

For publication

Constitution Updates

MEETING: Standards and Audit Committee

DATE: 20th September 2017

REPORT BY: Monitoring Officer

For publication

1.0 Purpose of report

1.1 To seek member approval for updates to the Constitution.

2.0 Recommendations

2.1 That the Constitution be amended to take account of the recommended changes in this report.

2.2 That the Constitution as amended be published.

3.0 **Background**

- 3.1 The Constitution is a key document, required by law, which sets out the principal powers, duties and procedures of the Council. It also sets out to whom decision making over the Council's various functions are delegated.
- 3.2 The current form of Constitution has been in place since the early 2000s and follows a government model proposed at the time. Most council constitutions follow a similar format, though some are now moving away from it.
- 3.3 The Constitution needs to be changed from time to time to ensure it reflects current practices, functions and structures and efficient working of the authority.
- 3.4 This report recommends a range of changes reflecting the need to facilitate property sales and acquisitions as part of the council's budget strategy, strengthening internal audit procedures, and increasing greater flexibility over sealing Council documents.
- 3.5 Various consequential amendments may need to be made to other parts the Constitution, numbering etc to ensure consistency and reflect these changes.

4.0 **Property Disposal Delegations**

- 4.1 In Part 3 of the Constitution there is a variety of powers to acquire and dispose of land. Mostly acquisition of land or surplus land disposal is delegated to the relevant Cabinet member, subject to the Leader's responsibility for key sites. There is an officer delegation for industrial sites. Cabinet member for Economic Growth can dispose of housing land "of little or no value."
- 4.2 The Council has established a Finance and Performance Board to have strategic oversight of the Council's financial affairs and performance and give proactive leadership of the council's strategic projects and programmes. It meets fortnightly and comprises the Leader and Deputy Leader, the Chief Executive, the Executive Directors, the Director of Finance and Resources and Chief Accountant.
- 4.2 As part of its terms of reference the Board approves property acquisitions and disposals over £250,000 in value. Appropriate formal delegations are needed to put this into effect. As the Board is not a formal council

committee nor an executive meeting it is suggested that an officer delegation is the most effective way to achieve this.

- 4.3 The Council also has a Land Disposal Group meeting monthly which considers land disposals. This is an officer group which includes an Executive Director, the Director of Finance and Resources and other relevant managers and officers. It considers disposal of land which is surplus to the requirements of the Council and makes recommendations to the Finance and Performance Board for disposal in the case of sites valued at over £250,000.
- 4.4 An officer delegation is needed so that decisions can be made as a result of consideration by the Group.
- 4.5 The proposed changes are shown in Appendix A.

5.0 Internal Audit Procedures

- 5.1 Financial procedures in Part 4 of the Constitution were reviewed in 2016, Changes to Internal Audit provisions within this part of the constitution have been reviewed further.
- 5.2 It is recommended that some provisions deleted in the 2016 review be reinstated as these set out in detail and transparently the powers and responsibilities relating to internal audit.
- 5.3 In addition service managers' responsibilities under the Finance Rules be clarified to help ensure that internal audit reports are responded to promptly and that agreed recommendations are implemented in agreed timescales.
- 5.4 The proposed changes are shown in Appendix B.

6.0 Sealing of Council Deeds

- 6.1 Currently all Council documents executed under the Council's seal must be signed by the Mayor (or Deputy Mayor) plus an Authorised Signatory (usually a Council solicitor). Changes approved in October 2016 mean that in the absence of the Mayor/Deputy Mayor or in cases where a document must be completed urgently two authorised signatories can sign deeds. Authorised signatory means the Local Government and Regulatory Law Manager or any other person authorised by them in writing.

- 6.2 While it is a longstanding tradition of the Council for the civic leader to sign formal documents, it is not always practicable for the Mayor/Deputy Mayor to be available to sign documents in their busy schedules. This can lead to potential delays in completion of transactions. Often signing can take considerable time in view of the number of documents and the number of places each document, plans and amendments need to be signed and initialled.
- 6.3 It is proposed that while the facility be retained for signature by the Mayor / Deputy Mayor greater flexibility be introduced by the power for authorised signatories being extended to enable officer signature instead of either of the civic leaders.
- 6.4 The proposed changes are shown in Appendix C.

7.0 Human Resources/people management implications

- 6.1 The changes will enable more efficient working of the authority, reflecting the current structure and best practice. Officers and members will be able to operate within a clear framework.

6.0 Financial implications

- 6.1 The report proposes changes which will lead to greater efficiency and enable quicker approval of relevant land disposals following detailed consideration by relevant groups. This will help achieve the council's strategic budget objectives. Changes to internal audit provisions will help ensure the integrity and performance of the internal audit regime and that its recommendations are put into effect within agreed timescales. Changes to procedures for signing deeds will help ensure that legal processes can be completed in a timely way, ensuring that capital receipts are not delayed.

5.0 Legal and data protection implications

- 5.1 The Council must have a Constitution and this must be updated periodically to reflect current practices and decision making structures: it is a living document. Some changes flow from, eg changes in legislation or decisions made by the council or restructured posts replacing previous posts. Other changes need formal approval.
- 5.2 While the main Constitution changes are authorised by full Council, Council has previously delegated authority to Standards and Audit Committee to approve more routine Constitution changes.

6.0 **Equalities Impact Assessment (EIA)**

- 6.1 A preliminary EIA been carried out. The changes do not have any equalities implication and is not anticipated to have a disproportionate impact on any group. A copy of the EIA is attached at **Appendix D**.

7.0 **Risk management**

- 7.1 This report concerns updates to the Constitution to enable efficient and legal operation of Council decision making, to strengthen internal audit procedures and to introduce more flexible and efficient procedures for signing Council documents.

Description of risk	Impact	Likelihood	Mitigating Action
Constitution not reflect current requirements of the Council	H	M	Regular review of all parts of the Constitution and appropriate proactive and reactive amendment.
The need to obtain formal authority for disposals and acquisitions which have been considered by relevant groups causes delays to marketing and capital receipts.	H	M	Increase officer delegations so that decision can be made after detailed consideration by relevant office/member group.
Internal audit provisions are not robust leading to less cooperation with the internal audit process and delay in implementation of recommendations.			Reinforce and clarify Constitution provisions.
Sealing of documents is sometimes delayed when the Mayor and Vice Chair are not	H	M	Adjust authority to seal documents so that in these circumstances two duly authorised

available or have other engagements.			signatories can attest the document instead of the Mayor/Deputy Mayor.
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8.0 **Alternative options and reasons for rejection**

- 8.1 **Do not change the Constitution:** The Constitution must be updated to time to reflect the current structure and legal functions and appropriate procedures. The Constitution is required by law and must be reviewed on a rolling basis.
- 8.2 **Do not change land disposal delegations:** a formal report would need to be submitted to members for approval. This would cause unnecessary delay and divorce the decision making process from detailed consideration of whether or not to dispose on a case by case basis.
- 8.3 **Do not change Internal Audit provisions:** The recommended changes are to help ensure that service managers give appropriate attention to and cooperation with the internal audit process. This is a concern of Standards and Audit Committee.
- 8.3 **Do not change signing provisions:** The option for greater flexibility for signature by officers would not be incorporated meaning that the Mayor/Deputy Mayor would continue to sign all deeds unless absent.

9.0 **Recommendations**

- 9.1 That the Constitution be amended to take account of the recommended changes, and that any consequential amendments be made.
- 9.3 That the Constitution as amended be published.

10.0 **Reason for recommendations**

- 10.1 To ensure effective and efficient operation of the Council.

Decision information

Key decision number	N/A
Wards affected	All
Links to Council Plan priorities	to provide value for money services

Document information

Report author		Contact number/email
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Background documents		
The Council's Constitution – on Council website		
<i>This must be made available to the public for up to 4 years.</i>		
Appendices to the report		
Appendix A	Approval of Land Acquisition / Disposal	
Appendix B	Internal Audit Provisions	
Appendix C	Signing of Deeds	

Appendix A

Approval of Land Acquisition / Disposal

Amendment to Delegations Part 3 of the Constitution

- A To the Chief Executive, an Executive Director or the Director of Finance and Resources:

Notwithstanding any other delegations in Part 3, after consultation with members of the Finance and Performance Board to approve the acquisition and disposal of land of a value up to or exceeding £250,000.

- B To an Executive Director or the Director of Finance and Resources:

Notwithstanding any other delegations in Part 3, after consultation with members of the Land Disposal Group to approve the disposal of land surplus to the requirements of the Council of a value of up to £250,000.

Appendix B

Internal Audit Provisions

Amendment to Finance Rules Part 4 of the Constitution

1 Status of and responsibilities under the Finance Rules

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(b) Responsibilities of Service Managers

Service Managers are responsible for the financial management of their areas, they must:

- Ensure the highest standards of financial probity.
- Ensure compliance with the Finance Rules and any procedures or guidance issued by the Chief Finance Officer within their service area.
- Ensure that a proper scheme of delegation has been established in their area of responsibility and that it is operating effectively.
- Consult Internal Audit before making any changes to financial systems and procedures.
- Monitor monthly the overall financial position of their service area.
- Maintain up to date inventories
- Advise the Chief Finance Officer and relevant Cabinet member on issues/proposals that have a financial impact in their area.
- Provide information to the Council's auditors on a timely basis as required.
- Ensure that any audit recommendations are considered and responded to promptly and that agreed recommendations are implemented in accordance with agreed timescales.

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2 Audit

(a) Internal Audit

In accordance with the Accounts and Audit Regulations the Council is responsible for ensuring an 'adequate and effective system of internal audit'. The Chief Finance Officer has responsibility for monitoring adherence to the Audit Plan. Audits will be carried out in accordance with CIPFA Guidelines. At the commencement of the financial year the Standards and Audit Committee will approve an audit plan for that year. On a quarterly basis the Standards and Audit

Committee will receive an update report on the progress made in delivering the plan including progress on implementation of internal and external audit recommendations.

The Chief Finance Officer will arrange for the accounting records and systems of internal control of the Council to be subject to an adequate and effective system of internal audit in accordance with proper internal audit practices. The Head of Internal Audit or their authorised representative is authorised to: -

- (a) have access, at all reasonable times, to all Council land and premises;
- (b) examine any records, documents, information or correspondence held by Council officials and members which relate, directly or indirectly, to the Council's finances;
- (c) require any Council official or member to produce any Council-owned cash or property under their control;
- (d) check Council inventories;
- (e) request and receive explanations on any matter under examination.

The Chief Executive, Executive Directors and Service Managers will immediately notify the Chief Finance Officer or the Head of Internal Audit (each of whom will inform the other) of any financial irregularity, suspected irregularity or circumstances suggesting the possibility of an irregularity, including those affecting Borough Council cash and property. Pending investigation and reporting, the Chief Executive, Executive Directors or Service Manager should take all necessary steps to prevent further loss and to secure records and documentation against removal or alteration.

The Head of Internal Audit will immediately investigate such matters and, where there is evidence of possible irregularities, will notify the Chief Executive.

Service Managers must ensure that all the agreed recommendations in audit reports are implemented (see Responsibilities of Service Managers above).

APPENDIX C

Signing of Deeds

Amendment to Attestation of Common Seal Part 2 of the Constitution

14.7 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Regulatory and Local Government Law Manager.

A decision of the authority, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Regulatory and Local Government Law Manager should be sealed.

The affixing of the Common Seal will be attested by either:

- the Mayor (or the Deputy Mayor) and by an authorised signatory OR
- two authorised signatories

In this paragraph 14.7 “authorised signatory” means the Local Government and Regulatory Law Manager and/or any other person authorised by him/her in writing and “authorised signatories” shall be interpreted accordingly. And production of a copy of this paragraph 14.7 shall be sufficient authority of these authorisations.

APPENDIX D

Equalities Impact Assessment

Chesterfield Borough Council

Equality Impact Assessment - Preliminary Assessment Form

The preliminary impact assessment is a quick and easy screening process. It should identify those policies, projects, services, functions or strategies which require a full EIA by looking at negative, positive or no impact on any of the equality groups.

Service Area: Legal

Section: Legal

Lead Officer: Monitoring Officer

Title of the policy, project, service, function or strategy the preliminary EIA is being produced for: Constitution Updates

Is the policy, project, service, function or strategy:

Existing ☐

Changed ☒

New/Proposed ☐

Q1 - What is the aim of your policy or new service?

The Constitution needs to be changed from time to time to ensure it reflects current practices, functions and structures and efficient working of the Council. The proposal recommends a range of changes reflecting current senior officer structure, and more efficient financial procedures and thresholds as well as some other relevant updates.

Q2 - Who is the policy or service going to benefit?

The updates will support the efficient working of the Council.

Q3 - Thinking about each group below, does, or could the policy, project, service, function or strategy have an impact on protected characteristics below? You may also need to think about sub groups within each characteristic e.g. older women, younger men, disabled women etc.

Please tick the appropriate columns for each group.

Group or Protected Characteristics	Potentially positive impact	Potentially negative impact	No impact
Age – including older people and younger people.			✓
Disabled people – physical, mental and sensory including learning disabled people and people living with HIV/Aids and cancer.			✓
Gender – men, women and transgender.			✓
Marital status including civil partnership.			✓
Pregnant women and people on maternity/paternity. Also consider breastfeeding mothers.			✓
Sexual Orientation – Heterosexual, Lesbian, gay men and bi-sexual people.			✓
Ethnic Groups			✓
Religions and Beliefs including those with no religion and/or beliefs.			✓
Other groups e.g. those experiencing deprivation and/or health inequalities.			✓

If you have answered that the policy, project, service, function or strategy could potentially have a negative impact on any of the above characteristics then a full EIA will be required.

Q4 - Should a full EIA be completed for this policy, project, service, function or strategy?

Yes ☐
No ☒

Q5 - Reasons for this decision:

The updates are not anticipated to have disproportionate impact on any groups.

Please e-mail this form to the Policy Service before moving this work forward so that we can confirm that either a full EIA is not needed or offer you further advice and support should a full EIA be necessary.