

 Executive 13 January 2016		Agenda Item No. 3
Title	Constitution and Policy Revisions	
For further information about this report please contact	Graham Leach, Democratic Services Manager & Deputy Monitoring Officer 01926 456114 graham.leach@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Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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		
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
The purpose of the Constitution is to regulate the way in which the Council is governed. The amendments provide updates to reflect legislation and current practice along with a few minor additions to the officer scheme of delegation to enable an improved service to be delivered.	

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	29/12/2015	Andrew Jones
Head of Service	21/12/2015	Andrew Thompson
CMT		
Section 151 Officer	21/12/2015	Mike Snow
Monitoring Officer	29/12/2015	Andrew Jones
Finance		Jenny Clayton
Portfolio Holder(s)	29/12/2015	Councillors Phillips, Mobbs and Whiting
Consultation & Community Engagement		
Final Decision?		No
Suggested next steps (if not final decision please set out below)		
The decision, if approved, will require consideration by Council on 27 January 2016		

1. **Summary**

- 1.1 The report brings forward changes following the review of the Constitution.
- 1.2 The report is also brought forward for confirmation of the Council's Partnership Policy.

2. **Recommendations**

- 2.1 That the Executive recommends to Council the amendments to the Constitution as set out at Appendix 1.
- 2.2 That the Executive recommends to Council, for the avoidance of doubt, that it has established a licensing committee under section 6 of the Licensing Act 2003; that it has delegated to that committee responsibilities under section 7 of the Licensing Act 2003 and section 154 of the Gambling Act 2005; and that this Committee is known in the Constitution as the Licensing and Regulatory Committee.
- 2.3 That the Executive recommends to Council the Partnership Policy as set out at Appendix 2.

3. **Reasons for the Recommendations**

- 3.1 The Council's Constitution was identified as an area for review in the Annual Governance Statement of 2013. A substantial review has been undertaken with various changes brought forward on an ongoing basis. This report recommends further changes as well as some additional delegations to officers to enable them to work more effectively.
- 3.2 The changes to Article 2 of the Constitution, as proposed in Appendix 1 are to reflect practice within the Council. The Code of Conduct for Planning Committee, as an example, has not formed part of the Constitution for 5 years and therefore reference to it should be removed, that said the Code is still in place and will be reviewed and updated in this Calendar year along with all other annexes to the Constitution. The Role of the Councillor leaflet will still be available, but how to get a copy is covered by Article 16 of the Constitution.
- 3.3 The changes to Article 6 of the Constitution are proposed to ensure that it reflects the responsibilities the Council has in terms of Health Scrutiny and the arrangements this Council has in place.
- 3.4 The amendment to Article 9, to remove the requirement for an Independent Person to be part of the Standards Committee or to be present, is in line with requirements of Localism Act 2011.
- 3.5 The changes within Article 11 are to recognise a Joint Committee across the Coventry & Warwickshire Area to drive the economic development and prosperity agendas. This is set out in Minute 84 of the Executive on 13 November 2013. (The terms of reference for this will be appended to the Constitution).
- 3.6 The changes to Article 16 are to reflect the practice of this Council since the Constitution was introduced. The removal of a requirement to provide a paper

copy enables Councillors to have an electronic copy if they so wish or simply have a link to the relevant pages on the Council's website.

- 3.7 The change to the officer scheme of delegation CE (4) and HS (2) and addition of HS (97) are to enhance service delivery. The Additions of HS (94), HS (95) and HS (96) are included to ensure that officers have appropriate authority to enforce legislative requirements rather than having to seek approval from Executive each time. FS (5) is not technically a new delegation as it was approved in December 2004 by Council, but has not been formally recorded in the scheme of delegation, although the practice has occurred ever since. The inclusion of FS (17) is to enable a more dynamic and flexible approach to setting these requirements removing the need for Council to approve them each time. They will also be discussed by the procurement champions as part of their regular meetings. The inclusion of FS (18) is a matter approved by Council on 23 January 2013.
- 3.8 The amendments to the Council Procedure Rules are included to provide clarity about when a member of the Public can address the Council.
- 3.9 The amendments to Executive procedure rules are brought forward so that it reflects practice that has been in place for the last four years. Changes to Access to Information Procedure Rules are brought forward to recognise the changes to legislation in 2013 regarding publication of the Forward Plan.
- 3.10 The removal of the Standard Terms and Conditions for the Purchase of Goods and Services is to enable a more dynamic and flexible approach to setting these requirements removing the need for Council to approve them each time. They are discussed by the procurement champions as part of their regular meetings.
- 3.11 The amended Policy & Budgetary Framework is brought forward to confirm the arrangements as already established by the adopted Code of Financial Practice and provide clarification on process.
- 3.12 The Executive notes that, subject to the approval by Council, a single .pdf file of the Constitution will be published on line and made available to Councillors.
- 3.13 With regard to recommendation 2.2 the Council has taken advice from Counsel on it Committee structure with regard to the Licensing Committee as required under the Licensing Act 2003. This advice has been shared with the Chairman of the Committee and this recommendation is brought forward to remove any ambiguity in the Constitution.
- 3.14 In accordance with good practice, the Council's Partnership Policy has been reviewed to determine whether it is still fit for purpose. It was originally approved in 2010 following an extensive review. Officers are of the view that no changes to the Policy are required and so it is recommended that the current Policy is approved once again.

4. **Policy Framework**

- 4.1 **Policy Framework** – The report brings forward updates to the Council's Budgetary and Policy Framework to ensure it reflects previously agreed changes (by Council) as set out in the Code of Financial Practice.

4.2 **Fit for the Future** – The report does not directly impact on Fit for the Future but ensures that robust governance arrangements are in place for the Council to operate within.

4.3 **Impact Assessments** – Not applicable..

5. **Budgetary Framework**

5.1 The report does not impact on the Budgetary Framework but does bring forward amendments to bring it in line with the already approved Code of Financial Practice.

6. **Risks**

6.1 The main risks associated with this report are the non-approval of the recommendations. This is because the failure to do so could leave the Council open to challenge about its practices and some ambiguities with the Constitution.

7. **Alternative Option(s) considered**

7.1 The report brings forward the final changes to the Constitution to bring it up to date. Therefore no alternative options have been considered.

8. **Background**

8.1 In addition to the changes in this report there are further changes to the Constitution that will be considered by Council on 27 January 2016. In summary these are:

- (1) the Code of Corporate Governance (an addition to the Constitution) as proposed in Executive minutes of 2 December 2015,
- (2) amendments to delegation of function for Housing Appeal Review Panels as contained in Executive minutes of 4 November 2015; and
- (3) amendments to public speaking at planning committees as set out in planning committee minutes of 8 December 2015.

Proposed Changes to the Constitution (Additions included in italics, removals struck through)

Article 2 Members of the Council

2.04 Conduct -

Councillors will at all times observe the Members' Code of Conduct, the Protocol on Member/Officer Relations and ~~Code of Conduct for members dealing with planning applications~~ set out in Part 5 of this Constitution.

2.06 Role Description for Councillors

The Council has produced a document which sets out the Role Description of Warwick District Councillors that is annexed to this Constitution

~~This document is available on request from the Monitoring Officer and the Councils Website.~~

Article 6 – Overview & Scrutiny Committees

6.01 Terms of Reference

The prime purpose of the Overview & Scrutiny Committee is to review items to be considered by the Executive, to review past decisions, policy development, *health and wellbeing issues*, specific issues and problems within any service area.

The Health Scrutiny Sub-Committee is a sub-committee of the Overview & Scrutiny Committee. It has been delegated the task, by its parent committee, to handle most of the health and wellbeing scrutiny work that would otherwise fall to the Overview & Scrutiny Committee.

6.08 Excluded matters

(I) Complaints or matters before the courts, or ~~Local Government~~ Ombudsman, or *Regulatory Bodies*; and

Article 9

~~(b) — **Independent Persons.** The following provisions apply:—~~

- ~~—— Independent Persons will be entitled to attend Standards Committee but not vote;~~
- ~~—— At least one of the Independent Persons must be present for the duration of a meeting of the Standards Committee for the proceedings of that meeting to be valid; and~~

Article 11

Sub Regional Economic Prosperity Board – Warwick District Council has joined a Joint Committee across the Coventry & Warwickshire Area to drive and provide sub-regional governance, to the economic development and prosperity agendas. (Minute 84 Executive 13 November 2013). The terms of reference for this are appended to the Constitution)

Article 16

16.03 Publication

- (a) The Democratic Services Manager & Deputy Monitoring Officer will *provide a* ~~give a printed~~ copy of this Constitution to each member of the authority on the member first being elected to the Council.
- (b) The Democratic Services Manager & Deputy Monitoring Officer will ensure that a ~~copies is~~ are available for inspection at the main council offices (Riverside House, and can be purchased by anyone on the payment of a reasonable fee)
- (c) The Democratic Services Manager & Deputy Monitoring Officer will ensure that the ~~summary of the~~ Constitution is *accessible via the Council's website* ~~made widely available within the area~~ and is updated as necessary.

Part 3 Responsibility for Functions

D. **LICENSING & REGULATORY COMMITTEE** (15 Members)

- i. To exercise delegated powers in discharging the Council's functions under the Licensing Act 2003, other than those delegated to the licensing panels (*by the Committee*).

Part 3 Scheme of Delegation to Officers

CE(4)	<p>The Chief Executive be authorised Deal with urgent items that occur between meetings, in consultation with the relevant Deputy Chief Executive, Head(s) of Service (if available) and Group Leaders (or in their absence Deputy Group Leaders) subject to the matter being reported to the Executive at its next meeting.</p> <p><i>(This excludes a decision which is not wholly in accordance with the budget or policy framework approved by Council and the process outlined in the Budgetary Framework must be followed)</i></p>
HS (2)	<p>The Head of Housing be authorised to approve or refuse renovation grants, decent homes grants, disabled facilities grants and home repair assistance <i>any discretionary or mandatory grant related to repair, improvement or adaptation</i>, the issue of approvals following the application of the test of financial resources and authorisation of payment upon satisfactory completion of the work. To recover, withhold or cancel payments</p>
HS(94)	<p>The Head of Housing be authorised to enforce the Management of Houses in Multiple Occupation (England) Regulations 2006, made under Section 234 Housing Act 2004.</p>
HS(95)	<p>The Head of Housing be authorised to serve a:</p> <ul style="list-style-type: none">(i) Prohibition Order in respect of a Cat 1 hazard, in relation to Section 20 of the Housing Act 2004(ii) Prohibition Order in respect of a Cat 2 hazard, in relation to Section 21 of the Housing Act 2004

	(iii) Notice requiring documents to be produced, in relation to Section 235 of Housing Act 2004
HS(96)	The Head of Housing be authorised under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, Statutory Instrument SI number 2015:1693 (made under the Energy Act 2013), authority to: (i) under regulation 5 issue a Remedial Notice; and (ii) per Part 4 (Regulations 8-13) issue a Penalty Charge Notice.
HS(97)	To formulate responses to planning applications in respect of housing requirements.
FS (5)	The Head of finance be authorised to set the Council Tax base
FS(17)	The Head of Finance be authorised, in consultation with the Portfolio Holder for Finance and the Leader, to produce appropriate and robust standards terms and conditions for the purchase of service or goods by this Council, and ensure that they are available on the Council's website.
FS(18)	The S151 Officer, in consultation with the Finance Portfolio Holder, approves the form NNDR1

Part 4 – Council Procedure Rules

34. Public Speaking

(a) Council

You will be permitted to speak in relation to any of the following items included on the agenda: notice of motion, ~~petition~~, report or minutes of another committee. Any request to speak on other items will be a matter of discretion for the Chairman.

(The rights for a member of the public to address Council on a Petition are set out in the Councils Petition Scheme)

Part 4 - Executive Procedure Rules

2.3 Who may speak at the Executive?

Any other speaker is at the discretion of the Leader subject to a maximum of five minutes.

2.4 Order of Business at the Executive

~~(vii) workload report of the Overview & Scrutiny Committees~~

Part 4 - Access to Information Procedure Rules

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect ~~any more~~ specific rights to information contained elsewhere in the Constitution or the law.

13. **PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- (b) at least five 28 clear days have elapsed since the publication of the forward plan; and

14.1 **Period of Forward Plan**

Forward plans will be prepared by the Monitoring Officer on behalf of the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

For each key decision the Forward Plan will identify:

- (i) *the address at which the documents listed are made available for inspection, will be the District Council's Riverside House offices, unless otherwise expressly stated;*
- (j) *details of the contact officer and Portfolio holder for each item.*

The forward plan must be *made available for inspection at the District Council's Riverside House offices and published on the District Council's website* at least 28 days before the start of the period covered. ~~The Monitoring Officer will publish once a year a notice in at least one newspaper circulating in the area, stating:~~

- ~~(a) — key decisions are to be taken on behalf of the Council;~~
- ~~(b) — that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;~~
- ~~(c) — that the plan will contain details of the key decisions to be made for the four month period following its publication;~~
- ~~(d) — that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;~~
- ~~(e) — that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;~~
- ~~(f) — the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;~~
- ~~(g) — that other documents may be submitted to decision takers;~~
- ~~(h) — the procedure for requesting details of documents (if any) as they become available; and~~
- ~~(i) — the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.~~

Part 4 Standard Terms and Conditions of Contract for both the Purchase of Goods and Services.

That these be removed from the Constitution and the production and publication of these be delegated to the Head of Service as set out at new delegation FS(17)

BUDGET OR POLICY FRAMEWORK PROCEDURE RULES

2.1.1 The Budget Framework

The process by which the budget framework shall be developed:-

- * Alongside consideration of the Budget for the forthcoming year and agreeing the level of Council Tax for that year, the Executive will consider and agree a financial strategy setting out medium term (2–3 5 year time period) projections of the Council's financial position. In agreeing the financial strategy the Executive will take into account representations from the relevant Overview and Scrutiny Committee(s) and other stakeholders that it is considered appropriate to consult. The financial strategy shall cover as a minimum the Council's General Fund, Housing Revenue Account and capital expenditure and funding requirements. The financial strategy and projections will be reviewed by the Executive during the financial year.
- * At least 6 7 months before the budget needs to be adopted the Executive will establish outline financial parameters within which the budget will be prepared. In agreeing such parameters the Executive is required to consult with the relevant Overview & Scrutiny Committee(s). Consultation with other stakeholders should also be undertaken by the Executive to the extent to which this is considered necessary.
- * At least 2 3 months before the budget needs to be adopted, the Executive will publish initial proposals for the budget. These proposals shall include and detail significant changes from the current year budgets. The proposals shall include the timetable by which the Executive will approve the budget and details of any consultation it wishes to undertake with stakeholders.

4. URGENT DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

(The Chief Executive may not use his delegated authority (CE4) to take urgent decision between meetings for the purposes of amending the Policy or Budgetary Framework)

6. IN-YEAR CHANGES TO THE BUDGET OR POLICY FRAMEWORK

The responsibility for agreeing the budget or policy framework lies with the Council, ~~and~~ Decisions by the Executive, an individual member of the Executive or officers, discharging Executive functions must be in line with ~~it~~ *the agreed budget or policy framework*.

No changes to the budget or policy framework may be made by those bodies or individuals except those changes to the budget or policy framework allowed by the Council's Code of Financial Practice and those changes necessary to ensure compliance with the law, ministerial direction or government guidance.

WARWICK DISTRICT COUNCIL PARTNERSHIP POLICY

1 Organisational responsibility and review

Good governance arrangements require a public authority to be clear about its approach to partnerships. This policy defines how Warwick District Council shall manage partnership arrangements.

The Policy will be reviewed every three years with a report to Executive requesting formal approval.

2 What do we mean by partnership?

The Audit Commission uses the term “partnership” to describe a joint working arrangement where the partners:

- are otherwise independent bodies;
- agree to co-operate to achieve a common goal; and
- to achieve it create an organisational structure or process and agreed programme, and share information, risks and rewards.

There are essentially four different types of partnership:

- separate organisation;
- virtual organisation (no formal legal basis);
- co-locating staff from different organisations; and
- steering group without dedicated resources

3 Forming a partnership

Because partnership working can be both difficult and expensive, it is essential that Warwick District Council considers other options as well as a partnership. Depending on the circumstances, a different approach could be either more efficient, more effective, or both. Generally Warwick District Council would want to form partnerships for the following reasons:

- aligning the services provided by the partners with the needs of the users;
- making better use of resources;
- stimulating more creative approaches to problems; and
- influencing the behaviour of the partners or of third parties in ways that none of the partners acting alone could achieve.

For Warwick District Council to enter a new partnership a report should be presented to the Executive which sets out the following:

- the reason the partnership exists and are there other options;
- the rationale for the selection of partner(s);
- long and short-term direction, objectives and possible end point of the partnership;
- its relationship to other partnerships/organisations;

- clarity of roles, responsibilities and what each partner is bringing to the arrangement in terms of skills, access, resources (including information) or influence;
- how it aligns with the Council's and partners' strategies;
- governance protocols for decision making (including elected members), accountability, budgets and other resources;
- a cost/benefit analysis supporting the need for the partnership;
- a Risk Register (from WDC's perspective);
- an information sharing protocol;
- the performance management arrangements, key performance indicators and targets;
- the mechanisms for reviewing and developing the partnership; and
- what the exit strategy is should the Council wish to no longer be in the partnership.

Attached at Appendix a is a Partnership Checklist which will need to be completed prior to the commencement of a partnership and submitted along with the Executive report. The Checklist will then be reviewed on an annual basis by all lead officers.

4 Performance managing the partnership

Performance management arrangements including key performance indicators and outcomes need to be agreed at the start of any partnership. There are four key things that need to be managed:

- key performance indicators and outcomes;
- efficiency of the partnership;
- health of the partnership; and
- risk.

The health check at Appendix b should be carried out at the same time as completion of the Checklist.

5 Sharing information across and between partnerships

One of the prerequisites of an effective partnership is an agreement to share information, intelligence and knowledge. Partners need to be culturally prepared to share information. This may require some support to achieve. It should include an evaluation of the information held by the partners and an agreement of what needs to be shared to help the partners to achieve the objectives of the partnership. Sharing of knowledge should be driven by need and partners also need to agree how the information is to be used. It could include the tracking of service access from a user's perspective.

Appendix a

	File Reference	
Name of partnership		
Partners		
Commencement Date		
Purpose of PARTNERSHIP		

	CONTROL	COMMENTARY Please refer to supporting documents/working paper references	Lead Officer
	ABOUT THE PARTNERSHIP		
1.1	Is the partnership to be a formal or informal one?		
1.2	Have the aims of the partnership been defined and why have the partners been chosen?		
1.3	Is purpose of the partnership short-term or long-term?		
1.4	Who is the lead partner?		
1.5	What are the estimated costs to the council of contributing to the partnership (analysed)?		
1.6	What (if any) is the financial liability of the Council if all other partners chose to withdraw from or terminate the agreement?		
1.7	Are there any other contingent liabilities?		

1.8	What are other parties contributing to the partnership? How does the partnership contribute to the Council's Corporate Strategy/Policy Framework?		
	CONTRACTUAL AGREEMENT		
2.1	Is there a contractual agreement which includes: <ul style="list-style-type: none"> • A constitution? • Legal, financial and personnel responsibilities? • Budgetary and accounting arrangements? • The monitoring of service delivery? • Nomination of a guarantor? 		
	CONSTITUTION		
3.1	Is there a written constitution?		
3.2	Does it define a management structure?		
3.3	Does it cover such issues as: <ul style="list-style-type: none"> • The frequency of meetings? • Quoracy? • The recording and distribution of minutes? 		
3.4	Does it identify: <ul style="list-style-type: none"> • Each partner's responsibility in terms of financial liability (i.e. is it limited/ shared)? • Who owns any assets and balances resulting from the partnership? 		

	<ul style="list-style-type: none"> • How will the partnership settle disputes? • Exit clauses and a mechanism for other variations to the agreement? • Any confidentiality issues? • Who will fit the roles of treasurer, secretary, and auditor? 		
	LEGAL RESPONSIBILITIES		
4.1	<p>What provision has been made for compliance with the law e.g. With respect to health and safety, data protection, employment and service specific legislation?</p> <p>How is information sharing regulated?</p>		
	FINANCIAL RESPONSIBILITIES		
5.1	Who is responsible for ensuring that financial records are maintained and kept?		
5.2	Have required records been defined to ensure that all legal and other obligations are met?		
5.3	Have arrangements been made for internal/ external audit as required?		
5.4	Have insurance requirements been considered, e.g. personal indemnity, third party, vehicles etc?		
5.5	Has advice been sought on the VAT rules applying to the partnership?		
	PERSONNEL RESPONSIBILITIES		
6.1	Who is responsible for recruiting, employing and training staff?		

6.2	Are staff clear about their roles and obligations, e.g. awareness of legal liability and governance framework (particularly important in the case of directors/ trustees)?		
6.3	Have staff or members made any declarations where there may be a conflict of interest?		
6.4	Will partnership employ staff directly or will it expect partners to do it?		
6.5	What is exit strategy for staff employed by the partnership?		
	BUDGETARY AND ACCOUNTING ARRANGEMENTS		
7.1	<p>Does the agreement include:</p> <ul style="list-style-type: none"> • Arrangements for approving budget? • Arrangements for monitoring expenditure? • Arrangements for dealing with overspend/ underspend? • How any contributions in kind (e.g. staff time or assets employed) are to be costed and included in the cost sharing arrangements? • What administrative/management costs are to be charged to the partnership on the basis of their calculation? • An agreement by all parties, where the partnership will recover grant income, that they will comply with all the 		

	<p>requirements specified and will provide the information required?</p> <ul style="list-style-type: none"> • Arrangements for making payments to the lead authority? 		
	MONITORING SERVICE DELIVERY		
8.1	<p>Is there a service plan including profiled budget and performance indicators?</p> <p>If so:</p> <ul style="list-style-type: none"> • How many years does it span? • How regularly will it be updated? 		
8.2	How will service delivery be monitored and reported.		

PARTNERSHIP HEALTH CHECK

	Never	Sometimes	Often	Always
Partners can demonstrate real results through collaboration				
Common interest supersedes partner interest				
Partners use the word 'we' when talking about partner matters				
Partners are mutually accountable for tasks and outcomes				
Partners share responsibilities and rewards				
Partners strive to develop and maintain trust				
Partners are pro-actively sharing information they hold				
Partners are willing to change what they do and how they do it				
Partners seek to improve how the partnership performs				
Partners regularly review risks together and work towards mitigation of high risk areas				