

 WARWICK DISTRICT COUNCIL	Executive 30 November 2016	Agenda Item No. 7
Title	Minor Amendments to the Constitution	
For further information about this report please contact	Graham Leach, Democratic Services Manager & Deputy Monitoring Officer graham.leach@warwickdc.gov.uk Richard Lunwood, Green Space Development Officer richard.lunwood@warwickdc.gov.uk	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality Impact Assessment Undertaken	No

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive	14/11/2016	Chris Elliott
Head of Service	10/11/2016 10/11/2016	Rob Hoof, Tracy Darke, Mike Snow
CMT		
Section 151 Officer	10/11/2016	Mike Snow
Monitoring Officer	14/11/2016	Andrew Jones
Finance	10/11/2016	Mike Snow
Portfolio Holder(s)	14/11/2016	David Shilton, Stephen Cross, Andrew Mobbs
Consultation & Community Engagement		
John Gregory – Solicitor Acting for the Council – 10/11/2016		
Final Decision?	No	
Suggested next steps (if not final decision please set out below)		
This will be a recommendation to Council on 25 January 2016		

1. **Summary**

- 1.1 This report brings forward some minor amendments to the Council's Constitution to provide clarifications and appropriate delegations to ensure that work is undertaken at an appropriate level.

2. **Recommendation**

- 2.1 The Executive recommends to Council the following amendments to the Constitution as set out at Appendix 1 of the report.

3. **Reasons for the Recommendation**

Section 106 Agreements

- 3.1 Warwick District Council receives a number of payments from developers via Section 106 Agreements to help deliver capital improvements to public open spaces. It also receives commuted sums (which would also fall part of a Section 106 agreement) to provide for a limited period of maintenance on new public open space provision.
- 3.2 In some areas (normally rural), Warwick District Council does not own or manage any of these public open spaces. Ownership and responsibility instead falls to the appropriate Parish or Town Council.
- 3.3 As the Planning Authority, Warwick District Council is a legal party to the Section 106 Agreements and is bound by the conditions therein. The District Council also collects the contributions from the developer. However, in the circumstances set out at 3.2 above, it is often expedient for the funds to be transferred from the District Council to the relevant Parish or Town Council so that they can provide the relevant infrastructure and/or maintenance.
- 3.4 S106 Agreements include clauses holding the District Council responsible for the appropriate use of financial contributions, and providing a way for developers to recover payments with interest if they are not used for the purpose specified within a given timeframe (usually 5-7 years). However, as the Parish or Town Councils are not parties to the S106 Agreements they are not bound by these terms.
- 3.5 This means that, in situations where the District Council wishes to transfer funds to the Town or Parish Council, there is presently no mechanism under which the District Council can control how the money is spent, or require its repayment in the event that it has not been used in accordance with the terms of the S106 Agreement. That is, should a developer wish to reclaim their commuted sums due to inappropriate use, the District Council would remain solely liable for reimbursement of the funds to the Developer, without having control of how the Parish Council has spent the money or having a mechanism under which it can recover the funds from the Parish or Town Council.
- 3.6 This has not been an issue in the past as transfers have been rare, and individual agreements were made on a case by case basis as the situation arose. With the huge increase in development within the district, this is no longer an appropriate approach.

- 3.7 A new legal agreement has been drawn up to ensure that the District Council's position is protected when funding is passed on to Town and Parish Councils. The Agreement covers how the money is to be spent and provides for repayment by the relevant Town or Parish Council in the event that the money is not spent appropriately, or at all, together with the addition of interest. However, there is currently no appropriate delegated authority to enter into such Agreements.
- 3.8 Delegated authority is therefore sought to enable the Head of Development Services to enter in Legal Agreements with Parish and Town Councils that will govern the terms of any transfer of Section 106 funding to them in circumstances where they are providing the relevant infrastructure or maintenance covered by the Section 106 Agreement.

Chief Executive delegation – Severance Payment

- 3.10 At present the Chief Executive has approved delegation to provide severance payments to members of staff in specific circumstances. This amendment is to provide clarification that it could be anyone of those three circumstances (as has been normal practice) and not a combination of all three.

Delegation to more than one service area – Street/Road Closures

- 3.11 This amendment is brought forward to enable the Head of Development Services to authorise road closure orders. This is as a result of the team responsible for running events now being located within this service area.

4. Policy Framework

- 4.1 The report does not bring forward any proposals that are contrary to the Policy Framework.
- 4.2 **Fit for the Future** – The proposals within the report contribute to Fit for the Future in respect of ensuring the Council can continue to deliver services effectively and appropriate arrangements are in place to achieve this.

5. Budgetary Framework

- 5.1 The report does not impact on the Budgetary Framework of the Council.

6. Risks

- 6.1 The main risks are associated with the proposal for Section 106 transfers not being approved, therefore potentially leaving the Council open to challenge on the use of Section 106 monies by Parish / Town Councils. The proposal is therefore brought forward to mitigate the risks to this Council.

7. Alternative Option(s) considered

- 7.1 It would be possible to leave the current situation in place. However, this is not considered appropriate because of the inherent risk to the Council.
- 7.2 Councillors could require Executive approval for each transfer as they come forward, but this would be extremely time consuming and would prevent Parishes from accessing their funds in a timely manner.

Part 3

Section 4 Scheme of Delegation

(Additional/new wording included in *italics*, deleted text ~~struck through~~)

DS (81) To enter into Agreements providing for the transfer of funds (for capital works or commuted sums for a limited period of maintenance) received as a result of planning obligations under Section 106 of the Town and Country Planning Act 1990 to a Parish or Town Council, where it is deemed appropriate for the Parish or Town Council to provide the infrastructure which is the subject of the planning obligation.

CE (16) Approve severance payment which either:-

- (i) are, in their opinion, in the Council's interests; or*
- (ii) result in savings which recoup all initial costs of severance, subsequent staff regradings and any other consequential cost increases, within a period of 12 months of the severance; or*
- (iii) result in a post being deleted from the establishment though not necessarily the same post as the one from which the person was severed.*

(NB the value of the payment must be agreed in line with the requirements of the Chief Executives delegated authority to determine urgent items between meetings CE(4))

A (7) Authority to carry out the necessary procedure and make orders under Town Police Clauses Act 1847 for the temporary closure of roads.

Head of Development Services, Head of Neighbourhood Services and Head of Health and Community Protection, following consultation with a solicitor acting on behalf of the Council.