

**COUNCIL  
16 JANUARY 2020**

**\*PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: CONSTITUTIONAL & GOVERNANCE REVIEW 2019/20**

REPORT OF THE SERVICE DIRECTOR: LEGAL AND COMMUNITY & MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR MARTIN STEARS-HANDSCOMB

CURRENT COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

FUTURE COUNCIL PRIORITY: BE A MORE WELCOMING AND INCLUSIVE COUNCIL

**1. EXECUTIVE SUMMARY**

- 1.1 This reports sets out the review undertaken and recommends amendments to update the Council's Constitution and propose new Panels.

**2. RECOMMENDATIONS**

- 2.1. That Full Council approves the proposed amendments set out in Appendix A, or where alternatives are proposed – such alternatives as are legally appropriate.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. To ensure the Council meets its statutory obligations and continues to improve its working practices.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. None.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. Following consultation with the Leader of Council, a Constitutional & Governance Working Group ('Working Group') was established. The Working Group is/ was a cross party/ officer group consisting of the following: Cllr Martin Stears-Handscomb, Cllr Judi Billing, Cllr Steve Jarvis, Cllr Carol Stanier, Cllr David Levett, Cllr Claire Strong, Anthony Roche, Melanie Stimpson and Jeanette Thompson. The Working Group has considered the proposal in meetings and by email.
- 5.2. Emails have been sent to the wider Membership and Senior Officers to seek any proposed changes and comment on the proposals. The proposals have been discussed at Political Board Liaison 'PLB' (concentrating on Panels) and at the Senior Management Team ('SMT') meetings in December. Other than that no further consultation has taken place.

## 6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

## 7. BACKGROUND

- 7.1. The Monitoring Officer has a duty to monitor and review the Constitution. Under paragraph 2.4 of the Constitution there is an annual straightforward (necessary/ minor) and triennial in-depth review process. The last detailed review took place in April 2018 and June 2018 – following the Senior Management restructure. A further review was then undertaken with the then Group Leaders in 2018 and approved in January 2019.
- 7.2. Following the election in May 2019, the new administration indicated that it would like to undertake a review of the Constitutional and potentially change the Governance arrangements. The Working Group was established to review and met on three occasions to consider various governance models and proposals. A motion at Council supported the Review<sup>1</sup>. At the first meeting a detailed options paper was discussed regarding Cabinet and Committee-based arrangements. The consensus was to explore a hybrid model of an Executive form of Governance with two new all-Member Cabinet Panels (in addition to the Cabinet Panel on the Environment), to allow for greater community and Member participation. The Working Group has also discussed further options and Constitutional amendments during these meetings.
- 7.3. As agreed by the Working Group, all Members and Senior Officers were emailed on 14 October for suggested amendments to the Constitution. Any received were considered by the Working Group. Wording and proposals are as set out in **Appendix A**. Panel Terms of reference are as **Appendices B-C**, with suggested minor Change to the Environment Panel's Terms (at **Appendix D**) to marry up with the wording with the other two proposed Panels. As indicated, the Panels were considered by PLB and the overall proposals by SMT in December.
- 7.4. The two new Panels proposed are Cabinet ones for:
- Housing, Strategic Planning & Transport; and
  - Community Engagement, Enterprise and Co-operative Development.
- Ordinarily, as these are advisory Panels to Cabinet/ the Executive Members/ Officers), then they could be established (as the Environment one was) by Cabinet. However, as these have wider resource implications, they are considered here.

## 8. RELEVANT CONSIDERATIONS

### **Constitution amendments (as per the Schedule appended at A):**

- 8.1. Mostly these are minor amendments to existing arrangements – gaining consensus of most of the Working Group. Of particular note are:

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<sup>1</sup> <https://democracy.north-herts.gov.uk/documents/b7207/Supplementary%20Agenda%20-%20Notice%20of%20Motions%2012th-Sep-2019%2019.30%20Council.pdf?T=9>

**General - delegated Executive decision making:**

- 8.2. The proposal is that any individual delegated Executive decision within the Constitution would be undertaken by the Executive Members (as opposed to Officers). At present the Council has a limited number of Executive functions that are specifically delegated in the Constitution to Officers. The vast majority detailed being operational/ non-Executive functions which legally cannot be undertaken by an individual Member<sup>2</sup>. To the extent that any Executive delegations have been identified, then these have been changed - (eg Grant awards: when an Area Committee or District Panel either cannot make or make a recommendation on the award).
- 8.3. Note in respect of Licensing fee setting - due to the differing legislation, this means that some are Officer approval, and others Executive Member. Therefore no change is proposed.

**Chairing of Project Boards 1.2.6:**

- 8.4. The proposal is that this will move from the Lead Officer to a Member on all new Project Boards established.

**Standing to speak at Full Council meetings 4.8.20 (a):**

- 8.5. There is a proposal to change this arrangement at Full Council. Some of the discussion have focused on the following:
- the audio recording equipment in the chamber and its ability to pick up those speaking when the person is standing, causing issues for those with hearing difficulties (be they Members or the public).
  - equality issues – and the requirement to stand (other than seeking a form of permission from the Chair, which of itself may not be desirable or appropriate);
  - the need to see who is speaking (and therefore need to stand);
  - the need to maintain an element of formality and respect for the Chair of Council (and therefore maintain the requirement).
- 8.6. Members should note that there is no longer uniformity of approach to standing in Full Council meeting nationally. Those that have changed to sitting, appear to have cited equality reasons as the appropriate justification. Proposed wording has been included in the Schedule to remove this requirement, should Members decide to approve.

**Deputy Executive Member new 5.5 & 14.4.18:**

- 8.7. The proposal is to include a definition of this role – to reflect the nature of it. This is not a formal decision making position within the Executive under the provisions of the Local Government Act 2000, therefore this definition largely aims to explain the role at the same time as making it clear that it has no formal decision making / Cabinet function.
- 8.8. As this is not a formal role, there has been a further proposal regarding the term “Deputy” and whether Observer or Shadow would be more appropriate. This is because a Deputy Executive Member cannot formally deputise in terms of Cabinet or delegated decision making. The alternative proposed is “*Administrative Observer*”, and if Members approve this, then the definition included will be updated to reflect this.

**Panels:**

- 8.9. These are as detailed in the Terms of Reference (**Appendices B-C**).

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<sup>2</sup> Section 101 Local Government Act 1972 undertaken by Council/ *ordinary* Committee or Officer.

- 8.10. It was discussed and acknowledged by Executive Members at PLB that the potential workload impacts of the Panels need to be carefully managed, both in terms of preparations for the Panel meetings and outcomes arising from them. It was acknowledged that any recommendations should be directed to Cabinet for consideration and that the work programme of the various Panels needs to be carefully planned and co-ordinated.
- 8.11. If the Panels are approved, a group of 16 will look initially at a draft programme, and will then discuss this with relevant Service Directors, bring this back to PLB and thereafter to Cabinet to agree the approach. If growth bids for staff are not approved for the 2020/21 budget then this can incorporate this issue as per the Financial implications referred to at 10.1, at that stage.

## **9. LEGAL IMPLICATIONS**

- 9.1. Full Council's terms of reference include "*approving or adopting the Policy Framework*". The Policy Framework includes the Constitution.
- 9.2. Section 37 Local Government Act 2000 requires the Council to have in place a Constitution and to keep that under review. The Local Government Act 2000 section 9P sets out the requirements of a local authority's Constitution, including the requirements to prepare it and keep it up to date and the requirement to make it available for public inspection.
- 9.3. In terms of Cabinet Panel's, whilst they have the term 'Cabinet', they are an advisory body, without Cabinet powers, and therefore there is no in principal issue with Council agreeing to their establishment.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There are resource/ financial implications for the changes in respect of Panel meetings and staffing resource. Growth bids are included in the draft Budget and cover support in Committee, Member and Scrutiny Services and Policy & Community Engagement. If the growth bids are not agreed by Full Council in February then it be necessary to either have a further review the Constitutional amendments in relation to the new Panels or identify non-statutory work that no longer needs to be undertaken by the relevant teams. Other than that the resourcing will have to be met through existing staffing structures. In addition to individual growth bids, Members will be aware that an additional payments can be claimed by officers for attending evening meetings (c.£25 per officer, per meeting), as well as toil/ or overtime, and that Property services support will be required to initially staff the reception 19-19.45. Currently it is expected that the costs of these will not be significant so no pressure has been included in the budget process. This will be subject to review in later years.

## **11. RISK IMPLICATIONS**

- 11.1. Ensuring the Council has appropriate governance arrangements in place is an important risk mitigation measure. The Council's Constitution is a fundamental part of those governance arrangements.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 One proposal potentially links to equality (the requirement to stand at Full Council). The preference in any such situation would be prevent any group with a protected characteristic from being treated differently and the proposal to change the standing order would reflect that. Other than that, the overall proposals do not materially affect any group with protected characteristics, but it is the aim, in revising the Constitution and its content regularly, to make it more 'user friendly', ensure transparency and also to encourage greater participation in the Council's decision making processes.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 The new Panels: it has been anticipated that this will increase workload for some sections within the Council and there are growth bids within those teams due to be considered by Full Council in February. They were considered as part of the Budget Workshops by all Groups, and the draft Budget at Cabinet on 17 December 2019.

## **15. APPENDICES**

- 15.1 Appendix A – Schedule of proposed amendments to the Constitution.
- 15.2 Appendix B - Cabinet Panel on Housing, Strategic Planning and Transport
- 15.3 Appendix C - Cabinet Panel on Community Engagement, Enterprise and Co-operative Development
- 15.4 Appendix D - Cabinet Panel on Environment – as amended.

## **16. CONTACT OFFICERS**

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## **17. BACKGROUND PAPERS**

- 17.1 Current NHDC Constitution 2019: <https://www.north-herts.gov.uk/home/council-and-democracy/council-constitution>