

**Eden District Council
Accounts and Governance Committee
13 April 2017**

**Council
20 April 2017**

**Review of the Constitution
Reporting Officer: Deputy Chief Executive
Responsible Portfolio: Resources**

1 Purpose of Report

- 1.1 To enable consideration of the proposed changes to the Constitution and the representations which have been received from Members and Officers.

2 Recommendation:

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| <ol style="list-style-type: none">1. That the recommendations of the Constitution Review Group which are set out in the Appendix 1 to the report and included in the draft version of the Constitution which is attached to this report as Appendix 4 be approved.2. That the Deputy Chief Executive be authorised, in consultation with the Members of the Constitution Review Group, to approve and authorise any minor and typographical changes to the text of the Constitution following its adoption by Council and arising upon a review of the document prior to publication following the Annual Meeting in May. |
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3 Report Details

- 3.1 The Accounts and Governance Committee agreed at its meeting on 10 December 2015 to form a working group to review the Constitution in two phases. Councillors Ms P Breen, A Connell and Mrs M Robinson were appointed to undertake this review. Phase 1 of the review was subject to a report to the Committee in February 2016 and Council in April 2016. Phase 2 of the review was to undertake a review of the whole Constitution particularly in the light of impending changes to the Council's management structure. On 29 September 2016 the Accounts and Governance Committee resolved amongst other matters to continue the second phase of the review of the Constitution. On 10 November 2016 Council approved amendments to the Constitution to take account of changes in the responsibilities and delegations of the Executive, changes in legislation and the temporary senior management structure of the Council. Phase 2 has been undertaken with the usual and annual review of the Constitution in the early part of 2017.

3.2 The review group has met on two occasions to consider all of the representations which have been received from Members and Officers and to consider the Constitution as a whole. Councillor Tonkin attended the review group meetings in the absence of Councillor Mrs Robinson.

3.3 The review group is aware that there are other reports which may have an effect upon the provisions contained within the Constitution. Council is to consider elsewhere on this Agenda:

- revisions to the Code of Planning Conduct and Practice;
- a new staffing structure;
- proposed changes to the composition of the Scrutiny Committees;
- a review of the Accounting and Audit Rules;
- a review of the Procurement Rules; and
- a report of the Independent Remuneration Panel.

Furthermore on 9 March 2017 Council approved Guidance on the Members Code of Conduct and for this to be adopted as part of the Council's Constitution.

3.4 Once a version of the Constitution has been approved at this meeting a final document will be prepared which will have to be proof read and incorporate all the agreed amendments. It is intended to have a list of contents and consecutively numbered pages and this exercise can only be undertaken once the final version of the documents has been prepared and any highlighted and proposed variations removed. It is considered appropriate, therefore, for the review group to meet on a final occasion to provide a Member overview of the document prior to its formal publication. It may be necessary to correct typographical errors following a proof reading and prior to a formal publication of the document.

3.5 Comments were made by certain Members and by an Officer in the course of the annual review of the Constitution. The received comments are included as Appendix 2 to this report. The representations have been paraphrased (Appendix 3) and the consideration of those representations included within the proposed amendments to the Constitution which are set out in Appendix 1 and included within the text of the Constitution itself (Appendix 4).

3.6 The Chief Executive along with the other officers of Management Team has been consulted on an earlier draft of this report. The Chief Executive considers that nothing is served by the questions and answers being read out. They are matters of record only and not for debate and to read them out would not be good use of Council time. If Members disagree with this view then it is suggested that all questions should go to the last item of business. The purpose of the Council meetings is to consider business and the asking and answering of questions is not business per se. Clearly in such circumstances Members would need to endeavour to complete the business

of the meeting within 3 hours in accordance with paragraph 9 of the Council Procedure Rules.

- 3.7 It falls within the remit of the Accounts and Governance Committee to undertake a review of the Constitution and make proposals to Council for consideration. Whilst the Deputy Chief Executive as Monitoring Officer has power to make consequential amendments to the Constitution, it is considered appropriate on this occasion to embody all the changes proposed by this report and other reports in consultation with the Review Group.
- 3.8 The views of the Accounts and Governance Committee will be reported to Council.

4 Policy Framework

- 4.1 The Council has four corporate priorities which are:
- Decent Homes for All
 - Strong Economy, Rich Environment
 - Thriving Communities
 - Quality Council
- 4.2 The proposals within this report are relevant to the 'Quality Council' priority.

5 Implications

5.1 Legal

- 5.1.1 The Constitution is reviewed on an annual basis. It is a matter for Council itself to approve the formal and final version of the Constitution.

5.2 Financial

- 5.2.1 Any decision to reduce or increase resources must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 17 September 2015.
- 5.2.2 There are no proposals in this report that would reduce or increase resources.

5.3 Equality and Diversity

- 5.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.
- 5.3.2 There are no implications arising from this report.

5.4 Environmental

- 5.4.1 The Council has to have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.

5.4.2 There are no implications arising from this report.

5.5 Crime and Disorder

5.5.1 Under the Crime and Disorder Act 1998 the Council has to have regard to the need to reduce crime and disorder in exercising any of its functions.

5.5.2 There are no implications arising from this report.

5.6 Children

5.6.1 Under the Children Act 2004 the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.

5.6.2 There are no implications arising from this report.

5.7 Risk Management

5.7.1 The Council reviews the Constitution annually to make sure that it remains and is fit for purpose and includes the provisions which are considered to be necessary and required.

6 Reasons for decision/recommendation

6.1 To enable the proposals which have been submitted in relation to the Constitution to be considered and those which are considered to be appropriate to be formally approved.

M Neal
Deputy Chief Executive

Governance Checks:

Checked by or on behalf of the Chief Finance Officer	✓
Checked by or on behalf of the Monitoring Officer	✓

Background Papers: None.

Contact Officer: Mr P Foote, Senior Legal Advisor

Telephone Number: 01768 212117

Appendix 1 Proposed Changes to the Constitution

Appendix 2 Representations Received

Appendix 3 Summary of Representations Received

Appendix 4 Constitution of Eden District Council - Draft

Proposed Changes to the Constitution

The proposed changes to the Constitution are set out below and are highlighted in the text of the Constitution where appropriate.

1. That there should be a table of contents.

This table of contents is in lieu of an index. It is considered that it would be preferable to have an index but this is a time-consuming task which should ideally be undertaken by someone who is accomplished in the exercise.

2. That the pages of the Constitution be numbered consecutively.

It is proposed that the notation which appears on the Constitution such as, for example, RoP1 should be removed and replaced with a page number. The current notation does not aid use and is rather cumbersome.

3. That the statement of the Articles which is contained on Page 9 of the Summary and Explanation should be omitted.

Currently the Articles of the Constitution are contained in the Summary and Explanation with the heading for each Article. The statement does not serve any apparent purpose and does not provide a further explanation and should be omitted.

4. The Statement of Citizens Rights in Article 3.1 be re-ordered so that voting and petitions for an elected mayor appears as No 4.

It is considered that the most important rights for a citizen are those which are contained in what is currently Paragraph 2, 3 and 4 and, as a consequence, the Article 3.1 should be re-ordered.

5. The Commercial Plan be added in Article 4.1c

The Commercial Plan was adopted previously by Council and it was expressly recorded that it should be incorporated in the policy framework.

6. That the entire functions of full Council which were included in the Responsibilities for Functions and in Article 4.2 should be combined.

Currently, the functions of full Council are contained in both Article 4.2 and in the Responsibility for Council Functions. It is considered that the statement of full Council's functions should be comprehensive and consistent so that the two references should be the same. In addition, Council now has to approve the Pay Policy and has responsibilities in relation to Community Governance Reviews. These provisions have now been incorporated in the text.

7. That the proposed changes to Articles 6 and 7 be approved.

Members of the Review Group were aware that changes had been made to Articles 6 and 7 of the Constitution previously and that these changes had been omitted from subsequent versions of the Constitution. The matter was reported upon fully and was the subject of consideration by Council at its meeting on 14 April 2016. The proposed resolution at the Council meeting in April 2016 was lost and no further action was taken on the report at that time. The Members of the review group reviewed the principles which were behind the proposed amendments to Articles 6 and 7 and considered that they remain relevant. The review group was of the view that in order for Scrutiny to hold the Executive to account and be seen to do so it would be preferable for the Chairman of the Co-ordinating Board to not be of the same political group as the Leader or to be a member of the majority political group on the Council. The Members of the review group recognised that it may not always be possible to secure such a division of responsibilities. The requirement could only be undertaken when it was practicable to do so, therefore. Additionally, the review group consider that it should be possible for Members to put their names forward as Leader even if they were not a member of the majority political group. This would only occur once every four years in the ordinary course of events following the Annual Meeting although it could occur should the identity of the Leader change during the usual four year period. It was considered that it was appropriate for nominations to be submitted, potentially, by more than one person and other than by the majority political group for the position of Leader.

8. That the proposed changes to the Responsibilities for Functions be approved.

It is proposed to include a reference to the Human Resources and Appeals Committee to clarify that it determines appeals as is the case elsewhere in the document.

The statement of the Responsibility for Council Functions has been amended to incorporate the provisions which are taken from Article 4.2 as mentioned previously.

The functions which are delegated to the Assistant Director Technical Services were included previously, in two locations within the Responsibility for Functions section. The provisions have been re-ordered so that all of the functions which have been delegated to the Assistant Director Technical Services are included in one place and run consecutively. The statement also includes an authority to the Assistant Director to dispose of land valued at £2,500 or less which had previously been delegated to the Director of Corporate and Legal Services. This delegation enables the sale of relatively small parcels of land which are not contentious.

9. That the proposed amendments to the Council Procedure Rules be approved.

It is the usual practice for the Annual Meeting of Council to approve the Minutes of various meetings where those minutes have not been approved by the appropriate body because there has not been a further meeting. The proposed amendment to the timing and business of the Annual Meeting is to make clear that this may be done.

There are occasions when substitute members are appointed from a different group to the appointing member. The review group recognised that this may occur and that whilst it was an exceptional occurrence the reasons for the appointment should be formally recorded in the minutes of the meeting concerned. The review group considered the issue of questions being asked by Members in the context of a representation from Councillor Eyles which is referred to below. The review group considered that the formal question which was posed should actually be read out at the Council meeting rather than being displayed on the screen which was not readily accessible to all members and meant that the meeting itself was not as clear as it could be particularly for a member of the public. The members of the review group considered that all questions and answers should be formally read out at the meeting and that a similar provision should be inserted for Members as applies in relation to members of the public. It was noted that only the question as submitted should be put without further elaboration or addition.

10. That the proposed changes to the Access to Information Procedure Rules be approved.

The Procedure Rules have been updated and re-ordered. The Rules have been amended to include the specific provisions which relate to meetings of the Executive and to provide for the procedure before taking key decisions which are contained in the relevant regulations. The provisions have been amended to identify more clearly the process which is undertaken in relation to decisions which are made by individuals, the matters which arise in relation to the process and that any such decision is subject to call in.

11. That the proposed amendments to the Executive Procedure Rules be approved.

The Rules have been updated and re-worded in the interests of clarity, consistency and accuracy. Amendments have been made to remove the references to full Council which reflect the derivation of the Rules but which gives rise to matters being included which were not appropriate by referring to 'full Council'. The Rules do make reference to the Leader in his capacity as the Chairman presiding at the meeting and that, when necessary, the provisions will include the person who was presiding at the meeting in the absence of the Leader.

12. That the proposed amendments to the Budget and Policy Framework Procedure Rules be adopted.

The reference to the Local Development Framework have been removed as they are now out of date. The Local Plan, as it is now known, would be included and have to be considered as a policy framework document in the same way as any other policy.

13. That the proposed amendments to the Scrutiny Procedure Rules be approved.

It is now stated that the quorum for a meeting of the Committee should be three rather referring to another part of the Constitution to determine the appropriate number. Amendments have been made to the provisions to refer to the appropriate Director and Assistant Directors in relation to Members and Officers giving account. The call-in provision, paragraph 15 b) iii) has been amended to require a meeting to be called within ten clear working days of the decision to call in. Previously, the meeting had to be called within five days of the decision but this was impracticable given the arrangements which have to be made, albeit it rather promptly, to call a meeting and as five days notice has to be given by statute in any event.

14. That the Recording and Social Networking Policy be incorporated as a Code and Protocol to the Constitution.

Council has approved a recording and social networking policy in relation to meetings. It is considered that this should be formally incorporated within the Constitution itself.

15. Part 3, Responsibility for Local Choice – Functions (Page 67)

The 'Membership' column can be removed from the table as it is unnecessary and merely repeats the number of the decision making body.

Representations Received

From: Michael Eyles

Sent: 23 February 2017 12:22

To: Matthew Neal **Cc:** Virginia Taylor <>; Deb Holden <>; Judith Derbyshire <>; Thomas Sheriff <>; Robin Howse <>; Andrew Connell <>; John Tompkins <>

Subject: change to constitution

Dear Mr Neal

I would like you to consider my amendment to Rule 12 of the Constitution, highlighted in Red, during your review of the Constitution.

I am unsure whether the office of DCLS still exists under the new staff structure so I have made the assumption that the Deputy Chief Exec fulfils that role. I would be grateful if you could amend as required.

12) Questions by Members

a) Questions on reports

A Member of the Council may ask the Leader or the Member of the Executive or the Chairman of a committee any question without notice upon an item of the report of the executive or that committee when the item is being received or is under consideration by the Council.

b) Questions on notice at full Council

Subject to Rule 12c) below, a Member of the Council may ask the Leader, the Member of the Executive or the Chairman of any committee a question on any matter in relation to which the Council has powers or duties or which affects the District of Eden.

c) Questions on Notice to Portfolio Holders at Scrutiny Board and Committee Meetings

From time to time, Members of the Executive attend meetings of the Scrutiny Co-ordinating Board and Scrutiny Committees at the invitation of the Chair. Subject to Rule 12d below, a member of a Scrutiny Board or Committee may ask a Member of the Executive a question on any matter related to the Executive Members' published Portfolio Plan and Portfolio responsibilities as outlined elsewhere in this Constitution.

d) Notice of questions

A Member may only ask a question under Rule 12b) if either;

☐ he/she has given notice by delivering the question in writing or by electronic mail to the DCLS no later than midday one clear working day (that is not counting the day of the meeting or the day of delivery) before the day of the meeting; or

☐ the question relates to urgent matters, he/she has the consent of the Leader or Member of the Executive or Chairman to whom the question is to be put and the content

of the question is given to the Director of Corporate and Legal Services prior to the meeting.

e) Written Answers to questions

Written answers to Members' questions will be sent by electronic mail to all Members by the Deputy Chief Executive (or DCLS) no later than midday of the day of the meeting.

Thank you

Mike Eyles

Councillor

From: Michael Eyles
Sent: 01 March 2017 10:28
To: Matthew Neal < >
Cc: Councillors < >
Subject: Change to Constitution

Dear Mr Neal

I would like to propose the following amendment to the Constitution, part 4, Rules of Procedure :

12) Questions by Members

. . .

f) Response

An answer may take the form of:

- ☐ a direct oral answer;
- ☐ where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- ☐ where the reply cannot conveniently be given orally, a written answer circulated later to the questioner **all Members within ten working days.**

Regards

Mike Eyles

From: Valerie Kendall
Sent: 21 February 2017 16:00
To: Matthew Neal < >
Subject: Constitution

Dear Matthew

My only comment is a minor semantic one in Part 1:

Citizens' Rights

Citizens have the right to (Bullet point 4)

Suggest '*.....meetings of Council, its Executive **and** its Committees.....*' Instead of '*.....**or**.....*'

Regards

Valerie Kendall (Kirkby Stephen)

From: Judith Derbyshire []
Sent: 24 February 2017 12:27
To: Matthew Neal < >
Subject: Changes to EDC's Constitution

Matthew

As discussed at the last Council meeting, I think that there should be a process in place to ensure that any unplanned funding (above £50,000) received after the budget has been set is discussed with Scrutiny and Full Council in advance of the funding being spent, to ensure the funding is spent in a suitable and accountable fashion.

I know there may be situations when the plans for how the funding is to be spent have to be drawn up quickly and possibly spent in advance of the next Scrutiny or Full Council meeting. If so, the Portfolio Holder has to report back to the next suitable meeting on what has been done, how the money has been spent and what future spending is planned.

And next time I am trying to draw up a motion for Council, I will try to discuss it with you or Robin if possible. I had not thought of the implications of £50 grants also being included under the proposal.

Generally on the Constitution, I do not use a paper copy, but keep it on my ipad. So any means to make it accessible as possible in an electronic form would be good. It would be good if any changes that are made could be highlighted in a different colour, so we don't have to re-read and absorb all the document to pick up any

alterations. And it would be good to ensure that we have clarity on which edition is the most up-to-date and is being altered, as the previous mix-up allowing changes to the Constitution to be 'lost' should not be repeated.

Judith Derbyshire

From: Gordon Nicolson
Sent: 19 February 2017 14:14
To: Paula Breen <>; Matthew Neal <>
Subject: Amendments at Council and executive Meetings

Dear Paula and Matthew,

Please see the statement below.

The question of amendments to resolutions took up a considerable amount of time. The request from Councillor Eyles for an amendment to the minutes of the January meeting and Councillor Derbyshire's unsuccessful attempt to formulate an amendment about reporting progress to Council on additional allocated funds lead me to believe that significant amendments to recommendations in reports should be tabled in writing. This would allow proposers to specify their objective, provide precise wording for their amendment and allow Officers and Members to consider the implications of accepting the amendment. It follows that Members would be clear about what they were voting for and there would be no subsequent doubt about the wording which would be accurately reproduced in the minutes of the meeting.

I am writing to suggest that urgent consideration is given to requiring amendments other than typos or minor corrections should be presented to meetings in written form. The argument in favour of this is given above and my wish is to introduce clarity into the process of considering amendments and recording decisions in the minutes.

Is it possible to consider this request when amendments to the Constitution are being discussed at the forthcoming Accounts and Governance Committee meeting?

Best wishes

Gordon

Councillor Gordon Nicolson OBE

Member for Lazonby Ward and

Resources Portfolio Holder

From: David Wright
Sent: 20 March 2017 17:10
To: Matthew Neal < >
Cc: Jane Langston < >
Subject: Proposed Changes to Constitution - delegated powers

Hi Matthew,

Further to our meeting regarding the above I would recommend that we change delegated powers set out in Schedule 1 of Part 3 of the Constitution to prevent unnecessary applications going to planning committee. At present it states:-

1. Town and Country Planning and Development Control.

a) Delegations to Assistant Director Organisational Development:

- i) to determine all planning applications and to make observations on all statutory and other notifications except:
 - 1. applications where an approval would be contrary to policy - ie departures and potentially justifiable exceptions;
 - 2. applications of a major, controversial or sensitive nature;
 - 3. applications which have aroused significant public interest on valid planning grounds;
 - 4. applications where an objection from a statutory consultee is received and he / she is inclined to approve the application;
 - 5. the approval of applications subject to a parish council objection on valid planning grounds or the refusal of applications which have received a representation in support from a Parish Council;
 - 6. applications subject to a request by an objector to address the Planning Committee;
 - 7. applications subject to a request by a member on valid planning grounds to have the matter determined by the Planning Committee.

I would recommend it's amended to:-

1. Town and Country Planning and Development Control.

a) Delegations to Assistant Director Organisational Development:

- ii) to determine all planning applications and to make observations on all statutory and other notifications except:
 - 1. applications where an approval would be contrary to policy - ie departures and potentially justifiable exceptions;

2. applications of a ~~major~~, controversial or sensitive nature;
3. applications which have aroused significant public interest on valid planning grounds;
4. applications where an objection from a statutory consultee is received **on valid planning grounds** and he / she is inclined to approve the application;
5. the approval of applications subject to a parish council objection on valid planning grounds or the refusal of applications which have received a representation in support from a Parish Council;
6. applications subject to a request by an objector to address the Planning Committee **and that objection is based on valid planning grounds**;
7. applications subject to a request by a member on valid planning grounds to have the matter determined by the Planning Committee.

This prevents major applications being brought to the planning committee for the sake of being a major. Furthermore where the County highways object for reasons which are not material planning considerations such as the developer has failed to sign up to a s38 agreement or they do not like a proposed access that already has extant planning permission then the application can be determined under delegated powers. Finally it prevents application being brought to the planning committee by members of the public just because they want to address the committee and they do not have any valid planning grounds stated in their objection.

Best Regards

David Wright MRTPI

01768 212302

Eden District Council

Planning Services Development Manager

Mansion House

Penrith

Cumbria

CA11 7YG

Summary of Representations Received

Councillor Eyles

Councillor Eyles suggested that written answers to Members questions should be sent by electronic mail to all Members by no later than midday of the day of the meeting.

The amendment was accepted in principle but it was considered that it may be more practicable for the deadline to be stated as 4pm. The Review Group was advised that this was the time by which the formal comments and recommendations had been prepared for inclusion on the electronic display.

Councillor Eyles second suggestion relates to providing a written response to questions to all Members in ten working days. The proposal is acceptable.

Councillor Kendall

Councillor Kendall suggested that it was more appropriate to refer to meetings of Council, its Executive and its Committees rather than 'or' in the Citizens' Rights. The Review Group noted the point but it was considered that it was preferable to remain as drafted.

Councillor Derbyshire

Councillor Derbyshire considered that there should be a process by which any unplanned funding over £50,000 should be discussed by both Scrutiny and Full Council. This was to ensure that the funding was spent in a suitable and accountable fashion. The Review Group was of the view that this provision was already contained within the Accounting and Audit Rules. A supplementary estimate is an addition to the Council's agreed budget. All supplementary estimates require the approval of the Executive. A referral to Council is required if a supplementary estimate is more than £50,000.

The Review Group noted that changes to the Constitution should be highlighted so that it was readily apparent, insofar as it was practicable. The addition of the Constitution would indicate the date of its publication as it does now.

Councillor Nicolson

Councillor Nicolson requested that amendments to resolutions should be submitted in writing. The Review Group were of the view that it was good practice for Members to submit amendments in writing so that there was clarity and understanding. However, it was only possible to do this when proposed amendments were known before the meeting. The Review Group were of the view that amendments can and will arise during the course of the meeting itself. It is considered that Members should be minded that it is good practice to submit written copies of proposed amendments and resolutions whenever practicable. However, it was considered that consideration

should be given to typing proposed amendments on screen at the Council meeting and that this should be done as far as it is practicably possible and technically feasible. The proposal would meet Councillor Nicolson's fundamental issue too.

Mr Wright

It was suggested that the provisions relating to a referral to the Planning Committee should be amended so that there was not a need for major applications to be referred to the Committee as a matter of course. The Review Group did not accept the rationale for this view and was of the view that the term 'major' should remain and that there should be transparency in relation to major applications and scrutiny to them given by Members of the Planning Committee. It was likely that major applications would be contentious.