

# Executive

## Review and update of the Constitution

6 April 2009

### Report of Head of Legal and Democratic Services

#### PURPOSE OF REPORT

To seek approval from the Executive to recommend to Council the changes to the constitution proposed

This report is public

#### Recommendations

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The Executive is recommended:

- (1) To consider and comment on the proposed changes to the constitution
- (2) To approve, subject to any amendments the Executive may wish to make, and subject to any comments or amendments from the Standards committee on 8 April, the attached Introduction, Terms of Reference and Scheme of Delegation, Rules of Procedure and Planning Guidance and to recommend to Council that these documents be approved.
- (3) To recommend to Council that delegated powers be given to the Head of Legal and Democratic Services, to make any minor or consequential amendments that may be needed, in particular with inconsistencies or duplications that may exist within the part of the constitution not yet reviewed.
- (4) To recommend to Council that the financial limit for key decisions for 2009/2010 be £50,000

#### Executive Summary

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##### Introduction

- 1.1 The objectives of this review of the constitution are to update the constitution, make it easier to use, remove inconsistencies and duplication and make the decision making process better value for money.
- 1.2 This review has not covered the codes and protocols section other than to revise the planning guidance in the light of the adoption of public speaking at planning committees and to tie in with the new planning procedure rules. The

codes and protocols section will be reviewed when the new code of conduct is issued later in the year.

### **Proposals**

- 1.3 The Introduction is intended to explain to the public, and new councillors and staff, how the Council works. It replaces the existing Articles, Summary and the Access to Information Procedure rules.
- 1.4 The Terms of Reference and the Scheme of Delegation will now be Part One of the constitution. This sets out from the Council downwards what each committee does and then sets out both general and specific delegations to staff. All the delegations are now in one place and specific powers are listed under the specific Head of Service. All acronyms are removed.
- 1.5 The Rules of Procedure will now be Part Two of the constitution. This sets out, again starting with full Council, the procedure rules to be followed. The rules are in one place and have been written to be as clear and easy to follow as possible.
- 1.6 Annually updated information will not be in the constitution. This has consisted of a list of councillors and wards, the schedule of meetings and structures within the organisation. This information is very useful but changes too quickly for it to be held in the constitution. This information will be available through the committee management system and in hard copy through the Yearbook for those who prefer it.

### **Conclusion**

- 1.7 This has been a major piece of work. The Codes and Protocols section remains to be reviewed and rewritten in full and that will be the next stage of the project later in the year. Where there are inconsistencies with what is adopted here and what has not yet been reviewed I am seeking delegated powers to amend to make it consistent.
- 1.8 The constitution is the governance infrastructure of the authority. It is largely invisible but impacts every day in how we work, deal with the public, enforce legislation and take decisions. These changes are intended to increase transparency, improve efficiency and value for money and provide a clear guide for all on how we work. This should help the authority to comply with the duty to promote democracy contained in the Local Democracy, Economic Development and Construction Bill.

## Background Information

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- 2.1 The Council's constitution has not been reviewed for many years. It has been added to as required but consequential inconsistencies and duplications have not been dealt with. It has simply increased in size and complexity. This is unhelpful for everyone and leaves the Council open to potential challenge if people are not sure about their authority to take action.
- 2.2 The Terms of Reference and Scheme of Delegation starts with full Council. Full Council can take any action which the authority is legally able to take. Full Council must explicitly delegate power to enable any other body or person to act on behalf of the Council. The Council delegates to the Executive all the powers and functions which it is able to under relevant legislation. The Executive ensures the authority takes decision within the budget and policy framework adopted by the Council. It monitors the budget and performance of the authority and takes all key decisions unless it explicitly delegates these. Key decisions are those affecting more than one ward or involving a "significant" sum. What is significant is for the authority to decide in the context of its own budget and the economic climate.
- 2.3 Individual portfolio holders manage their areas of responsibility by taking the non key decisions in their area. Their role is crucial. The audit trail for individual decisions is as important as for decisions of the Executive.
- 2.4 All Terms of Reference have been updated and reviewed (for example removing reference to PRP).
- 2.5 Below this sits the officer scheme of delegation. This is critical for the day to day management and running of the organisation. The existing powers have all been pulled into one place to make them easier to find. The powers have then been reviewed to make sure they fit with responsibilities following the restructure and are up to date and relevant. Values have been increased where necessary to reflect the reality of today's costs. Changes flowing from the Improvement Plan for Planning have been included, as well as changes flowing from the new Contract Rules of Procedure adopted in January 2008. Personnel Committee no longer approves all posts provided the proposed posts are within budget so not increasing the establishment, but it retains responsibility for approving restructures of 5 posts or more and other strategic functions. The 'general' part of Personnel and General is moved to Council. Powers have deliberately been made more general to avoid problems with defence lawyers challenging our prosecutions on the issue of authority to take action.
- 2.6 The Rules of Procedure have been reviewed (or written where they did not exist). In particular focusing on those committees where the public are directly involved or affected, that is planning, licensing, standards and scrutiny.
- 2.7 Although the Codes and Protocols are not being reviewed the planning guidance needed updating in the light of the decision to allow public speaking at planning committee (and the detailed procedure rules for this are set out in the Rules of Procedure section) and to remove duplications that now exist because some parts of the planning guidance sits better in the revised

planning procedure rules. The procedure rules for public speaking were approved by the planning committee on the 12 March

- 2.8 The Overview and Scrutiny section has been revised to include a list of excluded matters. This is as a result of legislation which comes into force on 1 April 2009. Basically the legislation excludes matters relating to planning and licensing applications and individuals from being the subject of a member reference to a scrutiny committee. Most local authorities, including Cherwell, have been operating these exclusions on an informal basis for several years. The legislation formalises this position to make sure that there is a clear understanding of what matters are appropriate for scrutiny and why.

### **Key Issues for Consideration/Reasons for Decision and Options**

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- 3.1 Councillors, staff and the public will benefit from a clearer guide as to how we work. It will also help the Council defend any challenges when authority is exercised, whether by committees, individual portfolio holders or individual members of staff.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

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| <b>Option One</b>   | Leave the constitution as it is. This is not recommended as it is out of date. It is also very difficult to find what you need and therefore leaves the Council open to challenge because it is not used properly. |
| <b>Option Two</b>   | Update the layout, formatting and presentation only and ensure references to legislation are correct. This would be a huge improvement in itself and could be adopted  |
| <b>Option Three</b> | Approve the draft appendices attached which both update and improve presentation and streamline decision making to ensure democratic accountability and efficient decision making                                  |

### **Consultations**

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| <b>Corporate Management Team</b>                     | All feedback has been incorporated into the final draft   |
| <b>Extended Management Team</b>                      | Individual Heads of Service have given detailed feedback on their specific powers   |
| <b>Executive and Personnel and General Committee</b> | Executive members and members of the Personnel and General Committee have been informally consulted before the draft documents were finalised and their comments and suggestions are included |

### **Implications**

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- Financial:** There should be efficiency savings from greater clarity about what does, and does not, need to go through the

Executive and greater clarity on who can decide what.

Comments checked by Eric Meadows, Service Accountant, PH&E, 01295 221552

**Legal:**

It is important for the Council to have a robust constitution supporting effective decision making. It is also important to be able to defend challenges in the courts to authority to act.

Comments checked by Liz Howlett, Head of Legal and Democratic Services 01295 221686

**Risk Management:**

Risk of challenge will be mitigated by a robust constitution

Comments checked by Rosemary Watts, Risk Management and Insurance Officer. 01295 221566

**[Other Implications]**

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Comments checked by [Insert name], [Insert job title] 01295 22[Insert extension number]

**Wards Affected**

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All

**Corporate Plan Themes**

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Accessible Value for Money Council

**Executive Portfolio**

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**Councillor Barry Wood**  
**Portfolio Holder for Policy and Community Planning**

**Document Information**

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<b>Appendix No</b>	<b>Title</b>
Appendix One	Introduction
Appendix Two	Terms of Reference and Scheme of Delegation
Appendix Three	Rules of Procedure
Appendix Four	Planning Guidance
<b>Background Papers</b>	
The existing Cherwell District Council constitution	
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