



**Council – 27 July 2023**

## **AMENDMENTS TO THE CONSTITUTION**

### **Report of Director of Corporate and Customer Services (Monitoring Officer)**

#### **Report Author and Contact Details**

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#### **Wards Affected**

District-wide

#### **Report Summary**

This report details a series of proposals to amend the Constitution of the Council to ensure that it is relevant and up to date, as well as compliant with the law. The proposals within the report have been developed to improve governance processes and procedures.

The Council is also asked to adopt the Local Government Association's Model Code of Conduct for Members, on the recommendation of the Constitution Working Group.

#### **Recommendations**

1. That the Constitution be amended to reflect the change in the size of the Council's membership from 39 councillors to 34 councillors.
2. That Article 3 be amended to clarify citizen involvement and participation and remove reference to customer service standards and opening hours.
3. That Part 3 of the Constitution be amended to incorporate the terms of reference for the Biodiversity Sub-Committee, Local Plan Sub-Committee and the insertion and deletion of functions as set out in Appendix 1 of this report.
4. That Part 4 of the Constitution (Rules of Procedure) be amended on the basis of the insertions and deletions highlighted in Appendix 2 of this report.
5. That the Members Allowances Scheme, as drafted and published by the Monitoring Officer in accordance with the Council decision on 26 January 2023, be agreed.
6. That Part 5 of the Constitution (Codes and Protocols) be amended to delete the current Code of Conduct for Members and be replaced with the Local

Government Association's Model Code of Conduct for Members, as set out in Appendix 4 of this report.

7. That the Constitution Working Group be tasked with reviewing:
  - (a) Petition Scheme
  - (b) Area Community Forum arrangements
  - (c) Public Participation arrangements
  
8. That, in accordance with the recommendation from the Community and Environment Committee on 13 July 2023, Contract Standing Orders be amended by inserting a new Standing Order 6.15 in respect of exceptional waivers.

**List of Appendices**

- Appendix 1 Draft Part 3 of the Constitution (Responsibility for Functions)
- Appendix 2 Draft Part 4 of the Constitution (Rules of Procedure)
- Appendix 3 Members Allowances Scheme (as at May 2023)
- Appendix 4 Derbyshire Dales District Council's Code of Conduct for Elected Members (based on the Local Government Association Model)

**Background Papers**

Not applicable

**Consideration of report by Council or other committee**

No

**Council Approval Required**

Yes

**Exempt from Press or Public**

No

## **Amendments to the Constitution**

### **1. Background**

- 1.1 The Council is required to maintain and publish a Constitution, in accordance with Section 9P of the Local Government Act 2000, setting out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.
- 1.2 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.
- 1.3 As such, it 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 It is good practice to keep the Constitution under regular review and with the Council last considering changes to the document in July 2022, it is timely to bring forward recommendations that seek to update the document to reflect the changes that have taken place since the election of the new Council in May 2023. In addition, it is necessary to consider an outstanding recommendation from the Constitution Working Group for the Council to adopt the Local Government Association's Model Code of Conduct for Councillors.

### **2. Key Issues**

- 2.1 This part of the report sets out the various updates and proposed amendments in detail. With the Council size set by the Local Government Boundary Commission for England (LGBCE) taking effect in May 2023, it is necessary to update the Constitution to reflect the revision to 34 Members and so the Council is recommended to approve this change.
- 2.2 Having reviewed the Articles of the Constitution in detail, the Monitoring Officer has been able to compare the current provisions to best practice and consider whether provisions are needed or up to date. Within Article 3, which sets out provisions in respect of Citizen Involvement and Participation, there is detailed text setting out the opening hours of Matlock Town Hall and which telephone number to use to contact the Council. In reviewing the same provisions for other authorities, such operational information is not provided here. It is unlikely that citizens of the Derbyshire Dales would look at the Constitution to identify the means to contact the Council and the same information is easily accessible through the Council's website already, as well as being confirmed in the proposed Customer Access Strategy. This provision of the Constitution should rightly focus on the ways in which citizens can engage with the Council's governance and decision-making processes, to have their voice heard so that decision-makers can have regard to their views. The proposed amendment does not

impact on these provisions, but it is recommended that the Constitution Working Group reviews the provisions for public participation.

2.3 At the Annual Meeting of the Council, the new administration established two new sub-committees to support their priorities for this term until May 2027. A new Biodiversity Sub-Committee was established, whilst the former Local Plan Working Group was amended to become a sub-committee, with clear aims and objectives to support the review of the Local Plan. Part 3 of the Constitution (Responsibility for Functions) needs to be updated to reflect these changes with the insertion of terms of reference for both bodies, which will report to the Community and Environment Committee.

2.4 Part 3 of the Constitution (Responsibility for Functions) also details the terms of reference for Council and its committees, as well as multiple specific functions that are delegated to officers. These functions were last reviewed by the Constitution Working Group ahead of the amendments agreed by the Council in July 2022. Amongst the recommended amendments presented for adoption as part of this report is the insertion of clear urgency arrangements for the discharge of functions reserved to the Council. Such arrangements would only be required if the Council were unable to meet and discharge such functions, and any functions discharged by officers in this context would require the consent of the Leader and the Chair of the Council.

2.5 It is also proposed that specific provisions are inserted in respect of the role and remit of the Policy Committees. The existing provisions are not detailed in explaining the role of policy committees and relies on a higher level of interpretation than would be considered appropriate from the Monitoring Officer in defining what business should be transacted by those committees. The proposed amendments make clear the policy committees are responsible for:

- Agreeing policy issues that are not reserved to full Council
- Approval of the proposed withdrawal or variation of any service where this is outside the scope of an agreed Service Plan and the likely impact on present or future users of the service is considered significant
- Agreeing alterations to Council Services Plans (provided they remain within the constraints of the Budget and Policy Framework)
- Agreeing fees and charges (other than any set by the full Council as part of the budget setting process) in line with the Medium Term Financial Plan and any policies in respect of fees and charges
- Agreeing to policy and performance priorities for the short and medium term, taking into account the needs of the Council as a whole
- Considering reviews of service performance against approved plans.

It also makes clear the role of the Governance and Resources Committee in overseeing the delivery of corporate priorities, as detailed within the Corporate Plan, and making decisions on cross-cutting matters that are not reserved to the Council.

2.6 A number of amendments are proposed to the Council Procedure Rules, which are detailed in Part 4 of the Constitution (Rules of Procedure). Members will note the provisions in respect of the election of a Leader and

Deputy Leader(s) within Council Procedure Rule 3. Authority was previously delegated to the Monitoring Officer to insert such provisions in July 2022.

2.7 An amendment is proposed to Council Procedure Rule 5 which details the business of Ordinary Meetings of the Council. Firstly, it is recommended that the provisions for maiden speeches be deleted. These were introduced in the previous term of the Council, but this is not considered to be a necessary provision in the new term of the Council and its deletion is proposed. Within the same procedure rule, it is recommended that Rule 5(j) is amended to include provisions for recommendations arising from Policy Committees to be dealt with by way of highlighting the recommendation within the minutes of those meetings, along with a copy of the report that led to the recommendation. This approach will remove the requirement for separate items of business to be listed on the agenda but will enable consideration of the matter in accordance with the Rules of Debate.

2.8 With regard to Council Procedure 14, which is concerned with Public Participation, it is recommended that provisions be introduced focus the scope of questions put to the meeting. Whilst there have not been issues in this area, such provisions are common within the procedure rules of other local authorities in order to ensure that matters are focused on issues which materially effect the residents and area of the Derbyshire Dales. The provisions will enable the Monitoring Officer to reject a question if it:

- is not about a matter for which the Local Authority has a responsibility, or which affects the District; or
- is defamatory, frivolous or offensive; or
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information; or
- relates to an individual/group business or the questioner's own particular circumstances; or
- relates to a matter which is the subject of legal or enforcement proceedings or an appeal to a tribunal or to a Government Minister or an investigation by the Local Government and Social Care Ombudsman or Monitoring Officer; or
- relates to the personal circumstances or conduct of any officer and Councillor or conditions of service of employees; or
- relates to the activities and aims of a political party or organisation; or
- relates to individual planning applications;

2.9 A similar provision is recommended to be introduced within Council Procedure Rule 16 which concerns Motions on Notice and suggests that the following criteria be applied for motions to be considered:

- is not about a matter for which the local authority has a responsibility, or which affects the district;
- is defamatory, frivolous or offensive;
- is substantially the same as a motion which has been put at the meeting or a meeting of the Council in the past six months. (This does not apply to motions moved in pursuance of a recommendation of a Committee or of officers or motions which have been withdrawn from a previous meeting);

- requires the disclosure of confidential or exempt information;
  - would, if carried, commit the Council to a course or courses of action contrary to agreed processes or outside its authority to act; or
  - relates to a planning or licensing application which has yet to be determined
- 2.10 It is proposed to insert provisions for Points of Information and Personal Explanations to be cited by Members. There have been frequent occasions in Council meetings where Members have tried to use Points of Order to clarify information that may have been misunderstood or where incorrect information has been presented to the Council. The introduction of such provisions will enable Members to clarify matters through an appropriate procedure, although the admissibility of the points will be determined by the Chair.
- 2.11 The Council has previously agreed the requirement under the Openness of Local Government Bodies Regulations 2014 to permit individuals to record, film and broadcast from meetings of the Council and its committees. However, in doing so, the Council did not include provisions for this within its procedure rules. It is therefore recommended that a new Council Procedure Rule 26 be inserted to cover the way in which the authority codifies the public's rights to record or film meetings.
- 2.12 Approval was given to a new Members' Allowances Scheme in January 2023, which took effect after the municipal elections in May 2023. In approving the recommendations of the Independent Remuneration Panel, it has been necessary to draft a new Scheme for publication within the Constitution. The scheme enclosed at Appendix 3 is recommended for adoption within the Constitution. Members will recall that the Independent Remuneration Panel has been asked to make recommendations arising the changes made to appointments to roles at the Annual Meeting. This work is ongoing and will be reported back to the Council in September 2023.
- 2.13 Under the Localism Act 2011, each local authority has a duty to adopt a Code of Conduct dealing with the conduct that is expected of members and co-opted members, when they are acting in that capacity. The code must be consistent with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Councils must also ensure that their codes include appropriate provisions about declaring pecuniary and other interests. There is no national prescribed version of a code in England and no obligation to adopt a particular model. The LGA Model Code is suggested national good practice, and Councils can adopt this revised code, or adopt their own local code.
- 2.14 The New Code covers:
- Respect
  - Bullying, harassment and discrimination
  - Respect for the impartiality of officers of the council
  - Confidentiality and access to information
  - Disrepute
  - Use of position
  - Use of local authority resources and facilities

- Complying with the Code of Conduct
- Protecting councillors' reputation and the reputation of the local authority
- Gifts and hospitality
- Declaration of interests wider than the DPI Regulations
- Strengthens emphasis on intimidation, abuse, and bullying
- Reiterates that all forms of councillor communications are included, including social media
- Improves guidance re gifts, hospitality, and conflict of interests
- Has a wider scope

2.15 The Constitution Working Group (prior to the election) found the Model Code of Conduct to be a better drafted document than the existing Derbyshire Dales Code. It is a clearer statement of the standards, conduct and behaviours that Members agree to abide by and uphold when taking office. On this basis, it is a much easier document for the public to digest and understand too. The anticipated benefits of adopting the new Code are:

- Greater consistency of approach to standards cases
- Potential for higher standards of conduct
- Addresses specific areas of concern raised through the consultation
- Reduces levels of complexity around particular issues
- Introduces more robust safeguards needed to strengthen a locally determined system

2.16 Importantly recognises that Councillors should be able to undertake their role without being intimidated, abused, bullied or threatened by anyone including the general public.

2.17 At a recent meeting of the Community and Environment Committee a report was considered from the Director of Regeneration and Policy in respect of the UK Shared Prosperity Fund which reported advice from Government that there was scope for the Council to manage grant schemes more flexibly by approving different procurement thresholds via appropriate internal governance process. The Government had indicated that the Council could run a grant scheme with different thresholds if there was internal approval for that within the Council. Having reviewed the recommendation from the Community and Environment Committee, the Monitoring Officer has recommended that a new Contract Standing Order 6.15 be inserted to read as follows:

*6.15 In the case of goods / supplies and works procured by businesses or community organisations seeking grant funding provided by the District Council acting in its role as Lead Local Authority for the UK Shared Prosperity Fund, the upper threshold for purchasing using three quotations shall be £75,000. A copy of the written specification and quotations obtained must be submitted with grant funding applications before such grant funding can be considered for approval. A specific waiver report or record will be required in such circumstances and the purchase will also be recorded in the grant/monitoring information retained as part of the DLUHC claims process.*

### **3 Options Considered and Recommended Proposal**

- 3.1 An alternative option would be to not approve the proposals that have been recommended and make no changes to the Constitution. This is not recommended as the document needs update to reflect the circumstances that the Council is currently operating within.
- 3.2 The recommended option is to approve the proposed amendments to the Constitution to ensure that the authority continues to operate good, robust and up to date governance arrangements.
- 3.3 This report does not deal with all matters that require review within the Constitution. These matters include outstanding recommendations to review and update the Petition Scheme and review the arrangements for Area Community Forums. It is also recommended that the Constitution Working Group review arrangements for public participation to ensure that these meet the Council's aspirations for openness and transparency.

### **4 Consultation**

- 4.1 The Constitution Working Group was consulted in respect of the adoption of the LGA Model Code of Conduct and was supportive of recommending the Council to adopt this model.
- 4.2 The Corporate Leadership Team has been consulted on the changes to the Scheme of Delegation within Part 3 of the Constitution.

### **5 Timetable for Implementation**

- 5.1 The proposed amendments to the Constitution would take effect immediately in the event of the recommendations in this report being approved. The Monitoring Officer is accountable for the implementation of any decisions to amend the Constitution.

### **6 Policy Implications**

- 6.1 The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Therefore, the Constitution supports delivery of all the priorities described in the Corporate Plan.

### **7 Financial and Resource Implications**

- 7.1 There are no specific financial or resources implications arising from the body of this report save as for robust governance arrangements to ensure that the Council is making informed and documented decisions, thereby reducing risk to the Council. The financial risk is therefore assessed as low.

### **8 Legal Advice and Implications**

- 8.1 Under Section 9P of the Local Government Act 2000 (the 2000 Act), local authorities must prepare and keep up to date a Constitution, which must also be made available to the public. The Council's Constitution follows a



standard format as recommended by the former Department of the Environment, Transport and the Regions (DETR) in 2001, as part of the implementation of the 2000 Act.

- 8.2 Changes to the Constitution are matters reserved to the Council to determine. As a result, the adoption of amendments to the Constitution must be agreed by Council. The legal risk associated with the recommendations in this report is assessed as low.

## **9 Equalities Implications**

- 9.1 There are no particular implications arising from the amendments that are proposed. 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.

## **10 Climate Change Implications**

- 10.1 There are no climate change implications associated with the recommendations in this report.

## **11. Risk Management**

- 11.1 The regular review and amendment of the Constitution is a key mitigation to address broader risks of challenge to decisions and the procedures underpinning those decision making processes. This report is in itself a mitigation to any risks that may arise.

### **Report Authorisation**

Approvals obtained from Statutory Officers:-

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Paul Wilson	17/07/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	17/07/2023
Monitoring Officer (or Legal Services Manager)	James McLaughlin	18/07/2023