

<b>Council</b>	
<b>Meeting Date</b>	27 July 2022
<b>Report Title</b>	<b>Constitution changes: Amendments to recommendations in committee reports, and notification to parish councils when the head of planning determines representations are not based on relevant planning considerations</b>
<b>EMT Lead</b>	David Clifford
<b>Head of Service</b>	Head of Policy, Governance and Customer Services (Monitoring Officer)
<b>Lead Officer</b>	
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	Council is asked to: <ol style="list-style-type: none"> <li>1. <b>Agree</b> the constitutional changes set out in paragraphs 3.4 and 3.6 of the report.</li> <li>2. <b>Agree</b> the constitutional change set out in paragraph 3.11 of the report.</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 This report asks council to agree a constitutional change intended to ensure that amendments to recommendations in service committee reports are notified in sufficient time for officers to appraise their financial and other implications in order that committees are able to take appropriately informed decisions.
- 1.2 In addition, the report asks council to agree a further change intended to ensure that in cases where the head of planning determines that they are able to exercise their delegation to determine applications because representations received from town or parish councils are not based on relevant planning considerations, they will write to the town or parish council concerned to advise them of this.

## 2 Background

- 2.1 Council voted unanimously in October last year to move to a committee system of governance from the 2022/23 municipal year. At the same meeting, council requested the cross-party working group which had been established to consider this governance change to continue its work in overseeing the detail of the new constitution. The working group comprises Cllrs Baldock (chair), Bonney, Darby, Ingleton, Martin, Simmons, Truelove and Valentine.
- 2.2 Since the adoption of the new constitution in April and its coming into effect in May, the working group has continued to meet, with a view both to monitoring the

working of the new constitution in practice and recommending improvements where necessary, and to working through the 'issues log' of areas of the old constitution which the group agreed could benefit from review but which were not essential to implementing the move to the committee system.

- 2.3 In the old constitution there was an element of confusion with regard to the extent to which council procedure rules were also applicable to committee meetings. A rule was included which indicated which rules did and did not apply to committees, but it was not always obvious at first glance whether or not a given rule was applicable. The new constitution tries to improve on this situation by marking rules which are only applicable to council meetings and not to committees with an asterisk.
- 2.4 Because the rules of debate on motions with notice at a council meeting are necessarily more restrictive than would be appropriate for other decision-making meetings, the rules of debate at section 3.1.16 of the new constitution are correctly marked with an asterisk to show that they apply only to council meetings. These rules of debate include (at section 3.1.16.4) the rules on amendments to motions, covering among other things the requirement for amendments generally to have been notified in advance of meetings, not least in order that officers can consider whether there are financial or other significant implications.
- 2.5 In the cabinet system, amendments to recommendations being considered at formal cabinet meetings were extremely rare, because the relevant cabinet member and senior officers would have worked with the rest of cabinet in advance of the meeting to ensure that the recommendations as written would be acceptable to the whole meeting.
- 2.6 Clearly in the committee system there is more scope for members to propose amendments to officers' recommendations, and this is as it should be, but service committees still need to take decisions in an informed and evidence-based way. Without officers having an opportunity to work through the implications of amendments in advance of committee meetings, members could find themselves in the invidious position of having to choose between making a decision the ramifications of which are not fully understood and deferring making any decision at all until a subsequent meeting, which of course could carry significant risks of its own.

### **3 Proposals**

- 3.1 In order to prevent this type of scenario arising, the constitution working group's proposal, endorsed by the policy and resources committee, is that the constitution should be altered to introduce a requirement for amendments to recommendations in reports at service committees to be notified in advance of the meeting in a similar way to amendments to council motions.
- 3.2 This is not as straightforward as simply making the council rule apply to other committees, partly because the requirement is different and partly because there

is no requirement for the new rule to change the way committees other than service committees operate, so the rule needs to apply only to service committees.

- 3.3 As is the case already with council motions, the working group's view is that committee chairs need to have a degree of flexibility to waive the requirement for prior notification of amendments in cases where a majority of the committee appears to be supportive of the proposed amendment and any implications are either de minimis and/or already clearly understood.
- 3.4 With this in mind, the proposal is to add a new procedure rule as section 3.1.17 of the constitution, as follows:

***3.1.17 Amendments to report recommendations at service committees including Policy and Resources committee***

*Written notice of every proposed amendment to a recommendation in a report to a service committee, signed or forwarded by email by the proposer, must be given to the proper officer not later than 10.00am on the day preceding the relevant service committee meeting. These will be recorded and open to public inspection. Committee chairs may waive this rule during meetings in cases in which it appears to them that a proposed amendment would have the committee's support and that any implications arising from the amendment would be de minimis and/or clearly understood prior to the amendment being agreed.*

- 3.5 In practice, this would mean that all members would be notified by Democratic Services of the proposed amendment the day before the meeting. It would also allow time for the officer presenting the report and recommendation to consider the implications of the amendment, taking advice from statutory and other senior officers as appropriate, in order to be in a position to answer members' questions on the amendment and thereby ensure committee decision-making is as informed and as evidence-based as it should be.
- 3.6 In order to assist readers in understanding the difference between this rule and that applying to motions at council meetings, the constitution working group further recommends adding a sentence to the final paragraph of section 3.1.16.4 on amendments to motions. The paragraph currently reads:

*Amendments to recommendations contained in committee or officer reports to be considered by Council will be debated in the same way as amendments to motions.*

It is proposed to add the following sentence to this:

*Amendments to recommendations in reports to service committees are dealt with in section 3.1.17 below.*

- 3.7 Council is now **recommended** to agree the changes to the constitution set out above.

3.8 A further constitutional matter which has arisen in the working group is that of the head of planning's delegation to determine applications (delegation 2.18.15.1) and the qualifications that apply to this delegation (set out in delegation 2.18.15.2).

3.9 Among other restrictions, delegation 2.18.15.2 states that the delegation to determine applications will not be exercised in cases where the decision of the head of planning would conflict with written representations from a parish or town council, provided that such representations are, in the opinion of the head of planning, based on relevant planning considerations. This section of the delegation as it stands reads as follows:

*The delegated powers in [2.18.15.1] above shall not be exercised in the following circumstances: [...]*

*Applications where the decision of the Head of Planning would conflict with any written representation received within the specified representation period from:*

*(i) Any Member of the Borough Council;*

*(ii) A statutory consultee;*

*(iii) A Parish or Town Council;*

*Provided that any such representations from (ii) or (iii) above are, in the opinion of the Head of Planning, based upon relevant planning considerations.*

3.10 The working group considered and debated this delegation, and reached a consensus that the substance of the delegation and the qualifications to it do not need to be amended, but that in cases where the head of planning determines that a town or parish council's representation is not based on relevant planning considerations – and that determination of the application does not therefore need to be a matter for the planning committee – the town or parish council should be advised of this.

3.11 The working group therefore proposes to add the following text to delegation 2.18.15.2:

*Where the head of planning determines that a representation from (iii) above is not based on relevant planning considerations, they will write to the town or parish council to advise them of this.*

3.12 When this was considered and endorsed by the policy and resources committee, an amendment was adopted, adding the following wording to this paragraph:

*The member(s) for the ward within which the parish falls will also be urgently notified.*

3.13 Council is now **recommended** to agree these changes to the constitution.

## 4 Alternative Options

- 4.1 Council could decide that there is no need for these changes and therefore not agree them. However, this could create situations in which service committees had either to take decisions based on insufficient information or to defer those decisions until the information was available, or in which town and parish councils were left unaware that a planning application on which they had submitted representations would not go the planning committee. This option is therefore not recommended.

## 5 Consultation Undertaken or Proposed

- 5.1 The recommendations in the report have been developed by the cross-party constitution working group, the membership of which is set out in paragraph 2.1 above. In line with the new constitutional process for constitutional amendments, the proposals were considered and endorsed by the policy and resources committee when it met on 13 July. The policy and resources committee debated an amendment to the original recommendation, which resulted in some additional wording as set out at paragraph 3.12.

## 6 Implications

Issue	Implications
Corporate Plan	The recommendations in the report would support the council's fourth corporate plan priority of 'Renewing local democracy and making the council fit for the future'.
Financial, Resource and Property	One of the most significant scenarios which the first recommendation in the report is intended to avoid is that in which an amendment with cost implications is tabled on the night of a committee meeting, and the officers present, in the absence of any notice, are unable to provide members with sufficient detail on those costs and the relevant budgets for them to make an informed decision.
Legal, Statutory and Procurement	There is an extensive body of case law in which the courts have developed legal principles governing how public authorities exercise their powers and make decisions. These include a need for decisions to have been made reasonably, taking into account relevant factors and not taking into account irrelevant factors. The first recommendation in the report would strengthen the likelihood that members were adequately apprised of relevant factors when deciding whether to agree amendments to report recommendations.
Crime and Disorder	No specific implications identified at this stage.

Environment and Climate/Ecological Emergency	No specific implications identified at this stage.
Health and Wellbeing	No specific implications identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	No specific implications identified at this stage.
Risk Management and Health and Safety	No specific implications identified at this stage.
Equality and Diversity	No specific implications identified at this stage.
Privacy and Data Protection	No specific implications identified at this stage.

## **7 Appendices**

7.1 There are no appendices.

## **8 Background Papers**

8.1 There are no background papers.