

NON-EXEMPT

EAST HAMPSHIRE DISTRICT COUNCIL

Council

July 2019

POLICY APPROVAL FOR A PROPOSED REVISION, EFFICIENCY AND ALIGNMENT OF THE CONSTITUTIONS OF EAST HAMPSHIRE DISTRICT COUNCIL AND HAVANT BOROUGH COUNCIL

Report by: Head of Legal Services

FOR DECISION

REPORT OF: Portfolio: Leader and Chairman of Governance, Audit & Scrutiny Committee

Director: Lydia Morrison

1.0 Purpose of the paper

- 1.1 This paper is submitted to both Havant Borough Council and East Hampshire District Council for approval of approach and outline policy. Each Council is asked:
- 1.2 To consider the policy principles for a proposed review of the constitution of each authority and to consider the benefit of closer alignment to achieve consistency in approach and process efficiency; and
- 1.3 The paper is a mirror of the paper to each full Council and each Council will be asked to match fund the work.

2.0 Recommendations

- 2.1 Agree the review of the constitution and methodology set out in 3.2.
- 2.2 Approve the policy principles in Appendix 1.
- 2.3 Approve the creation of a single purpose joint subcommittee with Havant Borough Council of 8 Members.

- 2.4 Appoint 4 Members from East Hampshire District Council to the subcommittee.
- 2.5 Invite the Sub-Committee to report to full Councils in October 2019.
- 2.6 Approve the budget to a maximum of £20,000 from the East Hampshire District Council Business Transformation reserve.

3.0 Executive summary

- 3.1 The constitutions of both authorities are based on the standard model constitution. Over time the model constitution has been amended to reflect specific local need or an individual presenting issue. This has resulted in constitutional drift that gives rise to internal conflicts and inconsistencies within each constitution. The creation of short-term fixes become long term anomalies which are embedded in the document. As the constitution is the rule book for the organisation a rationalisation and periodic 'declutter' and revision is required to keep them fit for purpose.
- 3.2 The suggested process to be adopted is:
 - a) Joint sub-committee of both Councils comprising 8 Councillors (4 Councillors from each authority). The Chairman to be elected by the committee and the Vice chair from the other council. (Terms of Reference Appendix 2)
 - b) Review and redraft of the constitutions with policy clarification and input from the sub-committee when required.
 - c) Sub-committee reports back to both Councils in October with a report setting out:
 - i) the proposed draft of the revised constitution and any recommendations for further work
 - ii) any recommendations for any policy clarification which the sub-committee has been unable to resolve
 - iii) the proposals and timetable for implementation of the new constitution
 - d) Provide to each Councils Scrutiny Committee/Board a draft constitution for consideration by March 2020.
 - e) Recommend a new constitution for each Council in April 2020 prior to annual Council in May 2020.

4.0 Additional budgetary implications

4.1 East Hampshire District Council:

2019/20 £20,000	Annual Recurring £0
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The Chief Finance Officer has confirmed that this funding can be released from the Business Transformation reserves.

4.2 Havant Borough Council:

2019/20 £20,000	Annual Recurring £0
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The Chief Finance Officer has confirmed that this funding can be released from the General reserves.

5.0 Background and corporate strategy and directorate business plan(s)

- 5.1 Each Council has run a shared service arrangement over many years. These arrangements involve sharing resources and staff across both authorities. The constitutional 'rule book' for each authority is different. Each authority has different processes, policy approaches and committee structures.
- 5.2 It is suggested that greater efficiency may be obtained by alignment of the 'rule book'. If there are similar process and structures in each Council, there is an obvious saving that results from the adoption of the same approach. Officers will be working to one set of rules, albeit rules of different organisations, there will be clarity on committee delegation and decision making. It is important that officers have the same scheme of delegation. Currently, an officer in one authority carryout a role across both organisations may have different delegated authority. This creates and inherent risk for errors, conflict of interests and so on.
- 5.3 A digital constitution is also far more accessible to officers and members, although care must be taken to retain access to non-computer or internet users, the use of a digital constitution with Mod Gov should considerably reduce the paper requirement in the Democratic Core.
- 5.4 If each Council agrees the same policy principles the development of local policy framework may also be aligned. For example, each licencing committee may well adopt the same gambling framework policy or licencing policy. This will give the public and service users greater certainty over far wider area on the approach to certain activities. Business communities may consider a similar approach helpful to them, and subsequent consultations may be undertaken together.

- 5.5 Alignment of the constitution will also aid in the alignment of the work force. If both sets of employees are carrying out similar roles with similar delegations the complexity of workforce alignment may be simplified. The final alignment of the constitution and workforces will reflect the outcome of the shared service arrangement agreed by each Council.
- 5.6 If the alignment of the constitution, structure and workforce is achieved both Councils will be free to consider if the benefits realised adequately reflect the outcomes desired. The Councils would then be able to consider any remedial action to improve performance and reduce cost or consider further or alternative steps.

6.0 Options and reasons for recommending relevant option

- 6.1 Option 1: Do Nothing. This option is the simplest and requires no effort and little resource. However, it means the authorities will remain static, and lacking the ability to change and meet new challenges. Most importantly the current constitutional limitations remain, and the existing inefficiencies will remain.
- 6.2 Option 2: This will provide a complete refresh of each constitution, remove errors and omissions, inconsistencies and statutory shortfalls. It will also consolidate the short-term amendments in respect of the desire for increased transparency and accountability in decision making and align these changes with clear policy proposals.
- 6.3 RISK:

OPTION	FOR	AGAINST
1	No/Little cost. Easy Makes no contribution to meeting the goals of the organisation.	Stagnation of the authority no acknowledgment of the need to change increasingly outdated approach to public sector constitution and corporate governance. This leads to increased risk of failure of governance and finance.
2	Reduced risk of challenge as systems updated and in line with statutory requirements. Improved governance should lead to better evidence led decision making that has a greater chance of improved outcome. Reduced risk of poor, or financially unsound decision making. Increased transparency and possibility for public engagement.	Some resource impact, including training and increased engagement and ownership by members. Will require Officer resource to amend constitution, proof read, maintain the digital integrity.

6.4 Quality & Equality Impact Assessment

None. However, care must be taken at implementation to ensure equality of access to the digital constitution irrespective of physical or digital access limitations.

7.0 Resource implications

7.1 Financial implications:

This proposal falls outside of the current budget and would require a commitment up to £20,000 from each Council from reserves; The Chief Finance Officer has confirmed that the EHDC funding can be released from the Business Transformation reserves, and the HBC funding can be released from the General reserves. The potential savings are all system and process based and it is not possible to accurately anticipate the full impact. The digital impact will likely be represented by a cost incurred through Capita. This cost will not be incurred unless the revised constitution is implemented therefore that cost is not sought at this time, any underspend from the main work stream will be used to offset this cost.

7.2 Human Resource implications:

There will be additional resource required externally to assist in drafting and ensuring we are updated to all current legislation. The internal legal support will be met from existing resources. The further impact on the digital services is likely to be represented in financial terms through Capita.

7.3 Information Governance implications:

The review will update the need to know and information sharing sections of the constitution. The digitisation of paperwork allows embedded tracking on exempt information, to help prevent deliberate or improper disclosure.

7.4 Other resource implications:

Members time for the committee and full Council.

8.0 Legal implications

The proposed amendments will reduce the risk of legal noncompliance. Correct the current omissions in the constitution and provide for a general updating. The model constitution is based on a pre-Localism Act 2011 model and some of the newer statutory provisions have yet to be incorporated. Similarly, the impact of the general power of competence and the greater flexibility now required of Councils, e.g. potential investment or development strategy etc. may be enhanced through the review.

9.0 Significant risks

The do-nothing option risks future challenge. The risk of challenge increases over time as the gulf between the minimum statutory provisions and the wording widens. Equally the risk of officers failing to realise any omission will increase in time. Although many provisions are not in daily use over time the it is inevitable some of the outdated provision will need to be relied upon and a reputational risk to the authority may occur.

10.0 Consultation

This proposal has arisen following the interim Head of Legal Service initial review. Cabinets of both councils have been consulted. A full briefing has been provided to East Hampshire's Scrutiny Committee and the Committee has considered the proposal and are recommending the approach.

11.0 Communication

This will be implemented as soon as reasonably practicable on the amendment to the constitution.

The constitution will be republished in it amended form.

Appendix 1 - 2

Appendix 1 – Policy
Appendix 2 – Terms of Reference Sub Committee

Agreed and Signed off by:

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S151 Officer: 5 July 2019

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