

# AUDIT AND GOVERNANCE COMMITTEE



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| Report subject             | <b>Review of the Council's Constitution - Recommendations of the Constitution Review Working Group</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Meeting date               | 28 November 2024                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Status                     | Public Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Executive summary          | <p>The report summarises the issues considered by the Constitution Review Working Group and sets out a series of recommendations arising from the Working Group for consideration by the Committee relating to the arrangements at Council for a separate budget meeting and the scheme of delegation for the planning committees.</p> <p>In addition, the report seeks the appointment of an additional member of the committee to serve on the Constitution Review Working Group.</p> <p>Any recommendations arising from the Committee shall be referred to full Council for adoption.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Recommendations            | <p><b>It is RECOMMENDED that:</b></p> <ul style="list-style-type: none"><li><b>(a) in relation to Issue 1 (Article 4 – The Full Council) the proposed amendments to Part 2, Article 4 (The Full Council), as set out in Appendix 1 to this report, be approved;</b></li><li><b>(b) that the Council meeting scheduled for Tuesday, 25 February 2025 be designated as the Annual Budget Council Meeting and that an additional ordinary meeting of Council be scheduled for Tuesday, 11 February 2025 at 7.00pm;</b></li><li><b>(c) in relation to Issue 2 (Part 3A Responsibility for Functions – Planning Committee) the proposed amendments to Part 3A (Responsibility for Functions), as set out in Appendix 2 to this report, be approved;</b></li><li><b>(d) the Committee appoint a member of the committee to serve on the Constitution Review Working Group;</b></li><li><b>(e) any necessary and consequential technical and formatting related updates and revisions to the Constitution be delegated to the Monitoring Officer.</b></li></ul> |
| Reason for recommendations | To make appropriate updates and revisions to the constitution following consideration by the Working Group.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| Portfolio Holder(s): | Councillor Jeff Hanna (Portfolio Holder for Transformation, Resources and Governance)                              |
| Corporate Director   | Graham Farrant (Chief Executive)                                                                                   |
| Report Authors       | Janie Berry (Director of Law and Governance and Monitoring Officer)<br>Richard Jones (Head of Democratic Services) |
| Wards                | Not applicable                                                                                                     |
| Classification       | For Recommendation                                                                                                 |

## Background

1. The Terms of Reference of the Audit and Governance Committee include 'Maintaining an overview of the Council's Constitution and governance arrangements in all respects'.
2. In discharge of this responsibility the Committee established a Constitution Review Working Group of five of its Councillors. The current members of the Working Group are Councillor Connolly (Chair) and Councillors Andrews, Beesley and Phipps. A vacancy on the Working Group exists following the recent passing of the late councillor Brian Castle. Since its establishment in July 2020, the Working Group has continued to meet on a regular basis to consider requests for change. The Group receives advice from various officers including the Monitoring Officer and Head of Democratic Services. From time to time, as required, Officers and Councillors with specialist responsibility have been invited to have an involvement.
3. Since its establishment, the Working Group has continued to meet on a regular basis and completed various phases of its work. Recommendations that were agreed by Council have been implemented and incorporated into a revised and updated version of the Constitution and published on the Council's web site.
4. The Working Group has considered suggestions received from a wide variety and range of sources including input from Councillors and Officers.

## Format

5. Throughout the work of the Group a 'Forward Plan' of issues has been maintained and added to as additional issues have arisen. This approach will continue to be adopted for capturing future issues.
6. Where appropriate, any proposed changes to the Constitution are shown with track changes in the appendices to this report (and where changes are proposed to individual paragraphs these may be embedded into the body of this report in red outline boxes) to assist members identifying the proposed changes. Page number references are to pages within the current Constitution.

## Options Appraisal

7. The Working Group considers carefully whether or not changes are necessary on each issue raised. If supported the Working Group determines the proposed

alterations to the wording which forms the basis of the recommendations to the Audit and Governance Committee. This report sets out the proposed changes following those deliberations.

8. For ease of reference, each matter considered will be referred to as an Issue with a corresponding number which will be referenced through the report and recommendations. There are two issues for consideration in this report.

#### **ISSUE 1 – PART 2, ARTICLE 4 (THE FULL COUNCIL) – BUDGET MEETING**

9. At its meeting held on 11 April 2024, the Committee considered and recommended to Council, new Procedure Rules aimed at strengthening and clarifying the decision-making process for the consideration, objection, amendment and approval of key policies and budget proposals. The procedures rules were supported and approved unanimously by the Council on 23 April 2024.
10. Members will be aware that at the current time, the budget is considered at an ordinary meeting of council which includes non-budget related business. At the meeting in February 2024, the meeting adjourned after 4½ hours, reconvening a week later for a further hour and 40 minutes.
11. Members have expressed a desire for a dedicated council meeting to consider the budget items and this was supported through the recent councillor survey. The feedback from the councillor survey showed that 87% of those responding (52 out of 75) supported an extra council meeting for matters relating to the budget.
12. The proposed changes to Article 4 are set out in Appendix 1 to this report. Track changes are shown in red text. The effect of these changes is to introduce an Annual Budget Council meeting and the business to be included.

#### **13. RECOMMENDATION**

It is **RECOMMENDED** that:

- (a) in relation to Issue 1 (Article 4 – The Full Council) the proposed amendments to Part 2, Article 4 (The Full Council), as set out in Appendix 1 to this report, be approved;
- (b) that the Council meeting scheduled for Tuesday, 25 February 2025 be designated as the Annual Budget Council Meeting and that an additional ordinary meeting of Council be scheduled for Tuesday, 11 February 2025 at 7.00pm.

#### **ISSUE 2 – PART 3A RESPONSIBILITY FOR FUNCTIONS – PLANNING COMMITTEE**

14. The Director of Planning and Transport presented a paper for consideration by the Working Group outlining proposed changes to Part 3A Responsibility for Functions relating to the Planning Committee.
15. Every council has its own scheme of delegation to identify the circumstances where planning consent decisions are taken by the Planning Committees rather than delegated to officers.
16. As it is impractical and unnecessary for committees of councillors to consider all planning applications, best practice advice and national guidance encourages the delegation of decision making to appropriate officers of the council. The council may modify or revoke the scheme of delegation at any time.
17. The scheme of delegation set out in the council's Constitution reserves the right of the Eastern and Western planning committees to determine certain applications and

sets out the full details associated with delegation of the authority to make the decision to officers, and the options and associated requirements for referring applications to committees for decision where it is appropriate.

18. The Constitution explains that all matters relating to Town & Country Planning functions as set out in the planning and related Acts, are delegated to the relevant senior planning officer as set out in the Chief Executive's Scheme of Delegation to determine, other than those matters as set out in Part 3A, which shall be the responsibility of the respective area Planning Committee.
19. Therefore, the starting point is that all planning applications are delegated for officer determination and then it is a matter of carefully considering the types of applications where such an approach might not work for BCP Council, and rather the decision should be made by the Planning Committee.

### **Consideration of changes**

20. ***Applications for reserved matters where the outline planning permission was granted by Planning Committee*** – Change proposed to be added under paragraph 2.3.3
21. Explanation:
  - a. Once outline planning permission has been granted, a 'reserved matters' application must be made within three years of the consent (or a lesser period if specified by a condition on the original outline approval)
  - b. The aim of reserved matters in planning permission is to secure the outstanding details that were not included within an outline application.
  - c. As Planning Committee have been involved with the outline application, it appears logical for the Planning Committee to determine reserved matters pursuant to outline planning permission unless the Planning Committee expressly requested (when determining applications for outline planning permission) that the subsequent reserved matters should not be referred to the Planning Committee for determination.
22. ***Referral of applications where BCP Council has an interest (currently paragraph 2.3.4)*** – Change proposed to widen scope of applications that would go to Planning Committee
23. Explanation:
  - a. Interests outside the council may consider that the Planning Authority would not be objective in considering the Council's own applications and therefore making a decision in public through the Planning Committee will demonstrate that all relevant planning matters have been discussed fairly and objectively.
  - b. Many of the applications submitted by the council are minor and uncontentious. Therefore, in such cases, it could unnecessarily take up Planning Committee time and delay the planning decision and so the applications to be taken will include exemptions.
  - c. The constitution currently only requires applications where the Council is the applicant or landowner for major development proposals, and it appears that most Council's require a wider scope of planning applications to be referred.
  - d. Major applications are residential applications for 10 or more houses or for Outline Consent on a site of 0.5 hectares or more, or a commercial

development site of 1 hectare or more, or involving floor space of 1000m<sup>2</sup> or more.

- e. It is therefore proposed to widen the scope of application that would go to Planning Committee but use the logic in place for Councillor call-ins. Officers are proposing that the threshold for referral is 10 or more representations from third parties subject to the same conditions and exemptions i.e. prior approvals and notifications. This is half the number of representations that are required for applications where BCP Council is not the applicant or landowner.
- f. When the Director of Planning & Transport started with the Council, the former Leader expressed her concern about only 'major' planning applications being automatically referred and it was agreed that a change would be made to the constitution. In the interim, the Director of Planning & Transport has been referring most of the applications where the Council is the applicant or landowner to the Planning Committees. This needs to be formalised.

**24. *Referral of applications by a BCP Councillor where they consider it warrants Planning Committee consideration (currently paragraph 2.3.7, 2.6 and 2.7)* – Minor changes proposed**

**25. Explanation:**

- a. This requires a careful balance to ensure that the intrinsic value of Planning Committee is not lost by its consideration of planning applications that do not warrant that oversight.
- b. Referral relies on the personal motivation of a councillor to refer a matter to the Planning Committee. This can also create difficulties for a councillor when a constituent or organisation might lobby for an application's consideration at Planning Committee.
- c. Councillor referrals normally add delay to the decision-making progress and often Extension of Time (EoTs) are required from the applicant as the decision is going over the statutory timeframes. This is discretionary and if not given, this will impact on national and local performance targets, and can result in the Council losing the right to determine certain types of planning application if the Council is designated for poor performance.

**26. *Referral of applications by a town council, parish council or neighbourhood forum* – No change proposed**

**27. Explanation:**

- a. Parish and Town Councils and Neighbourhood Forums with made or post-examination plans are statutory consultees in the planning process and must be informed of all planning applications, and any amendments to those applications, within the parish.
- b. We have been advised that Christchurch BC had an automatic referral for consideration at a committee for applications which met certain criteria in respect to representations made by town and parish councils. Such a referral is not currently in place.
- c. No change is proposed at this time as:
  - i. Christchurch and Throop and Holdenhurst are currently the only area of BCP that has town and parish councils, and so the residents in these areas

would be treated differently to other parts of the BCP area if there was an automatic referral.

- ii. A community governance review is underway, and this may result in a greater coverage of town and parish councils in BCP. The Council may want to reconsider the situation of referrals to Planning Committee once this review has taken place and been enacted.
- iii. If a town council, parish council or neighbourhood forum consider that the issues raised are of such local or strategic significance which would benefit from scrutiny, they can contact their ward councillors and ask them to consider calling in the application to committee.

## **28. RECOMMENDATION**

**It is RECOMMENDED that in relation to Issue 2 (Part 3A Responsibility for Functions – Planning Committee) the proposed amendments to Part 3A (Responsibility for Functions), as set out in Appendix 2 to this report, be approved.**

## **CONSTITUTION REVIEW WORKING GROUP MEMBERSHIP**

- 29. The Audit and Governance Committee appoints members to the Constitution Review Working Group which comprises five members of the committee, including the Chair, Vice-Chair and three other councillors. Following the recent passing of the late councillor Brian Castle a vacancy on the Working Group exists.
- 30. The Committee is asked to appoint a councillor from its membership to serve on the Working Group. The current membership is detailed in paragraph 2 to this report.

## **31. RECOMMENDATION**

**It is RECOMMENDED that the Committee appoint a member of the committee to serve on the Constitution Review Working Group.**

## **Summary of financial implications**

- 32. There are no financial implications arising from this report.

## **Summary of legal implications**

- 33. The Constitution of the BCP Council complies with relevant legislation. Where appropriate, the Constitution references relevant legislation which underpins specific procedure rules.

## **Summary of human resources implications**

- 34. There are no human resource implications arising from this report.

## **Summary of sustainability impact**

- 35. There are no sustainability implications arising from this report.

## **Summary of public health implications**

- 36. There are no public health implications arising from this report.

### **Summary of equality implications**

37. The Constitution of the BCP Council sets out the rights of public access to the democratic process. Where appropriate the Equality Officer is engaged on relevant issues.
38. The proposed Constitution changes contained within this report do not impact directly or indirectly upon service users and as a consequence there are no equality implications arising from this report.

### **Summary of risk assessment**

39. The Constitution is a legally required document which prescribes the procedural and democratic arrangements for the proper governance of the Council.

### **Background papers**

Published works

### **Appendices**

Appendix 1 – Proposed changes to Part 2, Article 4 (The Full Council)

Appendix 2 – Proposed changes to Part 3A (Responsibility for Functions)