

Cheshire East Council

Date of Meeting: 19th October 2017

Report of: Director of Legal Services

Subject: Cheshire East Council-Review of the Constitution

1. Report Summary

- 1.1. This report provides an update to Council upon the review of the Constitution.

2. Recommendation

- 2.1. To note the progress made in respect of the review of the Constitution, and the timescale for the completion of the review.

3. Background

- 3.1. On 4th August 2017, the Constitution Committee received a report regarding a proposed, comprehensive, review of the Council's Constitution; which is needed to ensure compliance with all relevant statutory requirements, to improve organisational efficiency, and to further improve the governance arrangements for the Council.
- 3.2. The Committee resolved as follows:

“RESOLVED

That the Committee

(i) agrees on the need for a review of the Constitution and the production of a proposed new Constitution for consideration by Council in accordance with proposals contained in the advice note appended to the report;

(ii) agrees a proposed vision for the production of a new Constitution as follows:

“to have a clear, succinct Constitution which is accessible, user-focused, provides helpful instruction and ensures good governance and transparency across all elements of service delivery”

(iii) agrees the seven principles set out in the advice note as a starting point for the review of the Constitution and production of a proposed new Constitution, the principles being as follows:

The Constitution should:

- (i) recognise the Council’s democratic leadership role;*
- (ii) support, not hinder, the efficient exercise of democratic decision-making, good governance and the delivery of services;*
- (iii) be modern in its language, format and presentation;*
- (iv) be concise, covering only those essential issues which need to be in the formal Constitution and sign-posting to other documents and sources;*
- (v) recognise the new ways in which the Council operates (for example, through ASDVs and shared services);*
- (vi) delegate decision-making to the most appropriate level with the right checks, balances and scrutiny; and*
- (vii) be future proof, not requiring constant revisiting and updating.*

(iv) agrees the key areas for action and proposed approach as set out in the advice note;

(v). appoints a Sub-Committee of eight members of the Constitution Committee (5 Conservative; 2 Labour; 1 Independent) to meet fortnightly with terms of reference as follows:

a. agree a work programme based on the priorities set out in the advice note so as to divide the task of reviewing the Constitution into appropriate work packages and allocating the work packages to relevant member and officer task groups to progress;

b. approve the evolving re-drafted sections of the new Constitution that are proposed by the allocated Member and Officer task groups; and

c. approve a final draft of the full Constitution to be put to the Constitution Committee for approval, prior to the Constitution Committee then recommending the adoption of the same by full Council.

(vi). the names of the Sub-Committee members be notified to the Head of Governance and Democratic Services in accordance with the usual rules of appointing members to committee places. Substitute Members should, where possible, be appointed from within the membership of the Constitution Committee; otherwise, the Council's normal rules on substitutions would apply to the Sub-Committee; and

7. the Sub-Committee be asked to consider and make recommendations on appropriate means of making the Constitution available digitally”.

- 3.3. The Constitution Sub-Committee has now met on three occasions in order to drive-forward the review. In order to do so, it established four Working Groups, each led by a Sub-Committee member, on a cross-party basis, as follows:

Work Package 1 – The overall style and presentation of the Constitution (Sub-Committee)

Work Package 2 – Decision-making – Terms of Reference of Member Bodies (Cllr G Baxendale)

Work Package 3 – Decision-making – Officer Scheme of Delegation (Cllr N Mannion)

Work Package 4 – Procedure Rules (Cllr A Martin)

Work Package 5 – Codes/Protocols and Members' Allowances (Cllr B Burkhill)

- 3.4. Bevan Brittan solicitors, specialists in local government and constitutional law, were appointed to advise the Council upon the review and to assist in drafting the product which would comprise the Council's new Constitution.
- 3.5. Work Package 1 was dealt with by the Sub-Committee. Each of the Working Groups leading the other Work Packages have held meetings in order to consider the area of work allocated to them by the Committee. The approach adopted by the Working Groups has been to develop, based upon the principles originally agreed by the Constitution Committee on 4th August 2017, the material within their Work Packages.
- 3.6. The product of the work of the Working Groups has directed the work of Bevan Brittain, facilitating the production of newly drafted sections of the Constitution but, importantly, highlighting those matters where the Working

Groups may have had queries, or where there may be concerns about the proposed provisions of the new Constitution.

- 3.7. At its meeting on 4th August 2017 the Constitution Committee gave a commitment that there would be full engagement with Council Members as part of the review process. In order to reassure Members, the Sub Committee resolved that whilst officers would be permitted to use their discretion in bringing to the attention of the Sub Committee only matters of substance when constitutional changes are proposed, this discretion would be required to be exercised with caution. This has been done, and will continue to be done through the production of summary documents and discussions at the Working Groups, the Sub-Committee and Committee meetings.
- 3.8. The approach adopted for the review is as follows:
- 3.8.1.1.** Working Groups consider those sections of the Constitution which they have been appointed to deal with.
 - 3.8.1.2.** Working Groups agree any proposed new content and highlight queries or concerns (as per paragraph 3.6).
 - 3.8.1.3.** Advice sought from Director of Legal Services and Bevan Brittan.
 - 3.8.1.4.** Constitution Sub-Committee considers content and queries, or concerns, highlighted by the Working Groups, and makes recommendations to the Constitution Committee.
 - 3.8.1.5.** Constitution Committee makes recommendations to Council.
 - 3.8.1.6.** Council considers the Constitution Committee's recommendations and whether to adopt the Council's new Constitution.
- 3.9. As indicated, the Constitution Committee has given a commitment to fully engage Members as part of the process. Indeed, significant interest has already been shown by Members who wish to feed into the process, and to get involved. The following opportunities have taken place, or are due to take place in order to ensure that all Members are able to feed into the process.
- There have been two meetings of the Constitution Committee, three meetings of the Constitution Sub-Committee, and numerous meetings of the Working Groups. Invitations were given to all Members to attend meetings of the sub-Committee and the Committee.
 - A workshop was held at Sandbach Town Hall on 31st August, which was well-attended by Members of all Groups,

- The constitutional drafting and explanatory notes produced so far have been sent to all Members electronically. An offer to supply hard-copies of the documents to Members has been made, where requested.
 - Two drop-in sessions for Members to attend and be briefed, make comments or raise queries, will take place on 12th and 13th October. Further drop-in sessions can be arranged if needed, and the Director of Legal Services and Head of Governance and Democratic Services will be on hand to answer any questions which are raised.
 - A Briefing was arranged for Group Leaders.
 - Offer of presentations has been made to each political Group.
 - Further meetings of the Constitution Sub-Committee will take place, which may be attended by any Member, who may choose to address the Sub-Committee on issues of interest to them.
 - The recommendations of the Sub-Committee will be considered by the Constitution Committee which, as above, is open to receive the views of any Member.
 - The recommendations of the Constitution Committee will finally be considered by Full Council, which will debate the proposals before it.
 - Every lead member in each area of Member decision-making in the Constitution has been invited to contribute to the review of “their” area of the document.
- 3.10. Whilst Full Council will consider the product of the review, it is important to recognise that it has appointed the Constitution Committee, as the expert body, to consider legal and other advice, and to make informed recommendations upon constitutional matters. The engagement process illustrated above makes very clear that the views and concerns of Members are aired, and are then subject to appropriate advice before consideration by the Constitution Committee. Whilst Full Council decides whether or not to adopt a new constitution, Members must be clear that Full Council is not an appropriate forum to seek to undertake a detailed re-drafting of the document itself. That can only be done through the Sub-Committee, Committee and the member engagement process described above.
- 3.11. Whilst no formal decision had been taken by the Constitution Committee in respect of the date upon which Full Council would consider and seek to adopt the reviewed Constitution, the aim had been for this to take place at the meeting of Full Council on 19th October 2017. However, the considerable input by Members in the review to date, and the consequent engagement arrangements resulted in a decision by the Committee that the December 2017 meeting of Council should consider the matter instead.

4. Wards Affected and Local Ward Members

- 4.1. All wards and local ward members are affected.

5. Implications of Recommendation

5.1. Legal and Policy Implications

5.2. Full Council is responsible for adopting its Constitution, based upon the recommendations of the Constitution Committee.

5.3. Financial Implications

5.3.1. The review of the Constitution is intended to deliver efficiencies in respect of the way in which the Council works and makes decisions. This, ultimately, is expected to generate efficiency savings.

5.4. Human Resources Implications

5.4.1. There are no identified human resources implications.

5.5. Equality, Rural and Public Health Implications

5.5.1. These issues will be considered as part of the work of the review and will be central to subsequent recommendations.

6. Risk Management

6.1. Risk considerations have been taken into account throughout the review process and appropriate legal and professional advice has been taken. This will minimise risk. The final product of the review will result in a more understandable and effective Constitution which will lead to greater clarity in terms of the way in which the Council works, and in more transparent and efficient decision-making. This, in itself, will minimise risk.

7. Background Papers

7.1. The Council's existing Constitution is a published document, and has formed the basis of this review. Bevan Brittan solicitors have produced summary and explanatory notes which have fed into the process, and which have also been published.

8. Contact Information

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