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Subject to approval at the next Constitution Working Party meeting

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CONSTITUTION WORKING PARTY

12 October 2020 at 4.30 pm

Present: Councillors Mrs Yeates (Chairman), Mrs Gregory (Vice-Chairman), Bennett, Bower, Mrs Catterson, Mrs Haywood, Roberts and Dendle (Substituting for Councillor Cooper).

Councillor Coster was also in attendance at the meeting.

16. APOLOGY FOR ABSENCE

An Apology for absence had been received from Councillor Cooper.

17. DECLARATIONS OF INTEREST

There were no Declarations of Interest made.

18. MINUTES

The minutes of the meetings of the Working Party held on 17 August and 24 August 2020 were approved by the Working Party as a correct record, subject to the following amendments:

17 August 2020

Minute 12 – Draft Constitution – Parts 1 to 5 – Page 3 – Article 2 – Members of the Council – Section 2.0 – Elections and Terms of Councillors – fourth line down, the word “reviewed” to be replaced with the word “viewed”.

24 August 2020

Minute 15 – Draft Constitution – Parts 1 to 5 – Recommendation (4) – to correct the name of the Committee in the third heading from Environmental and Wellbeing Services to Environmental and Neighbourhood Services, as corrected at Full Council on 16 September 2020.

19. PROPOSED CONSTITUTIONAL UPDATE OF STANDING ORDERS RELATING TO FINANCIAL PROCEDURES

The Working Party received a report from the Financial Services Manager which sought approval to make further updates to the Financial Procedure Rules (Regulations) at Part 6 of the Constitution (Other Procedure Rules) – Section 5. Appendix 1 to the report set out the changes that were required. It was reported that these changes mainly removed reference to the Cabinet and Cabinet Member responsibilities which were being replaced with the appropriate Committee and/or the Corporate Policy and Performance Committee.

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The points raised by the Working Party have been set out below:

- Looking at the responsibilities of the Group Head of Corporate Support, a query was raised by the Chairman in relation to expenditure on any scheme that exceeded the capital programme provision by more than 10% or £50,000 as it was felt that this seemed to be a very high figure, similarly the same point was raised under responsibilities of CMT/Group Heads, the last bullet point “to notify the Group Head of Corporate Support immediately if the total value of a contract or its annual sum is likely to be different from the original figure by more than the approved limits (the lower of 10% or £50,000 subject to materiality) was again felt to be a too higher figure. It was explained that this was the figure currently set out in the Constitution and so presented no new change.
- The Chairman raised a further query in relation to the responsibilities of CMT/Group Heads in terms of exercising virement on budgets under their control of up to a maximum of £50,000 – there was concern that the Group Head of Corporate Support be consulted on this properly and that the scheme of virement be followed properly. It was explained that the wording had been changed from notified to approved so adding strength to this part of the process. The Chairman was reassured by the Financial Services Manager that any amount in excess of £100,000 would have to be reported to the appropriate Committee. The Chairman was also reminded that as this related to virements, the money had already been approved in the budget.
- The Chairman asked why the heading “Why is this important” featured on virements relating to Section 106 and Community Infrastructure Levy Contributions when they did not appear elsewhere in the Constitution? It was explained that this was a CIPFA recommendation applied to make financial regulations easier to absorb and understand as this was a complex subject.
- It was pointed out that the Section breakdown on Page 2 of the appendix still referred to Section 2 – Scrutiny – was this an oversight and did this need to be removed? The Locum Lawyer explained that this would be deleted and had been from the remaining parts of the Constitution, it was just that the tracking removal had not worked on this particular part of the appendix.
- The Chairman asked if at Page 15 – referring to supplementary estimates and the responsibilities of the Group Head of Corporate Support, the sentence that stated “the only exception to this rule is on the grounds of urgency” – if that urgency needed to be defined. It was explained that this was not defined as some degree of flexibility needed to be built in to cover emergency situations as well. An example provided was the recent report that had been submitted directly to Full Council which was to provide financial support to the leisure operating contract during the pandemic.

The Working Party

RECOMMEND TO FULL COUNCIL – That

- (1) The proposed changes to the Constitution at Part 6 Procedure Rules (Other) Section 5, Financial Procedure Rules (Regulations) as set out in Appendix 1, attached to the Minutes, be approved; and
- (2) The Monitoring Officer be authorised to make any further consequential changes to the Constitution.

20. PROPOSED CONSTITUTIONAL UPDATE OF STANDING ORDERS RELATING TO PURCHASING, PROCUREMENT, CONTRACTS AND DISPOSALS

The Working Party received a report from the Financial Services Manager confirming that earlier in the year, updates had been approved to the Standing Orders Relating to Purchasing, Procurement, Contracts and Disposals (Part 6 – Other Procedure Rules – Section 6) to ensure that they were fully up to date and reflected best practice.

A further review had since been undertaken to this section of the Constitution to reflect changes required for the move from a Cabinet to a Committee structure which would take effect in May 2021. The main changes were explained. These were that Committee approval had to be sought prior to the commencement of the procurement process. It was also proposed that Committees be consulted annually on any contract coming up for renewal.

A few questions were asked around EU Procurement Rules and whether the Constitution would need to be updated further. It was explained that the Council was in a transitional period as the country remained in the EU until 1 January 2021. How was the Government asking Councils to follow those rules? It was explained that the Constitution could only be updated in this respect when the law changed. When this eventually would take place, then the Constitution would be updated further. It was emphasised that although the names would change, the limits already listed would remain the same.

A further question was asked about the renewal of insurance policies and was this something that would be brought to Committees on a regular basis or just when changes were required. The Financial Services Manager explained that at the point of retender, insurances did not normally get reported through the decision-making process, unless there was a need to report an increased cost or risk to the Council.

The Working Party

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RECOMMEND TO FULL COUNCIL – That

(1) The proposed changes to the Constitution at Part 6 – Procedure rules (Other) Section 6, Purchasing, Procurement, Contracts and Disposals as set out in Appendix 1, attached to the Minutes, be approved; and

(2) The Monitoring Officer be authorised to make any further consequential changes to the Constitution.

21. CONSOLIDATED REPORT ON OUTSTANDING PLANNING ISSUES

The Working Party received a report from the Chief Executive which was a consolidated issues report dealing with Planning matters which had historically been spread out across different parts and sections of the Constitution.

This report suggested looking at these different elements by bringing them together into one part of the Constitution. The first issue for the Working Party to consider was that of the name of the Development Control Committee and if this should be renamed. The second part dealt with the proposed Planning Local Code and the Public Speaking Rules; and then the proposed terms of reference for the Development Committee and to agree a new Part 3 Responsibility for Functions. This would look at what functions the Committee would have and what functions Officers would have. The report set out the terms of reference and powers delegated to Officers.

The Working Party was reminded that Full Council had delegated everything on planning matters to this Working Party to consider.

The following issues were raised by the Working Party:

- Mixed views were expressed over the future name of the Committee. It was felt that the current name – Development Control Committee was not very clear in terms of what the Committee actually did. Suggestions were made for the name of the Committee to be changed to the Planning Committee as this was felt to be easy for everyone to understand.
- Other Members were of the view that the activities of Development Control should not be confused with the Planning Policy Committee in the future which would have very different planning roles. It was felt that this could cause confusion. Suggestions had been made to call the Committee the Development Management Committee, and again mixed views were expressed over this.
- The Chief Executive confirmed that this issue had been discussed when the Planning Peer Review had taken place a few years ago. He outlined that the current modern term did seem to be Development Management Committee and a move away from the term 'control'.
- It was acknowledged that the report confirming the results of the recent review of Planning had not yet been published and that it was likely that this report may

contain recommendations that could impact what the Working Party was being asked to debate and consider now.

In view of this, the Chairman confirmed that the next meeting of the Working Party would be held on 30 November 2020 and that it could be worth waiting to see the outcome of the Planning Review report and then look at this report in line with this report at that meeting. In discussing this option, Councillor Bennett proposed that this item be deferred until the next meeting of the Working Party to allow Members to have the opportunity to consider the outcomes of the Planning Review first, before considering this item. The Chief Executive felt confident that the Planning Review report would be ready in time to achieve this timescale.

Councillor Mrs Gregory then seconded this proposal and on it being put to the vote it was declared CARRIED.

The Working Party therefore

RESOLVED

That consideration of the consolidated report on outstanding planning issues be deferred to the next meeting of the Constitution Working Party to allow Members to review and assess the outcomes of the Planning Review report first.

22. DRAFT 2021 CONSTITUTION - PARTS 6, 7, 8 AND 9

The Working Party received a report from the Chief Executive presenting a review that had been undertaken of the Council's Constitution at Parts 6, 7, 8 and 9.

The review covered in detail the following areas:

Part 6 – Other Procedure Rules

- Section 1 – (Access to Information Procedure Rules)
- Section 2 (Budget and Policy Framework Procedure Rules)
- Section 5 – (Officer Employment Procedure Rules)

Part 8 – Codes and Protocols

- Section 3 (protocol on Member and Officer Relations)
- Section 4 (Planning Protocol)
- Section 5 (Petitions Scheme)
- Section 6 (Filming and Photographic Protocol)
- Part 6, Section 3 (Financial Procedure Rules) and Section 4 (Purchasing, Procurement, Contracts and Disposals Rules) and Part 8 Section 4 (Planning Protocol) had been presented elsewhere earlier on in the meeting.

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The Working Party was asked to note that Part 6, Section 1 (Member Code of Conduct) was awaiting consideration of the revised Local Government Association (LGA) Model Code which was expected to be agreed by the LGA at some point in October 2020 and so would be reported to the Standards Committee in December 2020. Also, that at Part 9 (Members' Allowances Scheme) that recommendations from the Independent Remuneration Panel would be reported to the Audit & Governance Committee on 19 November 2020, with further recommendations being made to Full Council on 13 January 2021 and so outside the remit of this Working Party.

It was also noted by the Working Party that at Part 6, Section 8, Corporate Complaints, this would be removed from the Constitution and would be dealt with elsewhere within the Council, as this was outside of the remit of this Working Party. It was also noted that the existing Part 7, Management Structure, was a description of the Council management structure at any one time and was not a constitutional issue and therefore not subject to this review.

The Locum Lawyer then worked through the proposed revisions to Parts 6 and 8 of the Constitution stating that the proposed changes could be seen as tracked changes in the appendices attached to the report. At Part 6, there were changes to be made to the Budgetary and Policy Framework and Access to Information Rules [removing reference to Sections 1 [Decision Notices] and 2 [Scrutiny]. Members' attention was drawn to the process by which Policies would be developed or revised and which Committee would lead on each Council Policy. The changes to budget making in terms of the new Committee structure was explained. It was important for Members to know what the Committees could or could not do in terms of enforcing the Budget.

A question was asked in relation to those Committees that would take the lead on developing a range of Policies [Page 117 of the report]. Currently, it was highlighted that the Property Investment Strategy would feed into the Corporate Support Committee. Previous meetings of the Working Party had queried whether this would be a matter for the Corporate Support Committee or whether this should be the responsibility of the Economic Committee. Following debate, it was agreed that the answer to this question very much depended upon whether this Strategy broadly covered corporate property or property investment to make money. In view of the varying assets that the Council had, it was agreed that this should be reviewed further and brought back to the next meeting of the Working Party for final decision.

Having worked through the remaining parts of the Constitution covering Officer Employment Rules; Member and Officer Relations; the Petitions Scheme; and the Filming and Photographic Protocols,

The Working Party

RECOMMEND TO FULL COUNCIL – That

- (1) The proposed revisions to be incorporated into the new 2021 Constitution at Part 6, Section 1 [Access to Information Procedure Rules] as set out at Appendix 1, as attached to the Minutes be approved;
- (2) The proposed revisions to be incorporated into the new 2021 Constitution at Part 6, Section 5 [Officer Employment Procedure Rules] as set out at Appendix 3, as attached to the minutes be approved;
- (3) The proposed revisions to be incorporated into the new 2021 Constitution at Part 8, Section 3 [Protocol on Member and Officer Relations] as set out at Appendix 4 attached to the minutes be approved;
- (4) The proposed revisions to be incorporated into the new 2021 Constitution at Part 8, Section 5 [Petitions Scheme] as set out in Appendix 5, as attached to the minutes be approved;
- (5) The proposed revisions to be incorporated into the new 2021 Constitution at Part 8, Section 6 [Filming and Photographic Protocol] as set out in appendix 6, attached to the minutes be approved;

The Working Party also

RESOLVED – That

- (1) The proposed revisions to be incorporated into the new 2021 Constitution at Part 6, Section 2 [Budget and Policy Framework Procedure Rules] as set out at Appendix 2 be referred back to the next meeting of the Working Party to reconsider which Service Committee the Property Investment Strategy should report; and
- (2) It be noted that Part 9 [Members' Allowances Scheme] is to be revised following a report by the Independent Remuneration Panel to the Audit & Governance Committee on 19 November 2020 and that Part 8 section 1 (Member Code of conduct) is to be considered by the Standards Committee having regard to the outcome of the LGA on whether or not to adopt a new Code of Conduct for Members.

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23. PART 2 - ARTICLES OF THE CONSTITUTION - JOINT AREA COMMITTEES

The Working Party received a verbal update from the Locum Lawyer following Full Council's decision on 16 September 2020 to not accept the Working Party's recommendation from its meeting held on 24 August 2020 that Part 2 – Articles of the Constitution, relating to Joint Area Committees could not be approved on the grounds that the delegation of functions to Joint Area Committees was of concern.

The Locum Lawyer confirmed that the Joint Arun Area Committees were Committees established and managed by West Sussex County Council (WSSC) and for that reason their terms of reference were defined by WSSC and not Arun District Council. Arun District Council was invited to attend those meetings, it had no say in terms of setting the terms of reference for the Committees.

This viewpoint was accepted to a degree by some Members but overall it was felt that the Joint Arun Area Committees were different to the other local Area Committees set up by WSSC meaning that this Council had certain powers and certain controls on aspects of its Council's business and that it would be wrong for the Council to confirm that it had given that power to WSSC without any negotiation or conditions attached. It was the view of some Members of the Working Party that the Council needed to control its destiny and take representations direct to WSSC to address as the Council had a certain responsibility to deliver to its residents.

The Chief Executive confirmed that this section had been in place within the Council's Constitution for a number of years and that nothing had changed.

Following a very lengthy debate, it was the view of some Members of the Working Party that this section of the Constitution should be removed to avoid confusion. Following further discussion, Councillor Bennett then formally proposed that the Functions set out at Part 3 – Responsibility for Functions in the Constitution at Part 11.0, Joint Area Committees, be removed. This proposal was then seconded by Councillor Dendle. On this proposal being put to the vote it was declared CARRIED.

The Working Party then

RECOMMEND TO FULL COUNCIL – That

- (1) Part 3 of the Constitution [Responsibility for Functions at 11.0 – Joint Arun Area Committees be amended to remove the functions listed for Joint Arun Area Committees; and
- (2) In view of Recommendation 1 above, that Part 2 – Articles of the Constitution, as presented to Full Council on 16 September 2020 be approved.

24. CHANGE TO THE ORDER OF THE AGENDA

At the request of one Member, the Chairman asked the Working Party if it could agree to a change to the order of the agenda to allow the item on changes to Public Question Time to be considered before the guillotine item. This was approved by the Working Party.

25. CHANGES TO PUBLIC QUESTION TIME [FOR THE REMAINDER OF THIS MUNICIPAL YEAR]

The Working Party received a report from the Chief Executive proposing that changes be made to the existing Constitution for the remainder of this Municipal Year in respect of Public Question Time. The changes being suggested were that in order to allow more questions from different members of the public, that the number of questions permitted by a questioner be set to a maximum of two questions.

The Chief Executive confirmed that this report had been taken to a Group Leaders' meeting and that apart from one Political Group, the principles outlined within the report had been agreed.

In discussing this item, the following viewpoints were made:

- Most agreed that there should be a limit set per person as at the last meeting of Full Council, one person had dominated Public Question Time.
- There was a difficulty here that related to Chairman's discretion as set out in the current Constitution. Public Question Time was set at 15 minutes, but this could be extended further based upon the discretion of the Chairman of the Council. The suggestion was made that perhaps the Chairman's discretion should be removed all together or that it also be limited to a stipulated timeframe.
- A question was asked as to why so many questions had been allowed and why one questioner had been allowed to dominate Public Question Time?
- The limitation to two questions per person was generally supported as it was felt that the Council did not gain from allowing lots of questions from one person. It was also felt that that the quality of questions asked by the public could be improved but accepted that this could not be stipulated.
- Could this be set for the new Municipal Year too – not just for the remainder of this Municipal Year?
- It was highlighted that whatever was agreed for Public Question Time at Full Council then needed to be rolled out also to apply to meetings of Cabinet and built into the 2021 Constitution in respect of the new six Service Committees. This was supported in principle.

Following further discussion, it was then proposed by Councillor Bennett and seconded by Councillor Mrs Gregory that the limitation of two questions per questioner for Public Question Time be introduced for Full Council and Cabinet to be effective for the remainder of this Municipal Year and that delegated authority be given to the Monitoring Officer to build this into the 2021 Constitution to apply to Full Council and the six new Service Committees from May 2021.

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In debating this proposal concerns were raised about the Six-Month Rule and in view of the fact that Full Council had already approved the meeting procedure rules for the new structure.

The Locum Lawyer confirmed that the Working Party had accepted responsibility to review and build the new Constitution so that it would be ready to come into effect in May 2021. On this basis, it was perfectly acceptable for the Working Party to suggest and recommend further adjustments to the Constitution as this had yet to come into force, it was a project that was constantly being reviewed.

Following further debate, a further proposal was put forward by Council Dendle in relation to the time limit in place for public question time, which was currently 15 minutes. At Council Procedure Rule 11.2, the Constitution stipulated that the time limit for questions by the public be 15 minutes, although the Chairman had discretion to extend this period. It was Councillor Dandle's view that this discretion be set to permitting only a further 15 additional minutes for Public Question Time. This proposal was seconded by Councillor Bennett, with it being confirmed that this also be put into place in respect of Cabinet Procedure Rule 12.2 and then extended into the 2021 Constitution in respect of Full Council and the six Service Committees.

On this proposal being put to the vote, it was declared CARRIED.

The Chairman then returned to the substantive recommendations and the Working Party

RECOMMEND TO FULL COUNCIL – That

- (1) The number of questions to be asked at meetings of Full Council and the Cabinet for the remainder of this Municipal Year be set to two questions per person and that the time limit for questions be set to 15 minutes, with the Chairman having discretion to extend this time period for a further fifteen minutes; and
- (2) The Monitoring Officer make arrangements for this provision to be added to the meeting procedure rules applying to Full Council and the six Service Committees in the 2021 Constitution.

26. LIMIT ON THE LENGTH OF COUNCIL MEETINGS (GUILLOTINE)

The Working Party received a report from the Chief Executive proposing that a limit on the duration of Full Council meetings (a guillotine) be introduced for all evening meetings for the remainder of this Municipal Year in line with the proposals already agreed by Full Council for the new Constitution that would come into effect in May 2021.

This proposal was being suggested as meetings of Full Council had been taking too long, often finishing late either late in the night or in the early hours of the morning. This presented a danger in that the quality of decision making could be compromised; that public participation might be discouraged; and that this practice potentially failed to fulfil the Council's equality duties to those with caring responsibilities.

The Working Party was therefore being requested to change the Council's existing Constitution to provide a new Rule 6A to be inserted in Part 5, Section 1 of the Council Procedure Rules as set out in Appendix 1, Part 2 attached to the report.

The Chief Executive confirmed that consultation had taken place with Group Leaders who had all confirmed their agreement to the proposals.

There were varying views expressed by the Working Party in debating this item. These have been summarised below:

- The proposal to introduce a cut-off was generally supported.
- It was felt that this should be introduced for all Committees.
- This new rule should become effective immediately, commencing at the next Full Council meeting on 11 November 2020, as soon as this recommendation had been approved.
- Concern was expressed that this should not apply to meetings of the Development Control Committee which had a different start time of 2.30 pm. Also, planning applications were often time bound and a decision was required that day that could not be delayed to a further meeting or to the next meeting of the Committee. Otherwise the threat of appeal for non-determination could be a risk for the Council.
- Some Members of the Working Party were against the proposals stating that there should not be a cut off but that instead the Vice-Chairman could take over from the Chairman in order to conclude the business on the agenda. There was concern that the proposals could introduce other political issues and so it was more important to keep meetings concise and on track.
- Some Members confirmed that they did not agree with the proposed guillotine as this could curtail debate. It was felt that the smooth running of meetings was down to the ability of the Chairman to conduct the meeting in a business-like fashion.
- Others confirmed an opposite viewpoint agreeing that cut-off time should be introduced and for all meetings, not just Full Council.
- Another suggestion was made which was to introduce a timetable for each item – this was something that WSCC had introduced and it seemed to be very effective and provided structure for the Chairman to apply to the meeting.
- It was accepted that decisions made past midnight were not good decisions.

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Following debate, Councillor Bennett proposed that the Appendix attached to the report confirming the duration of meetings for the 2021 Constitution be applied to all meetings of the Council, except for the Development Control Committee, for the remainder of this Municipal Year and that the Appendix attached to the report be updated for this purpose. This proposal was seconded by Councillor Mr Yeates.

The Working Party

RECOMMEND TO FULL COUNCIL

That the Appendix attached to the report be updated to include applying a limit on the length of meetings for all meetings of the Council apart from the Development Control Committee, as per the appendix attached to these minutes.

(The meeting concluded at 7.40 pm)