

NOT CONFIDENTIAL – For public release

Council

26 July 2022

Report of Director of Corporate and Customer Services & Monitoring Officer

RECOMMENDATIONS FROM THE CONSTITUTION WORKING GROUP – PROPOSED AMENDMENTS TO THE ARTICLES OF THE CONSTITUTION, RESPONSIBILITY FOR FUNCTIONS AND PROCEDURE RULES

PURPOSE OF REPORT

To submit the recommendations of the Constitution Working Group in respect of proposed amendments to various parts of the Constitution and to seek the Council's approval and adoption of the proposed revisions.

RECOMMENDATIONS

1. That the functions of the Council be confirmed as all new strategies and policies, those matters reserved by the law and any matters that the Council resolves to reserve to itself; as well as responsibility for the approval of the following specific strategies and policies:-
 - a) Revenue and Capital Budgets, including determination of the Council Tax and the Local Council Tax Support Scheme
 - b) The Corporate Plan
 - c) The Performance Plan
 - d) The Crime and Disorder Reduction Strategy
 - e) The Development Plan documents and the plans and alterations which together comprise the Development Plan, known as the Local Plan
 - f) The Licensing Authority Policy Statement under the Licensing Act 2003 and Gambling Act 2005
 - g) The Medium Term Financial Strategy
 - h) The plan or strategy for the control of the Council's borrowing, investments or capital expenditure or for determining the Council's minimum revenue provision.
2. That the Policy Committees be authorised to review and approve amendments to existing policy matters that are not reserved to Council or delegated to officers relating to the functions within service areas listed in their respective terms of reference at Part 3 of the Constitution.
3. That the term of reference of the Policy Committees be amended to include the following:

- a) The formulation, development and implementation of the Council's overall budget and policy framework, including recommending to Council where such matters are required in respect of new strategies or policies
 - b) The coordination of the implementation of policy and strategic objectives across the Council.
 - c) The implementation of Council approved strategies for the social, economic and environmental well-being of citizens in respect of functions and services not otherwise the responsibility of the full Council.
 - d) The promotion and maintenance of excellent services for citizens in line with the Council's corporate priorities.
 - e) Functions relating to personnel and health and safety to the extent that those functions are discharged in the Council's capacity as an employer.
 - f) The establishment of working groups, subject to available resources and to consultation with the Chief Executive, to develop or review policy in accordance with agreed priorities in the Corporate Plan or Budget and make recommendations back to Policy Committees for determination
4. That, subject to the approval of recommendations 1, 2 and 3, the Council Procedure Rules be amended to allow for questions to be put to officers at meetings of Policy Committees and for multiple contributions from Members during debate at the discretion of the Chairman of the Policy Committee meeting.
 5. That reports for information no longer be submitted to Council or its Committees unless there is a statutory requirement for the matter to be considered formally.
 6. That a regular information briefing be issued to Members covering matters previously subject to information reports to Council or Committees.
 7. That a Scrutiny Committee be established, with terms of reference to be inserted in Part 3 of the Constitution (Responsibility for Functions) and procedure rules to be inserted in Part 4 of the Constitution (Rules of Procedure), as set out in Appendices 2 and 3.
 8. That the Independent Remuneration Panel be asked to review the role and remit of the Chairman and Vice-Chairman of the Scrutiny Committee and recommend at its earliest convenience a special responsibility allowance to be paid for the roles to the Council.
 9. That General Delegations to Officers, set out in Appendix 1, be inserted in Part 3 of the Constitution and the principle be approved that functions are to be discharged by officers unless expressly reserved to the Council or its committees within the Constitution or by way of resolution.

WARDS AFFECTED

District wide

STRATEGIC LINK

The effective operation of the Council's democratic processes underpins all the Council's aims and objectives. The Constitution is also an important tool in setting and monitoring the Council's governance framework.

1 BACKGROUND

- 1.1 The Constitution is the cornerstone of the Council which enables decision making and sets out responsibilities for the discharge of functions, as well as the rights of Members and the public in engaging with and participating in the governance of the authority.
- 1.2 At the Council meeting on 22 April 2021, it was resolved that a Constitution Working Group be established to support the Monitoring Officer in reviewing key parts of the overall Constitution and make recommendations to Council for changes in decision making procedures. The role and function of the group is to provide a mechanism by which Council can carry out focused cross-party reviews of the Constitution, of both a general and specific nature to ensure the constitution remains fit for purpose. It undertakes this role by:
 - a) Considering any constitutional or procedural matter concerning the Council;
 - b) Undertaking health checks of the Constitution to ensure that the detail of the text remains fit for purpose and put forward appropriate changes;
 - c) Reviewing areas in the Constitution to ensure that it is kept in line with current legislation, local decisions made by the Council and best practice;
 - d) Recommending any proposed changes to the Constitution arising from the above to Council for approval.
- 1.3 The Constitution is a living document and changes can be made (on recommendation from other Council bodies or the Monitoring Officer) where circumstances or the Council's priorities have changed, where the Council wishes to change the way it carries out its services and functions.
- 1.4 The Working Group has met on several occasions to consider the current operation of decision making bodies and identify where improvements can be made.

2 ISSUES

- 2.1 The overriding priority for the Constitution Working Group has been to consider the mechanics of the decision making processes of the Council in the context of what has been a challenging period through the COVID-19 pandemic. As this work has been prioritised, the working group has not reviewed procedures or the rules of debate.
- 2.2 The changes to the Constitution that were approved in July 2020 were intended to ensure that the Council had full oversight and decision making capacity in relation to strategy, policy and resources without the duplication of workload of debate. The assumed benefits that were listed in the previous Monitoring Officer's report to Council have been partially realised with all Members certainly determining all new policy or amendments to existing policy. As such, Council has effectively become a committee of 39 Members living on a diet of reports prepared by officers. There is little opportunity to debate issues of public interest, save for extraordinary meetings or delaying business to later meetings which creates a delay in officers being able to implement policy or other service related decisions. Members have clearly indicated

a willingness and desire to debate motions coming from political groups and exercise accountability through the use of questions on notice.

- 2.3 In the two years since the Council reserved decision making responsibility to itself for all new or proposed amendments to policies there have been 27 meetings of the Council. By way of comparison, most local authorities meet 8 times in a municipal year on average. The current model of decision making places greater demands on all Members through increased attendance at meetings in Matlock Town Hall, as well as having to read through more reports on increasingly lengthy agendas. Meetings have regularly exceeded the two and a half hour guillotine and Members are frequently attending meetings that last a minimum of three hours without necessarily completing the business detailed. This observation is not a criticism of the way in which business is conducted, but is highlighted as recognition that the current arrangements are far from effective in expediting business in a timely way.
- 2.4 The Constitution Working Group recognised that the Council has considered challenging issues in the last two years where consensus between political groups has not always been reached and has contributed difficult debates on specific issues. By way of contrast, committees and working groups have continued to work in a largely homogenous way throughout the same period and it was noted that these were more effective vehicles for decision making. Having reflected on this, the working group was minded to recommend that the Council reverse the changes made in July 2020. It is important to note that Council will retain decision making powers in respect of any new policies or strategies brought forward, whereas changes to or reviews of existing policy will be considered by the Policy Committees, unless the Council specifically reserves specific policy or strategy matters to itself.
- 2.5 Beyond structural changes to the discharge of Council functions, some consideration was given to the need to provide sufficient space in Council meetings to exercise accountability and opportunities for debate on issues that were not confined to business prepared by officers. Since the Local Government Act 2000 was enacted many local authorities have seen their Council meetings become an opportunity for political debate and challenge, as well as providing a platform for political accountability. The debate of motions has always been a key part of Council meetings. The volume of business taken through Council at present may have deterred Members from submitting motions, and in one case had led to the withdrawal of a motion. It should be noted that where Members have given notice of questions or motions these will continue to have precedence in the order of business unless the Chairman determines otherwise in the meeting.
- 2.6 With Policy Committees proposed to have powers in line with practice that was in place prior to July 2020, it was also proposed that the remit of policy making for Council be confirmed as all new policies and strategies, including those specifically reserved to the Council in Article 4. The Council may also resolve to reserve specific decisions to itself on matters that Members determine to be strategically or politically significant and warrant input and determination from the full membership of the authority. From previous experience Members will be aware that the result of this proposal will be to increase the workload of the Policy Committees and these will need to meet more frequently, which has been reflected in the agreed Calendar of Meetings for the 2022/23 municipal year. With a current membership of 17 Members per Policy Committee, this ensures a broad involvement and representation of all of the political groups on the Council. The existing rules in respect of substitute Members mean that there is little reason for concern that Members will not be able to

have influence through their group colleagues on policies that are reviewed, implemented or amended through the Policy Committees.

- 2.7 The proposed terms of reference for the Policy Committees would also introduce a power to establish working groups for specific pieces of work where it was considered appropriate to do so. There has been recognition from every political group of the benefit of working groups in areas like climate change, and the Constitution Working Group considered that this way of working should not be inhibited by any constitutional shift to Policy Committees. It was also noted that officers were supportive of the use of working groups as a means to have detailed discussions on complex issues or corporate priorities before presenting formal reports to a committee. The reservation of this power for Policy Committees would not prevent the Council from also establishing working groups if it voted to do so. The Constitution Working Group has recommended that the Chief Executive be consulted in respect of resource implications associated with supporting a working group prior to its establishment.
- 2.8 The Constitution Working Group has recommended that reports submitted for information presently to Council or committees should not be reported formally unless there is a statutory requirement to do so. It was anticipated that this would reduce debate on matters where no decision is required. To enable this, it is recommended that a regular briefing digest be circulated to Members covering information that would previously have been reported for information to meetings. Members can continue to request that such information be formally reported to the relevant committee, but the intention of the working group's proposal was to reduce the frequency of such reports being presented which often resulted in questions or debate which did not lead to a decision.
- 2.9 The Constitution Working Group has recommended the establishment of a Scrutiny Committee. The group has prepared draft terms of reference and procedure rules for the operation of the Scrutiny Committee, but the functions can be summarised as:
 - Holding Policy Committees to account for decisions taken – either through call-in prior to a decision being implemented or through post implementation review of a policy, procedure or service change
 - Developing or reviewing an existing policy, procedure or way of working within the Council
 - Monitoring and reviewing the performance indicators in respect of service provision
 - Scrutiny of external bodies
- 2.10 The introduction of a Scrutiny Committee will provide a platform for challenge and learning within the Council's political framework. Such committees exist to provide opportunities to examine and question decision makers and officerS. This committee is not proposed to be established to review every decision taken or delay the implementation of decisions, but to provide a final check and challenge where there are concerns in respect of a proposed decision. As such, this is not a decision making committee, with those powers being reserved to the Policy Committees and/or the Council.
- 2.11 With regard to call-in, the Scrutiny Committee will be able to consider requests for decisions of the policy committees to be reviewed. The proposed procedures contain provision for up to 4 Members of the Council to call-in a decision for scrutiny. The

call-in process would require a reason for the call-in and an alternative proposal for the Scrutiny Committee to consider.

- 2.12 Concerns were expressed during the working group's discussions about the potential conflict of interest which would arise more frequently for Members of smaller political groups, who may not have sufficient numbers within their group to substitute for them to prevent the same Member being involved in a policy decision and then scrutinising the same decision. It is a principle of good governance that decision makers should not also exercise accountability and challenge on matters where they have made a decision. To address this situation, substitutions will be available to political groups for the Scrutiny Committee to avoid such situations and the Monitoring Officer will be given the discretion to consider potential dispensations to enable a Member to participate in scrutiny activity where the political balance of the committee is affected in a way that prevents the overall balance of the authority being reflected on the Scrutiny Committee when considering a call-in.
- 2.13 In the event that the Council approves the establishment of a Scrutiny Committee, training and development activity will take place for both Members and officers to ensure that there is a collective understanding of the role and working practices of this new committee and how it fits into the broader governance framework of the Council.
- 2.14 As the current Member Allowances Scheme has not been reviewed for more than four years, the Council must seek the recommendation of the Independent Remuneration Panel before determining the special responsibility allowance payable to the Chairman and Vice-Chairman of the Scrutiny Committee. It is recommended that the Panel be requested to prioritise making a recommendation on the special responsibility allowance to be paid to the Chairman and Vice-Chairman of the Scrutiny Committee.
- 2.15 The Council has previously been advised of the need to introduce General Delegations to Officers as part of the recommendations arising from the Black's Head Investigation in October 2020. At the present time there are very specific delegated powers related to statutory provisions that are clearly set out in Part 3 of the Constitution (Responsibility for Functions). The Constitution presently does not articulate that the Council has delegated authority to officers to manage and deliver functions associated with service delivery. It is for this reason that the Constitution Working Group has recommended a number of provisions that provide general delegated authority to officers. The constitutions of local authorities across England have established a clear principle that where functions are not specifically reserved to Council or a committee (or Executive) then officers have responsibility for such functions. The present practice at this Council is for functions to be determined by Council if they are not explicitly reserved to a committee or officers. It is therefore recommended that the Council establish the principle that a function is to be determined by an officer, unless it is specifically reserved to a committee or Council. The caveat to this is that an officer will seek to undertake consultation with the relevant Committee Chairman, and where appropriate with Ward Member(s), where there is likely to be significant public interest in a decision, which may result in the matter being referred to a committee or Council for decision.
- 2.16 A key component of a successful political framework is how transparent it is and how transparent it is perceived to be. Whilst much debate has taken place in meetings about the way in which questions are put to report authors, there has not been a focus

on understanding why the volume of questions are put by Members to officers. Anecdotal feedback shared with the Monitoring Officer, along with discussions in the Constitution Working Group, suggests that the absence of an evaluation of alternative options and why they have been discounted as the recommended approach in reports is the primary reason for the number of questions put to report authors in meetings. As referred to in paragraph 2.9 above, there are no provisions for questions from Members to officers at Council or Policy Committee meetings and these have been permitted at the discretion of the Chairman. There is no recommendation to change this practice at present for Council meetings, as the Rules of Debate require further review by the Constitution Working Group, but it is recommended that the Council Procedure Rules be amended to allow for questions to be put to officers during meetings of Policy Committees. In addition to this, there is recognition from the Monitoring Officer that the report template for Council and committees needs to be amended to require an evaluation of the options considered and not recommended, as well as further detail on the implications of recommendations. Such improvements are anticipated to improve the quality and transparency of decision making from the perspective of Members and the public, as well as potentially removing the need for as many questions and allowing Members to focus on debating the merits of proposals submitted for decision by Council and its committees.

- 2.17 In addition to the above, the Council approved the purchase of a committee management system earlier this year. The Modern.gov software is currently being implemented, which will increase the transparency of Council decision making and make it easier to search for previous decisions, as well as the publication of delegated decision records. Members will receive automatic notifications on the publication of documents and citizens can also register to receive notifications in respect of matters of interest to them.

3 PROPOSED CHANGES

Articles of the Constitution (Part 2)

- 3.1 Article 4 – The Full Council is recommended to be amended to:

- remove from 4.01(a)(i) the Community Strategy from the Policy Framework, as there is no longer a statutory requirement for local authorities to prepare this document.
- remove from 4.01(a)(ii) the Food Law Enforcement Service Plan, as there is no longer a statutory requirement for local authorities to prepare this document.

- 3.2 Article 6 – The Council's Committees is recommended to be amended to:

- insert at 6.04 –

Scrutiny Committee

The Council will appoint a Scrutiny Committee which will hold decision makers to account, review performance and designated projects and make recommendations to Policy Committees and officers

The functions of the Committee are set out in Part 3 of this Constitution entitled “Responsibility for Functions”.

Responsibility for Functions (Part 3)

3.3 The functions of the Council are recommended to be amended to:

- Insert at a) the words “,arising from Council decisions, changes in the Management Structure or new or amended legislation”
- Delete at b) the words “Corporate Plan” and insert the words “set out in Article 4 of the Constitution.”
- Delete at c) the words “or which seek to propose a significant departure from existing policy.”
- Insert at i) the words “or dismissal of”
- Delete at n) the words “Making decisions about any functions that by law, or as a result of local choice are not the responsibility of the Council and have not been delegated to a committee or officer;”
- Insert at q) the words “management structures within the organisation” and delete the words “organisational review and resources”

3.4 The functions of the Policy Committees are recommended to be amended to:

- Insert the words “All policy committees, other than where specified, will comply with the proportionality rules, as set out in the Local Government and Housing Act 1989. The Council appoints standing policy committees. Their purpose is to examine in detail specific issues or aspects of policy, procedure or service and make decisions on those matters within their specific remit, other than those that are specifically reserved to the Council. The membership will comprise councillors from each political group, subject to the political balance of the Council.”
- Delete the words “A significant area of work in relation to policy and strategic development is undertaken on behalf of the Council by the two Policy Committees. The Committees each meet every 6 weeks, or at such other periods as business may demand and report to meetings of the Council. One of the aims of the Constitution is to speed up decision making and so provision has been made for each Committee to make a decision in relation to the other's business where an urgent matter needs attention.”
- Insert the following table:

Community and Environment Committee	To consider specific issues or aspects of policy, procedure or service relating to: <ul style="list-style-type: none">• Affordable Housing• Anti-Social Behaviour and Community Safety• Car Parking• Climate Change• Community Development• Conservation and Design• Countryside Management• Disabled Facility Grants• Dog Warden Service
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	<ul style="list-style-type: none"> • Economic Development • Economic and Strategic Partnerships • Environmental Crime • Environmental Health • Estate Regeneration • Events • Flooding • Homelessness • Home Options • Housing Strategy • Leisure Services • Markets • Matlock Bath Illuminations • Neighbourhood Plans • Planning Policy • Private Sector Housing • Public Conveniences • Public Health and Safety • Sports Development • Supplementary Planning Guidance • Transport Operations • Tree Protection • Waste Collection and Recycling
Governance and Resources Committee	<p>To consider specific issues or aspects of policy, procedure or service relating to:</p> <ul style="list-style-type: none"> • Asset Management • Central Support Services • Communications and Marketing • Consultation and Engagement • Customer Access and Complaints • Data Protection and Information Governance • Digital Transformation and Business Process Improvement • Electoral Administration and Registration • Equalities and Diversity • Financial Governance • Internal and External Audit • Human Resources • Legal and Corporate Governance • Member Support and Development • Procurement and Contract Management • Revenues and Benefits

- 3.5 The wording in respect of the Community and Environment Committee and Governance and Resources Committee be deleted.
- 3.6 The wording in Appendix 1 in respect of General Delegations to Officers is recommended be inserted in Part 3 of the Constitution.
- 3.7 The wording in Appendix 2 in respect of the proposed Terms of Reference for the Scrutiny Committee be inserted in Part 3 of the Constitution.

Rules of Procedure

- 3.8 The following wording is recommended to be inserted within Council Procedure Rule 3 in respect of the business to be conducted at the Annual Meeting of the Council “Elect a Leader of the Council and Deputy Leader of the Council”
- 3.9 The following wording is recommended to be inserted within Council Procedure Rule 3.01 (Terms of Appointment), “including the offices of Leader of the Council and Deputy Leader of the Council”
- 3.10 That the following wording be inserted as a new Procedure Rule 18.5:

Content and Length of Speeches at Policy Committees

Speeches must be directed to the question under discussion or to a personal explanation or point of order. Members may also ask questions and receive a response to their questions from either the Chairman of the Committee or officers.

Members will not be restricted by these rules in the number of times that they may participate in a debate at a Policy Committee meeting, other than at the discretion of the Chairman of the Committee in seeking to secure the efficient management of debate on matters under consideration.

- 3.11 The wording in Appendix 3 in respect of the Scrutiny Procedure Rules be inserted in Part 4 of the Constitution.

4 OPTIONS CONSIDERED

- 4.1 In making the recommendations to the Council, the Constitution Working Group considered a broad discussion paper from the Monitoring Officer which reflected on the way in which the Council’s governance arrangements currently operate. This focused discussions on structures and functions initially, rather than on procedural matters. The recommendations have been made on the basis that the alternative, which is the current arrangement of Council having full authority to determine all policy, has not worked as well as had been envisaged in July 2020. Limited consideration has been given to the possibility of changes to the Rules of Procedure for Council meetings to enable a more effective discharge of functions as this would not have addressed the fundamental issue of the volume of decision making functions reserved to Council.
- 4.2 Some discussion took place in respect of a potential move to an executive arrangements model of decision making. This is an option available to the Council, which operates “alternative arrangements” under the Local Government Act 2000. There was no enthusiasm to consider this given that the model of governance was not considered to be the issue, but rather the distribution of functions within the

current model. If there were a recommendation to move to executive arrangements, the Council would be required to establish a Scrutiny Committee as a statutory requirement, as part of a suite of changes that would require either an Elected Mayor or a “Strong Leader” model.

- 4.3 The establishment of the Scrutiny Committee has been recommended by Members as an alternative to the current practice of questions to officers at Council meetings. The alternative to the recommendation would be to review the Rules of Procedure for Council and committee meetings to introduce provisions for questions to be asked within the Rules of Debate. This option was not recommended and the establishment of the Scrutiny Committee had been proposed to add value to the wider governance arrangements, as well as providing a forum for questioning and challenging of senior officers.
- 4.4 The adoption of general delegations for officers was recommended to the Council over 18 months ago and the proposed delegations are considered to be a necessary step forward in safeguarding the Council from legal challenge in respect of the discharge of functions. The alternative to the principle proposed in this report would be to provide a detail list of all functions currently required to be discharged by the District Council and set out whether the Council, Committees or Officers were authorised to discharge those functions. This would be a significant undertaking at a time when resources are required to deliver other priorities set by Members. Therefore the principle of delegating authority to officers to discharge functions other than where it is specifically reserved to the Council or its committees is expected to achieve the same ends, without incurring a lot of work and debate. As the Constitution is a living document, specific functions that Members would wish to reserve to the Council and Committee can be identified and the Constitution changed accordingly.

5 RISK ASSESSMENT

Legal

- 5.1 It is a statutory duty for the Council to maintain and keep under review a Constitution which must comply with the provisions of the Local Government Act 2000, regulations made under it and Directions issued by the Secretary of State as to its contents. It is also a requirement of our existing Constitution that its provisions be reviewed by the Monitoring Officer.
- 5.2 The proposal to establish a Scrutiny Committee is consistent with the requirements of The Local Authorities (Committee System) (England) Regulations 2012. Where a local authority operating a committee system determines to operate a scrutiny committee there are specific provisions in relation to whom that committee can make reports and recommendations. The proposed terms of reference are consistent with the provisions of the regulations.
- 5.3 Amendments to the Council’s Constitution by law is a matter for full Council. The Council’s Constitution provides for the Constitution Working Party to advise the full Council in matters relating to the operation of the Constitution and any necessary

amendments. As this process has been followed and the proposals are consistent with the law, the legal risk is considered to be low.

Financial

- 5.4 There are no financial implications directly associated with this report. The proposals are consistent with the Members' Allowances Scheme, although it is noted that the establishment of special responsibility allowances for the Chairman and Vice-Chairman of the Scrutiny Committee will be subject to a recommendation from the Independent Remuneration Panel and backdated to the date of appointment at the Annual Meeting. At such time as the Council determines the special responsibility allowance for those offices, a recommendation will be made to amend the revenue budget to reflect the additional budget requirement for the 2022/23 financial year. The financial risk is therefore considered to be low.

6 OTHER CONSIDERATIONS

- 6.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.
- 6.2 There are no particular implications arising from the amendments. Members are reminded of their duties under the Equality Act 2010 when exercising their functions to have regard to the need to eliminate discrimination against and promote equality for persons with a protected characteristic. When decisions are made in accordance with the Constitution such implications will be referred to as necessary.
- 6.3 A Climate Change Impact Assessment has been undertaken and has indicated a neutral impact associated with the recommendations in this report.

7 CONTACT INFORMATION

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8 ATTACHMENTS

Appendix 1 – Part 3 of the Constitution – Responsibility for Functions

Appendix 2 – Part 4 of the Constitution – Rules of Procedure