Development, the Head of Planning and Development and the Head of Commercial and Economic Regeneration. The Heritage Culture and Leisure Committee also made a decision at its meeting on 5 January 2016 to recommend an increase in the frequency of its meetings. A summary of all issues raised is provided at appendix 1.

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### **3. AVAILABLE OPTIONS**

- 3.1 The first option is to “do nothing”. The committee could decide not to review the Constitution at this time. It has operated quite well during the last year. It is, for the most part, clearly written and, in general, officers and councillors have understood it. However, there have been occasions when issues have arisen about which the Constitution is unclear or silent. If the committee decides not to undertake a review, these problems will continue and may increase.
- 3.2 The second option is to delay carrying out a review until later in 2016. The benefit is that the Constitution will have run for a full year (perhaps longer), allowing for a fuller assessment of areas for review. The disadvantage is that officers, committee chairman and councillors are already aware of areas which need reviewing. A longer time before review may increase difficulties.
- 3.3 The third option – which this report recommends – is to start a review now, in time for any amendments to be made and adopted by the date of the annual council meeting.

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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The preferred option is to start a review of the Constitution now, in time for any changes to be approved by Council in time to take effect from the date of the annual meeting. The reasons for this preferred option are as previously set out in this report.
- 4.2 It is suggested that the committee appoints a smaller working group of councillors to work with officers to undertake the review. The working group would report back to the next meeting of the committee on 17 March 2016. The committee could then make final recommendations to the Council meeting on 13 April 2016.
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## **5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 5.1 If the committee agrees the recommendations, it is proposed that the working group would meet as required before the next committee meeting on 17 March to discuss and recommend any amendments.
- 5.2 It is proposed that the officers supporting the working group would be John Scarborough, Paul Riley, Tessa Ware, Debbie Snook and Estelle Culligan.
- 5.3 Officers would canvass views from all councillors and report those comments to the working group and also to group leaders.
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## **6. CROSS-CUTTING ISSUES AND IMPLICATIONS**

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Impact on Corporate Priorities</b>	A clear and effective Constitution supports both corporate priorities of the Council. Reviewing the Constitution regularly ensures that it remains a "live" document.	Deputy Head of Legal Partnership
<b>Risk Management</b>	None	Head of Audit Partnership
<b>Financial</b>	None	Head of Finance
<b>Legal</b>	The legal implications are set out in the body of the report	Deputy Head of Legal Partnership
<b>Equality Impact Needs Assessment</b>	None	Policy & Information Manager

## **7. REPORT APPENDICES**

Appendix 1 Summary of issues raised by councillors and officers

Appendix 2 Suggested Changes to the functions of the Heritage Culture and Leisure Committee

Appendix 3 Suggested Changes to the functions of the Strategic Planning, Sustainability and Transport Committee

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## **8. BACKGROUND PAPERS**

None

## **Appendix 1 Summary of issues raised by councillors and officers**

### **Contents Page**

1. The Contents page should show page numbers, making the Constitution easier to navigate.

### **Part 1 Summary and Explanation**

#### Section 1.6 Leader of the Council

2. This section is confusing. The Constitution needs to explain what the role is and the parameters of the role. In addition, because the Leader is also Chairman of Policy and Resources Committee, there should be a cross reference advising that the Leader's role should be read and understood in relation to that Chairman's position.

### **Part 2 Responsibility for Functions**

#### Section 2 Committees of the Council

3. The size of the committees should be increased. For example, Planning Committee should be increased from 13 to 15 (the same size as Policy and Resources) so that each group (comprising two councillors or more) has a seat on the committee.
4. The size of the four main service committees should be increased so that the two smaller groups (Labour and UKIP with 4 councillors) get an automatic seat on each committee. This would mean that 2 committees would have Labour representation and two would have UKIP representation.
5. There should be an Economic Development Committee to focus on revitalising the local economy. Under the old governance system there was an economic development scrutiny committee which did excellent work.
6. The terms of reference of the committees should be adjusted to make clear that committees may consider any issue that in the opinion of the committee is relevant to the formulation and delivery of its objectives as set out in the committee purposes in section 2 of the Constitution.

### **Part 3 Rules of Procedure**

#### **3.1 Council Procedure Rules**

##### Rule 2 Ordinary Meetings

7. "( c ) Declarations of lobbying." As currently drafted, the Constitution only states that the Mayor/Chairman will receive any declarations of

lobbying. The protocol for councillors and members of the public regarding lobbying material at meetings needs to be included.

### Rule 3 Meetings

8. "R 3.2 Business" states that any councillor may put an item on a service committee agenda for consideration, via the Chairman and the Democratic Services team, subject to the committee's terms of reference. It should be made clear that it is the service committee that sets the agenda through its Chairman and Vice Chairman.
9. "R 3.2 Business". This rule should be strengthened and clarified by stating: "The Chairman of a committee, after consulting the Vice Chairman shall place the requested item on the next available committee agenda unless in the view of the Chairman, having consulted Legal Services, the matter is defamatory, offensive or frivolous."
10. This section currently only applies to "Service Committee agendas". It is arguable that a councillor should be able to put any matter on any committee agenda, subject to the matter being relevant to the committee's terms of reference. Therefore the rule should apply to all committees (except the annual general meeting of Council) and that the word "service" should be deleted throughout the section.
11. Many agendas and working papers are far too long and would not be acceptable in other parts of the public service. Committees should have the right to reject papers if they are not up to standard.

### Rule 5 Visiting Members

12. Visiting members' speaking rights should be clarified. As currently drafted, this rule states that "Any Councillor may attend any meeting of a committee or sub-committee of which s/he is not a member to speak on particular items provided s/he states his/her intention when the first item is called on each agenda....."The Council needs to uphold this rule or change it, as currently the rule is not being followed. It is suggested that the rule should remain as it is and should be enforced – ie that visiting members are invited to speak after the officer introduction but before the general debate and therefore should know and state what it is they wish to raise on a specific item.

### Rule 12 Questions by members of the public

13. This section currently states that at ordinary meetings of the Council, members of the public may ask questions of the Chairman of any committee on prior written notice. Political group leaders will also have the opportunity to respond. How should we deal with the situation where a Chairman replies and then his/her own group leader also

wishes to respond? As currently written, this is allowed. However, is this fair and should this continue?

14. Clarity is needed on whether members of the public can speak at committee meetings other than to ask a question. This is particularly relevant for properly constituted Residents' Associations and Parish Councils. At the moment, with the exception of the Regulatory Committees, the Constitution is silent on this issue. The convention in the past has been that the Chairman can exercise his/her discretion whether to allow it. The Chairman should have discretion to allow it. The introductory paragraph of Section 2 should be amended to state that committees may allow members of the public to address the committee or to engage in a dialogue, where, in the view of the committee, this would be conducive to the conduct of the business under discussion.

#### Rule 13 Questions by Councillors

15. Currently members of the Council may ask any question of a Chairman of a committee on any matter under consideration by Council (without prior notice) or on any other business of the Council (on prior written notice) or on an urgent item (if allowed by the Mayor). As written, all group leaders do not have the right of reply. They *should* have the right of reply and timing allowances should be adjusted accordingly.
16. If a councillor wishes to ask the Leader a question, s/he must ask the question of the Chairman of Policy and Resources, who is always the Leader. Councillors should have the right to question the Leader at Council meetings and not be restricted to going through the Policy and Resources Committee. NB: Under the Council Procedure Rules, rule 17 "Leader's Report on Current Issues", there is provision for councillors to ask questions of the Leader, but limited to questions about those issues raised by the Leader in his/her speech.

#### Rule 16 Rules of Debate

17. Clarity is requested about how we deal with amendments to recommendations which are moved at meetings. It has been asked if the head of service and the legal representative will work together to formulate the wording of an amended recommendation so that all members are clear before voting.

#### Rule 17 Leader's Report on Current Issues

18. R 17.2 states that the leaders of every other group shall have the right to respond to the issues raised in the Leader's report. This seems to give undue weight to parties that have only a very small representation. There should at least be a clear definition about what qualifies as a "group".

### Rule 26 Provisions Relating to Planning Committees

19. Rule 26.3(b) (Planning Decisions which appear to have significant cost implications) appears to state that the Head of Planning and Development has the right to override the wishes of the Planning Committee by referring applications to the Planning Referral Committee. Officers should not have the right to override the wishes of the democratically elected councillors. This sends the wrong signal to residents of the Borough and planning applicants.

### Rule 28 Election of Committee Chairman.

20. This currently states that the Chairman and Vice Chairman of each service committee shall come from different political groups. Why does this have to be the case? These positions should be filled by the people whom the committee feels are best suited for the job.

### General issues raised about Council meetings

21. At Council meetings there should be a written report as part of the agenda from each committee or sub committee which has met since the last Council meeting. These reports would detail the discussions undertaken in that committee. This would enable the Council to consider issues arising from the work of the committees and would enable debate at Council. This would not prevent the committees exercising their decision making functions but would make the committees more accountable to Council, would stimulate further public debate and, hopefully, make local democracy more vibrant.
22. Feedback has been requested on any perceived demands on councillors' time, given that the committee system generates extra workload and requires extra attendance at committees. This is tied to the issue of how councillors' allowances are benchmarked and reviewed.
23. Consideration should be given to effectiveness and efficiency of Committee meetings. This should include a review of workload and actual decision making activity.

### **Heritage Culture and Leisure Committee**

24. At its meeting on 5 January 2016, Heritage Culture and Leisure Committee approved the recommendation:  
"That the Democracy Committee be recommended to revise the frequency of meetings of this Committee from bi-monthly to monthly as part of its review of the Constitution in view of the anticipated increase in workload of this Committee. " The comment has also been made that the number of meetings each year should be on the same footing as those for the Communities

Housing and Environment Committee and the Strategic Planning Sustainability and Transport Committee. It is better to have more meetings diarised and cancel them if not required.

25. Some wording amendments to the functions of the Committee are required to reflect the current remit of the Committee. These changes are attached (Appendix 2).

### **Strategic Planning Sustainability and Transport Committee**

26. Is there is the need for a SPSTC sub committee?
27. Could we include some information about Neighbourhood Planning?
28. Some wording amendments to the functions of the Committee have been suggested to reflect the current remit of the Committee. These changes are attached (Appendix 3).

### **Training**

29. The issue of councillor training has been raised. Suggestions raised are as follows:
- On Planning Committee – 6 compulsory modules for new planning members plus induction, all of which should be completed within 6 months.
  - Introducing a CPD session for experienced Planning Committee members.
  - Audit Governance and Standards Committee training to be in place as with other committees.
  - Training on being a Chairman and chairing meetings.