

Title of Report:

# Review of the Constitution

Item 14

Report to be considered by:

Council

## Purpose of Report:

To review the Council's Constitution to ensure that it continues to support the most efficient, effective and accountable decision-making processes.

## Recommended Action:

The Council to agree the following Recommendations:

### Recommendation 1 - Part 3 – Scheme of Delegation

- (a) Changes in the Scheme of Delegation in relation to the Complaints Procedure as set out in Paragraph 2.6 of this report.
- (b) Changes in the Scheme of Delegation in relation to Affordable Housing and Local Plan Sites as set out in Paragraph 2.11 of this report.

### Recommendation 2 - Parts 5 and 6 Executive and Overview and Scrutiny Rules of Procedure

- (a) The addition of new Rules 5.3.2/6.5.2 and minor reference changes to Rules 5.3.1/6.5.1 and 5.3.3/6.5.3 in the "call-in" provisions and as set out in Paragraph 3.1 of this report.
- (b) The rewording of Rule 5.4.7 as set out in Paragraph 3.2 of this report.
- (c) The proposed change in wording of Rule 5.5.11 as set out in Paragraph 3.3 of this report.

### Recommendation 3 – Part 8 - Area Forum Rules of Procedure

- (a) The recommendations (1) to (15) set out in Appendix 14 (a) be approved.
- (b) The meeting dates for the new Thatcham Area Forum and the change of date for the next meeting of the Kennet and Pang Valley Area Forum (Paragraph 5.3 refers).

To amend the Constitution to reflect the Council's desire to have efficient and effective decision making/community involvement processes in place.

List of other options considered: N/A  
Key background documentation: N/A

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## 1.0 Background

- 1.1 In order to ensure that the Council's Constitution continues to underpin the effective, efficient and accountable decision making structures introduced under the Local Government Act 2000, regular monitoring and review of the Constitution is undertaken. The last review was undertaken in May 2004 and since that time a number of issues have arisen which need to be considered. The Corporate Plan (S4 "Stronger Governance") also requires the Council to review the Constitution on an annual basis.

## 2.0 Scheme of Delegation – Proposed Amendments

**Page 18 – Paragraph 3.3.2 - General Delegation to Corporate Directors/Heads of Service**

**Page 36 – Paragraph 3.8.1 - Head of Policy and Performance - General**

- 2.1 The Scheme of Delegation currently includes within Rule 3.3.2 – under the heading "Legal Matters", the following provisions in relation to Complaints.

"To respond to and determine responses to recommendations of the Social Services Complaint Review Panels including application of financial redress, as considered appropriate within the framework of the Council's policy on remedies to complaints, Financial Rules of Procedure and where necessary in consultation with the Monitoring Officer."

- 2.2 The above Rule permits the Council via the appropriate Corporate Director or Head of Service to respond to and determine responses to recommendations of the Social Services Complaints Review Panels at Stage 3 of the Complaints process only. Stage 3 is the last Stage in the complaints process. This means that where a complaint has been received and it is evident, at an early stage, the Council is at fault the Scheme of Delegation does not currently permit the Corporate Director or appropriate Head of Service to determine the matter particularly in relation to financial redress.
- 2.3 Rule 3.3.2, which is a generic rule included as part of the Model Constitution drafted by the Government, also refers to the Council's policy on remedies. In relation to Social Services this policy has never been in place although Community Care and Housing have been working to the guidance on good practice issued by the Local Government Ombudsman on Remedies.
- 2.4 The current Scheme of Delegation would therefore require the Council to convene a Social Services Complaints Review Panel (Stage 3) at a cost of approximately £1,000 in order to determine the matter even though the Council would have accepted that it was liable.
- 2.5 Rule 3.8.1 Head of Policy and Performance – General, also relates to the complaints processes of the Council as follows:
- "Power under Section 92 of the Local Government Act 2000 to direct the appropriate Corporate Director or Head of Service to make ex-gratia payments up to £2,500 or to provide other benefits in cases of maladministration, etc."
- 2.6 In order to address this matter it is proposed that that Rule 3.3.2 and Rule 3.8.1 are reworded. In relation to Rule 3.3.2 it is also suggested that this be moved and included within the Delegation to Specific Directors (Children and Young People (Rule 3.3.6 (a) and Community Care and Housing Rule 3.3.6 (b)) on Pages 20 and 21. The proposed changes are as follows:

### **Paragraph 3.3.2 – General Delegation to Corporate Directors/Heads of Services (New Wording)**

“To respond to and determine responses to recommendations made at any stage of the Social Services statutory complaints processes and other complaints procedures operated within Social Care Services, including application of financial redress, as considered appropriate by the Corporate Director or Head of Service, in consultation with the relevant Portfolio Member, within the framework of the Local Government Ombudsman Good Practice Remedies (March 2003) document, Financial Rules of Procedure, and where necessary in consultation with the Monitoring Officer.”

### **Paragraph 3.8.1 – Head of Policy and Performance – General (New Wording)**

“Power under Section 92 of the Local Government Act 2000 to direct the appropriate Corporate Director or Head of Service in consultation with the relevant Portfolio Member, to make ex-gratia payments up to £2,500 or to provide other benefits to remedy complaints, within the framework of the Local Government Ombudsman Good Practice Remedies (March 2003) document, and Financial Rules of Procedure, and where necessary in consultation with the Monitoring Officer.”

### **Affordable Housing and Local Plan Sites**

- 2.7 The Affordable Housing Scrutiny Review Task Group is currently looking at the Council’s policy on Affordable Housing particularly in the light of the withdrawal of the Local Authority Social Housing Grant. The Council’s current policy requires a developer to provide 30% affordable housing on developments of more than 14 dwellings.
- 2.8 Arising from several discussions, the Task Group believes that the Council needs to establish and adopt an open, accountable and flexible procedure which permits the mix of types of affordable housing (that is to say the ratio of shared ownership to rented or a financial contribution instead) to be varied based on individual site/community needs.
- 2.9 The Task Group is concerned that without a flexible approach to affordable housing being adopted a number of existing sites with planning permission will not be developed and this will, in turn, place pressure on the Council in delivering its overall housing targets. This may also affect future development sites. The Task Group is therefore looking for a solution that would address future housing developments and also to deal with sites where permissions and Section 106 Agreements currently exist.
- 2.10 The current practice is for an Officer within the Housing Service to make a judgement on the mix of types of affordable housing for any particular site and to feed this into the process for drafting the Section 106 Agreement. This practice is informal at the present time and needs formalising and incorporating into the Council’s Scheme of Delegation.
- 2.11 In order to formalise the process for determining mix of types affordable housing the following procedure is proposed for inclusion in Rule 3.3.6(b) and this will be accounted for by the need for Officers to complete a Decision Making Report Form:

#### **“3.3.6 Delegation to Specific Directors**

##### **(b) Community Care and Housing**

- In relation to negotiations connected with S106 Contributions the following will apply:

### (a) Future Development Sites

- (1) The Head of Community Care and Housing, in consultation with the Head of Planning and Transport Policy, the Portfolio Holder and Shadow Portfolio Holder for Community Care and Housing and appropriate Ward Members, be given delegated authority to determine the mix of types of affordable housing (that is to say the ratio of shared ownership to rented or a financial contribution instead that is to be varied based on individual site/community needs) to be provided on future development sites and that this process form part of any pre-application or general application negotiations undertaken as part of the development control function.
- (2) The Head of Community Care and Housing be given delegated authority to determine the level of affordable housing financial contribution in line with current policy.

### (b) Sites with Existing Planning Permission

The Head of Community Care and Housing be authorised to negotiate with developers variations in the mix of types of affordable housing specified in Section 106 Agreements to be provided on specific sites, following consultation with the Head of Legal and Electoral Services, the Head of Planning and Transport Policy, the Portfolio Holder and Shadow Portfolio Holder for Community Care and Housing and appropriate Ward Members.

**(NOTE: In each case the appropriate Officer will complete a Decision Making Report Form)”**

## 3.0 Executive and Overview and Scrutiny Rules of Procedure – Call-in

- 3.1 Rules 5.3 and 6.5 currently deal with the process of Call-in. To date the Council has not addressed the issue of decisions which should not be subject to call-in. In order to ensure that the Council continues to operate effectively and efficiently but also retains open and accountable decision making processes it is proposed to insert new Rules 5.3.2 and 6.5.2 and then cross reference these new paragraphs with Rules 5.3.1/6.5.1 and 5.3.3/6.5.3 thereby amending the call-in provisions within Parts 5 Executive Rules of Procedure and Part 6 Overview and Scrutiny Rules of Procedure as follows. (The reference changes to Rules 5.3.1/6.5.1 and 5.3.3/6.5.3 are shown on bold text.)

### 5.3/6.5 Call-In

#### 5.3.1/6.5.1 - Publication of Decisions

The Head of Policy and Performance will publish all decisions of the Executive, Committees of the Executive, Area Forums, individual Members of the Executive and 'key decisions', taken under delegated powers, of Officers ("Executive decisions") to all Members of Council normally within three clear working days of the decision. Decisions will generally be published at 5pm on a Wednesday and Friday each week, assuming that there are decisions to publish. If the body taking the decision reasonably considers that, for reasons of expediency which shall be stated in the notice of decision, a decision should not be subject to call-in procedures, **the procedure outlined in Rule 5.3.3/6.5.3 shall not apply to that decision.**

### **“5.3.2/6.5.2 Decisions not Subject to Call-In (New Rule)**

The call-in procedure as set out below shall not apply where the decision taken by the Executive has to be implemented before the expiry of the call-in period. This will only be the case if one of the following applies:

- The item is due to be referred to Council for final approval eg budget;
- If there was a delay in implementing the decision this would cause the Council serious financial implications or could compromise the Council’s position;
- The item has been considered by a Select Committee, or has been the subject of a review undertaken by another body eg Task Group associated with a Select Committee, within the preceding six months;
- The item is deemed as an Urgent Key Decision as set out in Rule 5.4.7.

The reason why the item is “not subject to call-in” must be specified in the report. In the event of a dispute over the reason why the item is “not subject to call-in” the Monitoring Officer or the Section 151 Officer will be the final arbiter.

### **5.3.3/6.5.3 Non-Implementation of Decisions**

Except **as outlined in Rule 5.3.1 above, or an item** that is not subject to call-in (**see Rule 5.3.2/6.5.2**), Executive decisions shall not be capable of implementation until either:

- The time for a call-in request has expired without such a request being made; or
- The procedure in the following Rules has been followed.”

3.2 Arising from the Constitution Task Group meeting that took place on Wednesday 4<sup>th</sup> August Members felt that there was a need, whilst considering Rule 5.3 Call-in, to reword Rule 5.4.7 Special Urgency – ‘Key Decision’. The following rewording, which has been agreed by the Task Group, is therefore put forward:

#### **“5.4.7 Special Urgency – ‘Key Decision’**

An urgent item of business, which is deemed to be a ‘key decision’, that needs to be determined before the next scheduled meeting of the Executive and which cannot be dealt with under the existing Scheme of Delegation to Officers may be considered if the conditions set out below are followed.

The ‘key decision’ can only be taken if:

- (a) agreement is obtained from the Chairman of the relevant Select Committee, that the taking of the decision cannot be reasonably deferred;
- (b) in the absence of the Chairman of the relevant Select Committee agreement may be obtained from the Chairman of the Council; or in his/her absence the Vice-Chairman.

Where such a decision is taken by the Executive, it must be taken in public except for items that are deemed Exempt Information as set out in Rule 9.10.3.”

3.3 Arising from a recent question to the Executive on Rule 5.5.11 of the Executive Procedure Rules (set out below) it was agreed that the Constitution Task Group should be asked to examine this paragraph to see whether it could be made much clearer in its meaning.

### **“5.5.11 Members’ Attendance at Meetings of the Executive**

Members of the Council who are not Members of the Executive may attend meetings of the Executive and any Committee of the Executive. They shall have the right to address the Executive on any item on the agenda. Subject to the discretion of the Chairman, they may be allowed to join in debates but may not vote.”

- 3.4 In order to clarify the meaning of the above Rule the following wording is therefore put forward by the Constitution Task Group: (The suggested changes are highlighted in bold text.)

“Members of the Council who are not Members of the Executive may attend meetings of the Executive and any Committee of the Executive. **There is a general assumption that they will have the right to speak and be allowed to join in debates on any item on the agenda but this will be subject to the discretion of the Chairman. Only Members of the Executive may vote on items on the agenda.**”

## **4. Area Forum - Rules of Procedure**

### **Increase the number of Area Forums**

- 4.1 The Executive, at its meeting on 8 April 2004, considered and approved a report in relation to the outcome of a review, carried out by a Task Group, of Area Forums. Following publication of the decision, notice calling in the decision was received in accordance with Procedure Rule 6.5.4. The Strategy and Commissioning Select Committee (18 May) reviewed this decision and the Executive (17 June) agreed to a number of additional recommendations from the Select Committee. Those recommendations which require Council approval are:

- (i) Increase the number of Area Forums from four to five.
- (ii) Terms of Reference
- (iii) Appointment of School Governors

- 4.2 It is proposed that the number of Area Forums be increased from four to five based on the under-mentioned areas. Appendix 14(c) sets out the Parish Councils and their relevant Area Forum.

Eastern  
Kennet and Pang Valley  
Thatcham  
Newbury  
Downlands

### **Appointment of School Governors – Individual Decision Making Scheme**

- 4.3 The Terms of Reference of the Area Forums permits them to consider nominations for and appoint to positions on School Governing bodies in West Berkshire. Since the inception of the Area Forums concerns have been expressed at the length of time it takes to achieve appointments to vacancies on School Governing bodies. This is due in the main to the Area Forums meeting on a quarterly basis.
- 4.4 In order to ensure that this process is managed more efficiently it is suggested appointments to School Governing Bodies be incorporated into the Individual Decision Making Scheme and that the following procedure be followed where it is not practical to wait for the next meeting of the Area Forum.

- (i) Appointments to School Governing Bodies must feature on a published version of the Council's Forward Plan. A Forward Plan submission form will need to be completed and sent to the Policy and Performance Unit in accordance with the agreed timetable.
- (ii) A report will be produced by the Governor Support Section enclosing application forms from persons wishing to be considered for the position of School Governor.
- (iii) The report shall be circulated to all Area Forum Members and a copy made available to the Policy and Performance Unit. Any comments will need to be referred back to Governor Support within 5 working days.
- (iv) The report, including any comments from Members and making a recommendation as to the preferred person, should then be placed before the Chairman of the relevant Area Forum for them to sign off. A member of staff from the Policy and Performance Unit should be involved in this process. Members of the Area Forum should be notified of the decision in writing by the Governor Support Section.
- (v) The Area Forum, at their next meeting, will then be advised of the Chairman's decision and the names of those persons appointed to the appropriate Schools.

## **5. Timetable of Meetings 2004/05**

5.2 It is proposed that the approved dates for the existing Kennet and Pang Valley Area Forum remain with the new Forum subject to the date of 12 October 2004 being changed to 6 October. The reason for this is that a number of the Parish Councils within the new Forum area have indicated that they have Council meetings scheduled for the 12 October.

5.3 In relation to the Thatcham Area Forum it is proposed that future meetings be held on the following dates:

20 October 2004

2 February 2005

20 April 2005

## **Appendices**

Appendix 14(a) – List of recommendations from the Executive to Council.

Appendix 14(b) – Aims and objectives of Area Forums

Appendix 14(c) – Proposed Area Forum Boundaries

## **Implications**

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**Policy:** This report accords with the Council's policy of reviewing the Council's Constitution to ensure that it is "fit for purpose".

**Legal:** In accordance with the Local Government Act 2000



## Consultation Responses

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**Local Stakeholders:** N/A

**Officers Consulted:** Nick Carter, David Holling, Anne Hunter

**Trade Union:** N/A