COUNCIL MEETING – 14TH MAY 2020

AGENDA ITEM NO. 3

CONSTITUTION REVIEW

Report from the meeting of the Licensing, Audit and General Purposes Committee on 23rd March, 2020.

1. INTRODUCTION

- 1.1 The Council's 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.
- 1.2 During 2019/20 a full review of the Constitution has been carried out to ensure that the provisions and underlying principles in the document continue to meet the Council's needs in the context of organisational change and that it aligns with the type of organisation that the Council is aiming to be in future.
- 1.3 This Report recommends the approval of a revised and updated Constitution for the Council following consideration by the Licensing, Audit and General Purposes Committee, and work carried out by the Constitution Member Review Group. It also summarises the approach to the review, and the process that has been followed. A hard copy of the draft Constitution has been circulated to Members and is available on-line with the electronic papers for the meeting.

2 BACKGROUND

- 2.1 The Council has a responsibility to monitor its Constitution, and to ensure that it is kept up to date. To this effect, updates are made on a regular basis. For example, in 2018 updates were made to reflect changes to the governance structure. The last full review of the document was carried out in 2013 to reflect provisions contained in the Localism Act 2011, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, and other general updates.
- 2.2 However, since the Constitution was first prepared in 2001, the fundamental structure of the document has remained the same, and it is now timely to carry out a more comprehensive review to ensure that the Constitution reflects current working arrangements and supports the type of organisation that the Council is aiming to be in future through its transformation and modernisation programme.

3. PURPOSE OF THE REVIEW

- 3.1 The review of the Constitution was carried out to ensure that the provisions and underlying principles in the document continue to meet the Council's needs in the context of organisational change. This includes the Council becoming a more agile and flexible organisation to enable things to be done quickly and to act on opportunities. Also, for an increased emphasis on taking a business-like approach to service delivery, making the most efficient use of resources, and putting customers first.
- 3.3 Building on these principles, the review sought to ensure the provisions are up to date, and to improve the overall accessibility of the document, reduce duplication, ensure provisions are consistent across the document, and improve indexing and navigability. As part of this, it is proposed to remove the Articles Section, and to integrate the Article rules within each relevant part of the Constitution. In this way, related information is presented together in the document where possible, rather than in separate parts.

4. SUMMARY OF PROPOSED UPDATES

- 4.1 A summary of the proposed updates to the document is set out in **Appendix 1**.
- 4.2 With reference to Part 2 (The Constitution and how the Council operates), while this Part has been revised and updated, the review preserves the Council's Governance Structure (decision making structures) agreed by the Council in 2018 which provides all Members with opportunities to develop and specialise in areas of interest, to influence and participate in policy development on key priorities in the Council Business Plan (through groups appointed by the new Policy and Project Advisory Board) and to carry out scrutiny through improved arrangements. The updated Constitution also incorporates reference to the role of shadow portfolio holders as well as cabinet champion roles.
- 4.3 In Part 3, the Scheme of Delegation for Executive Matters has been revised to improve clarity around responsibilities for executive decision-making and enable increased opportunities for some quicker decision-making through a revised scheme which is sustainable for the future. The revised 'Responsibility for Functions' includes the governance arrangements for new bodies such as the Rushmoor Development Partnership and Rushmoor Homes Ltd and clarifies the general powers of officers in the Corporate Leadership Team.
- 4.4 Each document within the 'Part 4 Procedure Rules' and 'Part 5 Codes and Protocols' has been reviewed to ensure consistency with the rest of the Constitution, with the addition of a new Mayoral Protocol, new Guidance for Members using social media linked to the Code of Conduct for Councillors and the inclusion of the ICT Acceptable Use Policy.

5. PROCESS FOR REVIEW

- 5.1 A cross-party Constitution Member Review Group met on a number of occasions during Autumn/Winter 2019/20 to consider key documents that form part of the Constitution, including the Standing Orders, the Code of Conduct for Councillors, Mayoral Protocol, Protocol for Member/Officer Relations and terms of reference for the Overview and Scrutiny Committee and Policy and Project Advisory Board. The Group's comments have informed the updates to the document from Members' perspective, and copies of the action notes of the meetings were reported to the Licensing, Audit and General Purposes Committee for information.
- 5.2 Wider consultation has also been carried out with the Corporate Leadership Team, and matters relating to executive decision making have been informed through discussion with the Leader of the Council.
- 5.3 Assistance was also sought from a representative from the Local Government Association (LGA) with expertise on the topic of Council Constitutions to provide an external view on the key elements of the draft updated document.

New provisions for remote decision-making

5.4 Very recently, the Government has introduced new temporary powers for councils to hold remote or 'virtual' meetings for the purposes of council decision making. The Council is currently using these powers for remote meetings, and the Head of Democracy, Strategy and Partnerships shall make the related administrative changes to the Constitution as the arrangements are developed.

6. **CONCLUSIONS**

6.1 Changes are proposed to the overall structure and content of the Constitution to ensure that the provisions remain up-to-date and the Council continues to work effectively in the context of ongoing modernisation and transformation and to help ensure the delegation arrangements are sustainable for future.

7. RECOMMENDATION

7.1 The Council is recommended to agree the draft revised Constitution, attached separately, incorporating the revisions summarised in Appendix 1.

Note: In accordance with Standing Order 29, the 'Standing Orders for the Regulation of Business' will stand adjourned without discussion to the Council Meeting in June.

Summary of Proposed Updates to the Constitution 2020

PART 1 – Summary and Explanation

Current Document	Summary of Proposed New Changes
Summary and Explanation Paras. 1.1 – 1.9	Delete Document (content is integrated in new Part 2) Insert new Table of Contents Insert new Summary paragraph: "This Constitution is intended to facilitate council business. It explains how the Council operates, how decisions are made and who has the power to take which decisions. It sets out the procedures, codes and protocols to be followed to ensure that decisions are made efficiently, transparently and with accountability to local people. The Council has agreed this Constitution, which combines all the governance provisions it is required by law to adopt, together with its Standing Orders which set out how it conducts its meetings. These documents together provide the framework within which the Council operates". and explanation of each new Part 1 - 6.

Current Document	Summary of Proposed New Changes
List of Definitions	Insert additional new definitions e.g. Call-in, Decision-making body, key decisions, Policy Framework, Programme, Task and Finish Group
Decision Making Structure Diagram	Delete from this Part and move to Part 2

PART 2

Current Part 2 – Articles of the Constitution	Summary of Proposed New Changes
Articles 1 – 16 and Schedule 1 Description of Executive Arrangements	To delete the Articles. The provisions are proposed to be integrated within relevant parts of the Constitution, so that related information is presented together, rather than in separate parts

Summary of where old Article provisions have been relocated in the updated Constitution:

Old Articles	Key provisions relocated to
1: The Constitution	Part 2 - 'About the Constitution'
2: Councillors and Role Descriptions	Part 2 – How the Council Operates – Role of Councillors Part 3 (Section 3) – Role of Leader & Deputy, Cabinet Members Part 3 (Section 10) – Councillor Role Descriptions – Special Responsibility Roles

Old Articles	Key provisions relocated to
3: Residents and the Council	Part 2 – The Public's Rights
4: The Council	Part 3 – (Section 4) Para 4.1 (Section 5) Role of the Council Part 4 – Budget and Policy Framework
5: Chairing the Council	Part 2 – How the Council Operates Para 3.14 – 'the key responsibilities of the Mayor'
6: The Overview and Scrutiny Committee	Part 3 (Section 7) – Terms of Reference of the O&S Committee
7: The Cabinet	Part 3 (Section 2) – Executive Functions – About the Leader and Cabinet
8: Committees of the Council	Part 3 (Section 6) – Role and Responsibilities of Council Decision-Making Committees
9: Policy and Project Advisory Board	Part 3 (Section 8) Terms of Reference of the Policy and Project Advisory Board
10: Area Committees	Part 2 – How the Council Operates
11: Joint Arrangements	Part 3 (Section 13) - Provisions for and Responsibility for Joint Arrangements
12: Officers	Part 3 (Section 11) – Roles of Officers
13: Decision Making	Part 2 – How the Council Operates (paras 3.10, 3.11 and 3.12)
14: Finance, Contract and Legal Matters	Part 2 – How the Council Operates (paras 3.16, 3.17 and 3.18)
15: Review and Revision of the Constitution	Part 2 – About the Constitution
16: Suspension and publication of the Constitution	Part 2 – About the Constitution

Old Articles	Key provisions relocated to
Schedule 1: Description of Executive Arrangements	Part 2 – How the Council Operates (para 3.3)

NEW Part 2 – The Constitution and how the Council operates

Insert new Part 2:

Section Title	Summary of Contents
About the Constitution	Description of aims and principles, arrangements for making changes to the Constitution, and provisions for suspending the Constitution
How the Council Operates	Description of: (1) Councillors – Terms of Office, Roles and Function (2) Governance of the Council (including decision-making structure, Council, Leader and Cabinet and Mayoralty) (3) The Public's Rights (voting and petitions, information and participation)

PART 3 – RESPONSIBILITY FOR FUNCTIONS

Current Part 3	Summary of Proposed New Changes
Responsibility for Functions	Insert new Section 1 - 'Introduction to Responsibility for Functions' which is a re-working of the current Responsibility for Functions This summarises the Executive/Council split, how delegation works and a new summary of general powers for Executive Directors and Heads of Service.
Section A Powers and Duties of the Cabinet Cabinet Powers and Duties – Further Delegation	Delete Insert new Section 2 – Executive Functions (Introduction to Executive functions) Insert new Section 3 – Scheme of Delegation for Executive Matters New Section 3 specifies: • Matters reserved to the Leader • Matters reserved to the Cabinet • Matters reserved to Cabinet Portfolio Holders • Matters reserved to specific Cabinet Portfolio Holders • New provisions for delegation of executive functions to Officers:

Current Part 3	Summary of Proposed New Changes
	Para 3.10:
	"All executive functions except the ones in paragraph 3.3 to 3.9 above are delegated to officers in the Corporate Leadership Team and Corporate Managers in relation to the Services for which they are responsible. A structure chart setting out service responsibilities is set out in Appendix 2 to this Section.
	Officers in the Corporate Leadership Team and Corporate Managers are 'Authorised Officers' and can authorise officers they line manage or other officers with the relevant skills and responsibilities to undertake delegated functions. Authorised officers will remain responsible and accountable for the exercise of the delegated functions"
Section B – Powers and Duties of the Committees	Delete – information included in new Section 6
Licensing, Audit and General Purposes Committee Powers and Duties	Delete document in current format – terms of reference are included in new Section 6
Licensing, Audit and General Purposes Committee – Further Delegation	Delete document in current format – arrangements for delegation are now set out in new Section 4
Licensing Sub-Committee – Powers and Duties	Delete document in current format – arrangements for delegation are included in new Section 4 (para 4.6 refers)
Licensing Sub-Committee (Alcohol and Ents) Powers and Duties	Delete document in current format – arrangements are included in new Section 4 – (para 4.3 and 4.4)
Development Management Committee Powers and Duties	Delete document in current format – arrangements are included in new Section 4 – para 4.2 and Section 6 para 6.5

Current Part 3	Summary of Proposed New Changes
	Insert new Section 4 – Scheme of Delegation – Non-Executive Matters (Council Responsibilities)
	Sets out those matters not to be the responsibility of the Leader and the Cabinet and the delegation arrangements for each:
	 Budget and Policy Framework Planning Matters Licensing of alcohol, entertainment and late-night refreshment Licensing of gambling Taxi and Private hire licensing and associated licensing arrangements Other licensing and registration arrangements Health and Safety at work Smoke Free premises Other Council responsibilities set out in the table in Para 4.9 No changes are proposed to the powers of current committees and subcommittees related to the functions above
	Insert new Section 5 – Role of the Council (Council Functions)
	Specifies functions that only the Council will exercise
	Insert new Section 6 – Roles and Responsibilities of Council Decision Making Bodies
	Sets out the terms of reference for the Licensing, Audit and General Purposes Committee, Licensing Sub-Committee, Licensing Sub-Committee (Alcohol and Entertainments) and the Development Management Committee

Current Part 3	Summary of Proposed New Changes
	No changes are proposed to the terms of reference of the Development Management Committee.
	'Local choice' matters which were the responsibility of the Licensing, Audit and General Purposes Committee are now proposed to be 'executive matters', and deleted from the terms of reference of the Licensing, Audit and General Purposes Committee:
	Functions related to:
	 Contaminated land Control of pollution and management of air quality Nuisance under the Environmental Protection Act 1990
	Insert new Section 7 – Overview and Scrutiny Committee – Terms of Reference
	No major changes to existing provisions. Some amendments to:
	 Provide similar structure to mirror that of the Policy and Project Advisory Board Reference to Annual Joint Meeting to be held between Chairmen
	 Reference to Armdar Solint Meeting to be field between Chairmen and Vice-Chairmen of OSC and PPAB and its purpose Reference to Task and Finish Groups to be reviewed annually, and time-limited, and as distinct from Standing Groups Ensure cross reference to the OSC Procedure Rules Reference to role of OSC in the scrutiny of business plan activities for Cabinet Champions

Current Part 3	Summary of Proposed New Changes
	Insert new Section 8 – Policy and Project Advisory Board – Terms of Reference
	No major changes to existing provisions. Some amendments to include reference to:
	 Expectation for Cabinet Members to attend PPAB Reference to Annual Joint Meeting to be held between Chairmen and Vice-Chairmen of OSC and PPAB and its purpose Reference to Task and Finish Groups to be reviewed annually, and time-limited,
	Insert new Section 9 – Rushmoor Development Partnership and Rushmoor Homes Ltd – Governance Arrangements.
	This is a new document for the Constitution and sets out previously agreed governance arrangements.
	Insert new Section 10 – Councillor Role Descriptions – Special Responsibility Roles
	Information updated from old Article 2.
	Insert new Section 11 – Roles of Officers.
	This is a new document for the Constitution and is a combination of new provisions to improve clarity of roles, and those that are drawn from the existing scheme of delegation. It details the statutory officer roles and makes the distinction from the head of service role.

Updates to reflect the changes to the officer designations in the current staffing structure, and to include the proper officer functions for the Meetings and Access to Information Regulations 2012. Insert new Section 13 – Provisions and Responsibilities for Joint Arrangements	Current Part 3	Summary of Proposed New Changes
Information carried over from old Article 11.		Updates to reflect the changes to the officer designations in the current staffing structure, and to include the proper officer functions for the Meetings and Access to Information Regulations 2012. Insert new Section 13 – Provisions and Responsibilities for Joint Arrangements

Part 4 – Council Procedure Rules

In all documents, changes have been made to ensure the correct titles of Heads of Services

Document	Summary of Proposed New Changes
Standing Orders for the Regulation of Business	Para 4 (2) – Amend to state that the Council shall appoint standing deputies to the four relevant bodies DMC, LAGP, OSC and PPAB
	Para 4 (3) – Delete provision for the military authorities to nominate a representative to serve on the Development Management Committee as a co-opted Member
	Para 6 (1) – Add to order of business: (i) receive any petitions submitted under Standing Order 21 (m) receive reports submitted by the Cabinet, LAGP and DMC 'and answer questions asked under Standing Order 8(2)
	Para 9 (4) – Motions referred to a Relevant Body no longer resubmitted to the Council unless the Council is the appropriate decision maker
	New Para 9 (10) – Insert 'Each motion shall be considered by the Chief Executive and the Head of Democracy, Strategy and Partnerships prior to inclusion on an agenda to ensure that the provisions of these Standing Orders and any other legislation and/or guidance, have been met'.
	Para 27 (5) – Delete 'in the case of the Cabinet, the Quorum shall be five voting Members'
	Para 29 – Delete 'Ordinary' – Standing Orders to stand adjourned to the next Meeting.

Document	Summary of Proposed New Changes
Appendix 1 – Scheme for the Appointment of Standing Deputies to the Development Management Committee	In the Scheme title, delete the words 'to the Development Management Committee'
	Revise the Introduction:
	'The Scheme for Standing Deputies applies to the Development Management Committee, Licensing, Audit and General Purposes Committee, Overview and Scrutiny Committee and the Policy and Project Advisory Board. It allows for the attendance of a standing deputy where a regularly appointed Member cannot be present'
	Para 2 – References to the DMC alone be updated to reflect the wider application of the Scheme.
Appendix 2 – Scheme for Questions to Cabinet at Full Council	No Changes proposed
Appendix 3 – Scheme for the Annual Report of the Overview and Scrutiny Committee	No Changes proposed
Access to Information Procedure Rules	Para 3.2 – Insert reference to public's right to webcast meetings.
	Para 3.3 – Insert 'At meetings attending by the public, the Chairman may remind that filming and recording is permitted, however filming and photography should not be directed towards or focussed on the members of the public attending the meeting'

Document	Summary of Proposed New Changes
Appendix - Arrangements for Urgency and Exceptions	Para 3.4 – Insert 'The person presiding at a meeting may order that filming, photography or recording must stop if it is being disruptive to the conduct of the meeting or is bring directed towards members of the public'. Para 4 – Notice of Meetings insert 'principle meetings of the Council' for clarity Para 20 – Records of Decisions made by Officers Insert "The requirement to publish records of decisions made by officers relates to both executive and non-executive matters. The Council will publish records of significant decisions made by officers under delegated powers' (revised list inserted) Insert New Para 22 – 'In line with principles of good governance, Heads of Service shall also keep records of other operational decisions taken by them to provide an appropriate audit trail and clear evidence of decisions taken' Insert Note to explain that Call-in can't be used in cases of urgency (cross reference the Call-in arrangements): 'Call-in procedures shall not apply where an executive decision is urgent. A decision will be urgent if any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The provision is set out in full in the Overview and Scrutiny Procedure Rules Para 19'. Add additional note to signpost that there are arrangements for urgent decisions outside the budget or policy framework set out in the Para 4 of the Budget and Policy Framework document.

Document	Summary of Proposed New Changes
3. Public Speaking Procedure Rules	Para 3.1 – Requirement to give advance notice – insert two 'working' days for clarity.
	Para 5.1 – 'A speaker will be allowed a maximum of 5 minutes to address the meeting, which may be extended to 10 minutes with the agreement of the Chairmanthe Head of Democracy, Strategy and Partnerships in consultation with the Chairman will have the final say on the numbers of speakers at the meeting'
Cabinet Procedure Rules	Delete Para 1.3 – Duplication of information in Part 2 – About the Constitution
	Para 1.7 – Change to 'the quorum for a meeting of the Cabinet shall be four (at least 50% of the Cabinet Membership)'.
5. Overview and Scrutiny Procedure Rules	Para 1 – Delete reference to Article 6
	Para 1(b) Insert that the 'full terms of reference for the Overview and Scrutiny Committee are set out in Part 3 of the Constitution'. References to the Corporate Performance Plan are updated to the Council Business Plan.
	Delete Paras 2 – 9, 21, 22 as these provisions are now set out in the OSC Terms of Reference in Part 3 of the Constitution
	Para 10 - Calls for Action - para (c) insert excluded matters are to be determined 'in the judgement of the Monitoring Officer in consultation with the Mayor'
	Para 15 – delete 'their performance' insert 'performance monitoring information'

Document	Summary of Proposed New Changes
Licensing Sub Committee (Alcohol and Entertainments) Hearing Protocol and Procedure	No changes proposed
7. Standards Hearing Procedure Rules	No changes proposed
8. Budget and Policy Framework	Revised document - updated to incorporate the role of the Policy and Project Advisory Board and Overview and Scrutiny Committee. Para 3 is updated to improve clarity on the process by which the budget and policy framework is developed.
9. Finance Procedure Rules	Draft new Procedure Rules inserted
10. Contract Standing Orders	Revisions to the document: The changes made are around • procurement limits which has seen the lower value limit raised from £2,000 to £5,000 • updated the EU thresholds to those currently in force • changed role titles • added in an additional sign-off for exemption to procurement so is decision of both Corporate Manager (Legal Services) and Executive Head of Finance
11. Officer Employment Procedure Rules	Revisions to the document to reflect that the Head of Paid Service is the Appointer for Heads of Service (other than Chief Officers), the Corporate Manager – Legal, and the Corporate Manager – People.

Document	Summary of Proposed New Changes
12. Petitions Scheme	Public Speakers – 'A maximum of ten minutes shall be permittedif there are additional speakers, this will be managed in accordance with the public speaking procedure rules'

Part 5 - Codes and Protocols

In all documents, changes have been made to ensure the correct titles of Heads of Services

Document	Summary of Proposed New Changes
Code of Conduct for Councillors	Insert new Annex to the Code of Conduct 'Guidance for Using Social Media'
2. Members Planning Code of Good Practice	Insert new section 'Separating professional and public roles'
3. Protocol for Member/Officer Relations	Revised to be more concise and with clearer focus on the key elements of the expectations for Member/Officer Relations. Removed duplication related to access to information provisions.
4. Protocol for Public Community Meetings	Insert reference to use of the Council Meeting rooms for community meetings

Document	Summary of Proposed New Changes
5. Selection of the Mayor and Deputy Mayor	Update to paragraph 10:
	"Those considered for appointment:
	must demonstrate a broad base of support amongst Members of the Council and all Members will be contacted in writing by the Chief Executive for their views on the proposed candidates after they have been identified from the seniority list".
6. Mayoral Protocol	This a new document for the Constitution, which is intended to codify the arrangements for the Mayoral role and support arrangements.
7. Appointment of Honorary Aldermen	No changes proposed
8. Officer Code of Conduct	Insert updated version of the Officer Code of Conduct
9. Code of Corporate Governance	Abridged version of the full Code included in the Constitution for information setting out the key principles of the Code.
10. Anti-Fraud, Bribery and Corruption Policy	Insert latest version of the Policy
11.ICT Acceptable Use policy	Insert latest version of the Policy

Document	Summary of Proposed New Changes
12. Members Learning and Development Policy	Updates Para 2.1 - key objectives to include 'ensure councillors have the skills and expertise to carry out the role of councillor in an ever-changing environment and gain satisfaction from their work' Para 3.1 insert 'Training and development will be delivered in a range of formats to ensure flexibility of access'

Part 6 – Members Allowances Scheme

In all documents, changes have been made to ensure the correct titles of Heads of Services

Document	Summary of Proposed New Changes
Members Allowances Scheme	No changes proposed – next update by the Independent Remuneration Panel due in 2022.