



## **Constitutional Review**

### **Purpose**

- 1.1 On 20 July 2022, Council resolved to undertake a Constitutional Review, to align with changes due to be brought about by the Local Government Boundary Review and the Council's electoral cycle.
- 1.2 The Centre for Governance and Scrutiny (CFGs) were commissioned to undertake several workshops with councillors and officers to assess the strengths and weaknesses of the Council's current constitutional arrangements. The findings of that report were presented to Derby City Council in Spring 2023.
- 1.3 Following the conclusion of the CFGs review and a subsequent period of drafting and member consultation, this report presents a refreshed Council Constitution for approval.
- 1.4 The report summarises significant changes recommended by the review process and seeks the consent of the Full Council for the new arrangements to come into effect from 2 May 2024, shortly prior to the next Annual General Meeting.

### **Recommendations**

- 2.1 To note the findings of the Centre for Governance and Scrutiny's report summarised at paragraphs 4.13 to 4.24 and to adopt the draft Council Constitution detailed at Appendix 1 with effect from 2 May 2024.
- 2.2 To delegate authority to the Monitoring Officer to make any minor or technical amendments to the Constitution that may be necessary to ensure that it can be expediently adopted from 2 May 2024. Any exercise of this delegation is to be carried out in consultation with the Constitutional Review Councillor Working Group and reported to Council at the Annual General Meeting.
- 2.3 To request that the Independent Remuneration Panel review the draft Constitution and present recommendations to the Annual General Meeting about any changes required to Special Responsibility Allowances.
- 2.4 To note the requirement for the Leader of the Council to prepare an Executive Scheme of Delegation within 10 days of the Annual General Meeting, detailing how executive functions will be discharged by the Cabinet.

- 2.5 To note that prior to the adoption of the draft Constitution, updated Financial Procedure Rules and disciplinary procedures for non-Statutory Chief Officers and Deputy Chief Officers will be brought before Council for approval and incorporation within the new Constitution.

## Reasons

- 3.1 To ensure the Council's constitutional processes and procedures remain efficient, transparent and accountable to local people. To embed a strong organisational and political culture within Derby City Council, where decision-making, roles and accountabilities are well-understood by councillors, officers and the public.
- 3.2 Subject to the approval of the draft Constitution, changes will be required to a variety of back-office and public facing processes, to ensure that the Constitution can be adopted without disruption from 2 May 2024. A delegation to the Monitoring Officer to make minor or technical variations in consultation with the Councillor Working Group is therefore considered appropriate and mirrors the standing delegation contained within the draft document.
- 3.3 The draft Constitution includes changes to the remit and composition of several of the Council's committees. Moreover, the Independent Remuneration Panel (IRP) have previously indicated their intention to consider the allocation of Special Responsibility Allowances, independently of the Constitutional Review process.
- 3.4 Under a Leader and Cabinet governance model, the Local Government Act 2000 reserves executive functions to the Leader of the Council, who may then arrange for those functions to be discharged by either:
- i) The executive;
  - ii) Another member of the executive;
  - iii) A committee of the executive;
  - iv) An area committee;
  - v) An officer.

As detailed in Section 5, paragraph 5.6 of the draft Constitution, a Leader's Scheme of Executive Delegation must be presented to the Annual General Meeting and then provided in writing to the Monitoring Officer within ten days thereafter.

- 3.5 The Financial and Contract Procedure Rules have been reviewed alongside the Constitution. A revised version of the Contract Procedure Rules has been included at Part 9 of the draft Constitution. However, the adoption of revised Financial Procedure Rules cannot be completed until thresholds contained within the Constitution have been confirmed (particularly in relation to Key Decisions and exceptions contained within the Officer Scheme of Delegations). It is therefore proposed that revised Financial Procedure Rules are brought before Council for approval in due course.

Similarly, provision has been made for the inclusion of updated disciplinary procedures for non-Statutory Chief Officers and Deputy Chief Officers, which are currently undergoing review and will be incorporated at a later stage. Updated disciplinary procedures for Statutory Chief Officers were adopted by the Council in February 2023 and these are incorporated in the draft document.

## **Supporting information**

### **Principles of the Constitutional Review**

- 4.1 The Council Constitution is intended to provide for effective, transparent and efficient decision-making, set within a framework of democratic accountability.
- 4.2 Whilst the Constitution is to some extent a set of rules within which members and officers are required to operate, it should also detail the core principles of the Council and the relationship between the Council, councillors and citizens of Derby.
- 4.3 Constitutions should be easily read and understood by councillors, officers and members of the public. Whilst they are routinely used by those officers tasked with ensuring the good governance of the local authority, they should be written in a language and format that is accessible to all.
- 4.4 Derby City Council's Constitution was adopted in its current format in December 2001. Although it has been altered and amended over time to comply with changes to statute or in response to other local factors, in resolving to undertake the Constitutional Review there was a recognition that the document had become unwieldy and difficult to interpret. Moreover, it was acknowledged that whilst many of the requirements and thresholds agreed within the Constitution may have been appropriate at the time they were adopted, they were no longer suitable for an organisation whose role in delivering public services and composition had fundamentally altered over the same period.
- 4.5 The Constitution should be a living document that reflects the needs and priorities of the city and the organisation at a given point in time. It therefore requires continual update and review to ensure it remains fit for purpose. As part of the Constitutional Review process, Democratic Services are seeking to establish ongoing engagement with councillors and officers via a standing Constitutional Review Working Group, to ensure that all elements of the Constitution remain consistent with changing statutory requirements and recognised good practice.

### **Timeline for the Review**

- 4.6 The Council resolved to undertake a Constitutional Review on 20 July 2022, to coincide with the decision to alter the Council's electoral cycle following a review by the Local Government Boundary Commission for England. It was initially anticipated that the review could be concluded by May 2023, although it would later become apparent that a more comprehensive re-drafting would require a longer period. The review process has been overseen throughout by the Constitutional Review Working Group, which includes representation from all political groups on the Council.
- 4.7 In July 2022, the Council resolved to commission external support for the review process. Following a procurement exercise, the CFGS were commissioned to support the review and undertake an assessment of the strengths and weaknesses of the Council's constitutional arrangements.
- 4.8 The initial review phase included interviews with individual councillors and officers, as well as a review of a range of governance documents and meeting recordings. The

second phase presented initial findings of the review to stakeholders and facilitated workshops were held with political groups, the Council Cabinet, Corporate Leadership Team and Democratic Services.

- 4.9 The workshops focused on seven areas that informed the recommendations of the CFGS, which were received by the Council in Spring 2023:
1. The Constitution – generally
  2. The Full Council meeting
  3. Council Cabinet
  4. Delegation
  5. Public Participation
  6. Overview and Scrutiny
  7. Other observations
- 4.10 The CFGS report includes 23 recommendations that are summarised at paragraphs 4.13 to 4.24. Since receipt of the report, the Council has continued to work with the CFGS to re-draft the Constitution in line with the recommendations. It was recommended that a model constitution was used as the basis for the re-drafting exercise; the format of the draft document reflects constitutions adopted by several newly created unitary authorities established in recent years. The model constitution was then adapted to include provisions specific to the particular circumstances of Derby City Council and the preferences of the Councillor Working Group, Statutory Officers and other key stakeholders.
- 4.11 Since September 2023, the cross-party Constitutional Review Working Group has met on several occasions to review each section of the draft Constitution in detail and provide feedback on areas where there is discretion to adapt rules and procedures to account for local circumstances.
- 4.12 It is recommended that should Council adopt the draft Constitution, it would come into effect from 2 May 2024. This is to ensure that there is sufficient time to allow several additional steps to be undertaken post-approval (summarised at paragraphs 4.79 and 4.80) and so that the Annual General Meeting scheduled for 22 May 2024 can be undertaken entirely in accordance with the provisions of the new Constitution.

### **Findings of the CFGS**

- 4.13 The detailed findings and recommendations of the CFGS were received in April 2023 and shared with key stakeholders, including the Councillor Working Group and Group Leaders.
- 4.14 The review established a consensus that the Constitution was ready to be updated and that its current format was neither easily navigable or accessible to councillors, officers or the public. This was predominantly a consequence of the length, language and structure of the current document.
- 4.15 Feedback from councillors suggested that the Full Council meeting had lost its purpose and was not an effective use of time and resources in its present format. Key areas of concern included the time spent on questions and motions on notice, many of which did not result in any meaningful action following a meeting and whether the

outcome desired by those raising questions could be achieved more effectively in other ways.

- 4.16 The CFGS found that there was a lack of clarity or consensus on the role and purpose of Council Cabinet meetings. The review found that the focus of the meeting as a decision-making forum had been lost and that elements of the meeting were more akin to scrutiny. The CFGS recommended that engagement between Scrutiny and the Executive took place at an earlier stage, to allow for more tangible outcomes to be achieved for service users.
- 4.17 The review identified that the Council's Scheme of Delegation required modernisation and that levels of delegation should be assessed to ensure that an appropriate balance was struck between good governance, democratic control and efficiency of decision-making. It was noted that the threshold for Key Decisions had not been altered in more than 15 years; inflationary pressures on the Council's expenditure during that period had resulted in decisions that would not have otherwise met the Key Decision definition now meeting that threshold.
- 4.18 Public participation was also identified as an area where improvements could be made. In particular, the Council Questions process was identified as being too time-consuming, resource intensive and not providing satisfactory outcomes for members of the public. Members also suggested that they would be receptive to new ideas to the current arrangements for Neighbourhood Boards, Neighbourhood Forums and Ward Committees, citing that the current structure was overly bureaucratic.
- 4.19 There was clear agreement from councillors and officers that the Overview and Scrutiny process could achieve more. Some felt that scrutiny meetings were overly politicised, whilst others believed they were too heavily officer-led. Whilst no consensus emerged on the size and structure of the scrutiny function, there was a willingness to consider how scrutiny could operate more effectively.
- 4.20 The CFGS concluded that the Constitution required essential change, not least to reflect the significant changes brought about by the new electoral cycle. It was found that the existing constitution was preventative rather than permissive, adding unnecessary processes, control, delay and inefficiency into the decision-making and policy setting responsibilities of the Council.
- 4.21 The CFGS found that a review of financial thresholds to permit greater delegated authority to both individual Cabinet Members and Officers would allow greater flexibility and authority to deliver Cabinet decisions, expedite delivery plans and capital projects, as well as reducing the use of Cabinet time on low-level issues.
- 4.22 The findings suggested that the Constitution incorporated elements that were unusual for a Leader and Cabinet governance model. For example, it was stated that the entitlement of Opposition Leaders to debate and challenge decisions at Council Cabinet, without the ability to influence, shape or impact those decisions at an earlier stage, did not lead to effective scrutiny. Similarly, it was observed that Cabinet Members were not the focus of accountability at either Cabinet or Scrutiny meetings, and that reports were predominantly presented by officers.
- 4.23 The CFGS suggested that the structure of Overview and Scrutiny did not preclude effective scrutiny, however the purpose of the Executive Scrutiny Board could be

adapted to ensure that scrutiny of executive decisions took place at an earlier stage, to provide more time for the outcomes of the scrutiny process to be taken into account and to ensure that the overall activity of Overview and Scrutiny was better co-ordinated.

- 4.24 The report found that public participation was respected and valued by both councillors and officers, and that it was important for residents to continue to have simple access to those who represent them and make decisions which affect their daily lives. It was felt that the review presented an opportunity to enhance public access, whilst reforming processes that had become in the view of councillors disproportionate or overly politicised.

## **Draft Constitution**

- 4.25 Since the receipt of the report, the Council has continued to work with the CFGS and the cross-party Councillor Working Group to re-draft the Constitution in accordance with the recommendations. A model Constitution adopted by several recently established unitary authorities has been used as the basis for this work.
- 4.26 Initial drafting was conducted by an experienced former Monitoring Officer commissioned by the CFGS. Since August 2023, the Head of Democracy has been meeting with the Councillor Working Group and relevant officers to make further amendments to the document and ensure that it is appropriate for Derby's local circumstances.
- 4.27 Each section of the draft Constitution is summarised in turn in the paragraphs below, with significant changes to existing practice highlighted.

### ***Format, accessibility and language***

- 4.28 The overall format and accessibility of the Constitution has been substantially changed. Unlike the existing version, the Constitution is contained within a single, bookmarked document. The composite parts of the Constitution are grouped thematically, allowing quick and easy access to relevant information for those who may not routinely use it.
- 4.29 Live links to accompanying legislation, policies and protocols are included throughout; more will be added over time prior to the proposed date of implementation.
- 4.30 Whilst some elements of the Constitution necessitate technical language, the core elements have been written in language that is easily understood, helping to ensure that councillors, officers and members of the public can access unambiguous information about their constitutional rights and entitlements.

### ***Part 1 - Summary and explanation***

- 4.31 A summary and explanation of the Constitution is statutorily required. It explains in general terms the Constitution, how the Council operates and how decisions are made.
- 4.32 The decision-making principles of the Council are set-out at paragraph 22. Compared to the existing Constitution, the decision-making principles have been expanded to

take account of recent decisions of the Full Council, including the Climate Emergency and the Socio-Economic Duty.

- 4.33 The section also explains new legal responsibilities emanating from the Armed Forces (Covenant) Regulations 2022.

### ***Part 2 - Public Participation***

- 4.34 This section provides basic information about the political composition of the Council and its governance arrangements. It also provides a summary of public rights to attend and participate in meetings, and to engage with the Council via petitions and public consultation exercises.
- 4.35 A summary of Community Rights emanating from the Localism Act 2011 is also detailed within this section, alongside a range of additional rights and entitlements held by the public to participate in local democracy, access documents and seek resolution to complaints about the Council.

### ***Part 3 - Full Council***

- 4.36 This section incorporates all rules, procedures and protocols relating to the Full Council meeting. This includes clear legal definitions of Executive, Non-Executive and Local Choice functions, within which the matters reserved to the Full Council are detailed. It also explains the basis upon which the Council sets its Budget and approves those policies that sit within the Policy Framework.
- 4.37 The Policy Framework is comprised of those policies that are required to be approved by the Full Council by law, as well as any policies that the Council may choose to include within the framework upon recommendation from the Cabinet. No changes have been recommended to the contents of the Policy Framework.
- 4.38 The Budget and Policy Framework Procedure Rules have been rewritten in more accessible language, but remain consistent with the provisions contained within the current Constitution. They detail the process for consultation and adoption of the Budget and Policy Framework, including the rights of Overview and Scrutiny to be consulted and the ability of the Council to call-in decisions that are contrary to either.
- 4.39 The Council Meeting Procedure Rules have been substantially altered. They delineate the five different types of Full Council meeting and the matters reserved to each.
- 4.40 In respect of the Budget meeting, customs and practices that have been followed in Derby for several years have been formally constituted. For example, the entitlement of the first speaker on the budget from each group to have unlimited time to speak or the order in which amendments are taken. The Procedure Rules also establish revised timescales for the submission and sign-off of amendments, although the discretion of the Mayor to waive these timescales in prescribed circumstances has been retained. This element was discussed extensively by the Councillor Working Group and it is felt that the proposed arrangements strike the correct balance between ensuring flexibility for councillors, whilst ensuring they do not place a disproportionate burden on those officers administering the process.

- 4.41 The maximum length of Council meetings has been reduced from four hours to three. It was felt by the Councillor Working Group that this would focus the attention of the meeting on its core business. The ability for this rule to be waived by majority vote has been retained.
- 4.42 Specific procedure rules relating to a motion to remove the Leader of the Council have been introduced, to reflect statutory requirements relating to the Leader's term of office and recognised good practice. In the course of consultation, the Councillor Working Group queried the 21-day notice period for the convening of an Extraordinary Meeting. Following consultation with the CFGS, it was accepted that this was necessary given the inherently destabilising effect on the organisation of a change of leadership and potentially also political control outside of the normal electoral cycle.
- 4.43 Deputations have been introduced as an additional form of public engagement. It was recognised that in many cases the requirements of the Council Questions process did not allow residents to feel as if their issues had been heard. The Deputations process allows a group of residents opportunity to address the Full Council meeting on a matter of local concern for up to five minutes, followed by a further five minutes for councillors to ask questions. A maximum of two deputations would be heard per meeting and in circumstances where more than two applications were received the Chief Executive would hold delegated authority to select those most appropriate to the Council's current circumstances.
- 4.44 As a result of the introduction of Deputations, the Council Questions process has been simplified. All questions are to be submitted with five clear days' notice to coincide with the publication of the agenda; questions will be published with the summons to the meeting in the order they are received and answered verbally. Members of the public will be limited to one question per meeting; councillors may submit more than one question, but member questions will be limited to 30 minutes in duration in total. There is no longer a facility for supplementary questions to be asked and there are enhanced powers for the Monitoring Officer to reject questions that are not about either budget or policy matters.
- 4.45 Statements from Cabinet Members have been replaced by a regular opportunity for the Leader of the Council or a nominated Cabinet Member to present a summary of the activity of the Council Cabinet since the last meeting of Council. Following receipt of the Leader's report, any member may ask questions of the Leader.
- 4.46 The process for consideration of motions on notice remains unchanged. The Councillor Working Group considered limiting the number of motions considered at a Council meeting, but this was ultimately discounted. Amendments are now required to be submitted with two days' notice, although the Mayor may waive this requirement in cases of urgency.
- 4.47 Motions without notice, the rules of debate, voting and procedure rules relating to conduct at meetings remain equivalent to the Council's existing provisions. The existing process for the determination of urgent non-executive matters has been more detailed more clearly in the Constitution, with the Chief Executive retaining delegated authority for these types of decisions.

#### ***Part 4 - Committees***

- 4.48 The Council's current committee structure is set out at Paragraph 4.1. The section provides a single point of reference for councillors appointed to committees and those officers reporting to them. The delegations and terms of reference to each committee have been reviewed and are consistent with the existing Constitution.
- 4.49 The most significant changes relate to the Personnel Committee, which has been renamed the Employment and Personnel Committee. Delegations relating to Single Status and Job Evaluation have been removed following the conclusion of the project; the Disputes Resolution Committee and Appointments Panel have been established as sub-committees of the Employment and Personnel Committee, given their related business. There is no requirement for members of the sub-committees to also be members of the overarching committee, retaining flexibility for all councillors to sit when these types of meetings are required.
- 4.50 In response to the CFGS recommendations and councillor feedback, Neighbourhood Boards, Forums and Ward Committees have been disestablished as constituted committees but may continue to exist as consultative bodies at the discretion of local councillors. This means that they would no longer be subject to statutory access to information requirements and create greater flexibility to establish arrangements that are appropriate for local areas. Alternative arrangements for the approval of delegated locality funding by ward members will be presented for approval in due course and will be incorporated within the Leader's Scheme of Executive Delegation.
- 4.51 The Committee and Sub-Committee Meeting Procedure Rules have been re-drafted. They detail the entitlement of councillors to have an item of business included on the agenda of a relevant committee; the role of the Chair in managing the business on the agenda and to arrange additional meetings; and the procedures to be followed to manage disorderly conduct. Following consultation with the Councillor Working Group, the existing practice of not allowing substitute members to attend committees except where otherwise agreed by Council has been retained.

#### ***Part 5 - Executive***

- 4.52 This section details the role of the Cabinet and the role of the Leader of the Council for the delegation of executive functions. It describes the current Cabinet portfolios and details the procedures for executive decision making.
- 4.53 Paragraphs 5.5 to 5.8 describes the process for the establishment of an Executive Scheme of Delegation. This document will be presented by the Leader of the Council following the Annual General Meeting and will detail the extent of delegation to the Cabinet, Cabinet Members, Joint Committees, Officers, Area Committees and Ward Members.
- 4.54 The Cabinet Procedure Rules have been re-written but remain broadly consistent with the existing provisions. In response to the recommendations of the CFGS, the Procedure Rules clarify that the Leader of the Council maintains sole discretion as to the extent that non-Cabinet councillors can speak at Cabinet meetings.
- 4.55 The procedure for the determination of urgent executive business has been amended. It is proposed that delegated authority is granted to the Chief Executive to take any

necessary action prior to the next meeting of the Cabinet in cases of urgency, with all use of this delegation reported to the next available public meeting of the Cabinet. This would replace the current Urgent Leader of the Council Cabinet Member Meetings under the current constitutional arrangements.

- 4.56 The Access to Information Rules continue to reflect the statutory requirements for a Council operating executive arrangements and are similar to the existing provisions.
- 4.57 The most significant proposed change is in relation to the threshold and definition of Key Decisions. Feedback from the CFGS suggested that for a unitary authority of its size, the Council's current financial threshold for a Key Decision was unusually low (£250,000). It was recommended that the threshold was increased to £500,000 and should account for the size of the budget to which a decision relates; the separate requirement relating to significant impact on communities living and working in two or more wards has been retained. Other requirements relating to Key Decisions such as the requirement for inclusion in the Forward Plan or in relation to Urgency or Special Urgency remain unchanged.
- 4.58 The statutory rights of councillors and additional rights of overview and scrutiny members to access documents remain unchanged. Provisions relating to the exclusion of the press and public from meetings now include a series of relevant considerations for determining whether a resolution to that effect is considered to be in the public interest.

#### ***Part 6 – Joint Arrangements***

- 4.59 Joint arrangements established by the Council or the Executive are now comprehensively detailed within the Constitution. The arrangements listed include joint committees, partnerships and other bodies established by the Council to discharge certain functions under relevant statutory provisions.
- 4.60 At the request of the Councillor Working Group, each arrangement details the Council's representation on that body and how those representatives are appointed. In the case of councillors, this may be an appointment made at the Annual General Meeting or by virtue of their prior appointment as a Cabinet Member.

#### ***Part 7 – Overview and Scrutiny***

- 4.61 Following the feedback of the CFGS and agreement by the Councillor Working Group, significant changes are proposed to the operation of Overview and Scrutiny. Having considered evidence from other councils including the findings of recent Best Value Inspections and Reports in the Public Interest, it was felt that the current scrutiny structure was too large and that a renewed focus on the quality rather than quantity of scrutiny work was required.
- 4.62 Firstly, it is recommended that the role of the Executive Scrutiny Board is altered to provide an enhanced role as a scrutiny management committee, co-ordinating scrutiny activity across the Council. Scrutiny Review Boards would become sub-committees of Executive Scrutiny and submit their work programmes annually for approval.

- 4.63 Secondly, to ensure scrutiny activity can be resourced effectively, it is recommended that the number of Scrutiny Review Boards is reduced from five to three, each meeting a minimum of five times per year. Initially, these would be established as the People, Place and Corporate Services Board, but the Executive Scrutiny Board would have the ability to alter the terms of reference of these boards as scrutiny priorities dictate.
- 4.64 The existing custom of Scrutiny Review Board Chairs being appointed as members of the Executive Scrutiny Board has been retained and is now included as a constitutional requirement, within the political proportionality allocations agreed by the Council.
- 4.65 A further addition to the Overview and Scrutiny Procedure Rules is the introduction of the Councillor Call to Action. This is a facility by which any councillor can require an issue that affects their ward to be included on the relevant scrutiny agenda, where the councillor has exhausted all other means of seeking a resolution. This provision was introduced following feedback from councillors that the Council Questions process was being used as a means to raise casework issues.
- 4.66 The remainder of the Overview and Scrutiny Procedure Rules, including the Call-In Procedure remain consistent with the existing provisions. Subject to the approval of the draft Constitution, Democratic Services will engage with the Councillor Working Group, the Chair of the Executive Scrutiny Board and the Leader of the Council to develop accompanying scrutiny protocols that reflect the changes summarised at paragraphs 4.61 to 4.65.

### ***Part 8 – Councillors***

- 4.67 This section provides overviews of the roles and accountabilities of councillors. It is intended to provide summary guidance to the public, office holders and those who work alongside councillors on a regular basis. This section also includes a library of codes and protocols relating to councillors' conduct and probity.
- 4.68 The Constitution lists the responsibilities and key tasks of councillors, both as members of the local authority and community leaders. The specific roles of the Mayor, Leader of the Council and Cabinet Members are also set out in detail. At the request of the Councillor Working Group, the role of committee chairs and councillor champions have also been added.
- 4.69 The Councillors' Code of Conduct, Complaints Procedure and Councillor/Officer Protocol were not within the scope of the Constitutional Review and are routinely maintained by the Standards Committee. Similarly, the Councillors' Allowances and Expenses Scheme is maintained by the Independent Remuneration Panel.
- 4.70 Planning Protocols have been reviewed, refined and updated in consultation with the Chief Planning Officer, to reflect recognised best practice within the sector. Minor procedural changes will be briefed to Planning Control Committee members subject to approval of this Constitution.

## **Part 9 – Officers**

- 4.71 The final section of the Constitution details the role and remit of the Council's Officers. This includes information about the Council's management structure and the scheme of delegation to officers. It also includes the employee code of conduct, procedures relating to the appointment and dismissal of senior officers and the Contract and Financial Procedure Rules.
- 4.72 In response to the recommendations of the CFGS, the Officer Scheme of Delegations has been substantially altered. Under the existing Constitution, the Officer Scheme of Delegation seeks to list all powers and functions reserved to Senior Council Officers: this format is not conducive to regular changes to the roles of officers or the changing nature of the authority. It results in the scheme being regularly out of date or not providing sufficient authority for officers to act with confidence, requiring the regular referral of decisions back to Cabinet or other decision-making bodies.
- 4.73 The Scheme contained in the draft Constitution is more permissive, delegating to the Chief Executive, Strategic Directors and Service Directors all powers and duties relevant to their areas of responsibility, except those powers expressly withdrawn from delegation by either the Executive or the Officer Schemes of Delegation. The Scheme lists a series of exceptions for contracting, IT, property, finance, staff and employment, legal services and pensions, where additional authority is required from particular officers or in some cases the Cabinet or Full Council.
- 4.74 The draft Constitution includes an updated list of legislation where the Council is required to appoint a Proper Officer. Legislation is listed chronologically and can be easily amended as new statutory requirements come into effect over time.
- 4.75 This section contains the Staff Employment Procedure Rules, which details responsibilities for appointing, dismissing and disciplining employees. It has been re-drafted to reflect the most recent statutory requirements and retains existing arrangements for councillor involvement in the appointment and dismissal of senior officers, via the Appointments Panel Sub-Committee, Investigating and Disciplinary Committee and Disciplinary Appeals Committee.
- 4.76 Council approved updated disciplinary procedures for statutory Chief Officers in January 2023, which are included within the draft Constitution. Equivalent procedures for non-statutory Chief Officers are currently being drafted and will be brought before Council for approval at the earliest opportunity.
- 4.77 The Contract Procedure Rules have been re-written to reflect the proposed threshold for Key Decisions recommended within the draft Constitution, the latest financial regulations and changes in relevant legislation. Council processes for procurement exercises that fall below national thresholds have also been updated.
- 4.78 The Financial Procedure Rules will be updated pending approval of the Constitution and brought to Council for further approval. The thresholds set within the Financial Procedure Rules are contingent on the agreed definition for Key Decisions and the level of executive delegation set by the Leader of the Council.

## **Next steps**

- 4.79 Subject to the approval of the draft document, several actions will be required before the Constitution can be adopted in May 2024. These will include drafting a Leader's Scheme of Executive Delegation; commissioning a report of the Independent Remuneration Panel in relation to the levels of Special Responsibility Allowances; liaising with lead Overview and Scrutiny members on the content of updated scrutiny protocols and, drafting public and internal guidance for existing and newly created constitutional processes.
- 4.80 It is recommended that the Councillor Working Group continues to meet to oversee this process and that a delegation is sought to the Monitoring Officer to make any further alterations to the Constitution that may be necessary to allow it to come into effect. Any subsequent changes to the draft document presented for approval at Appendix 1 will be reported to Council.

## **Public/stakeholder engagement**

- 5.1 The CFGS were approached to support the Constitutional Review in July 2022 and asked to assess the strengths and weaknesses of the Council's current constitutional arrangements. Following a desktop exercise which included reviewing existing constitutional documents and recordings of committee meetings, the CFGS undertook a series of workshops with councillors and officers.
- 5.2 The workshops included facilitated sessions with each political group and separate sessions with the Cabinet, Group Leaders, Committee Chairs and Chief Officers.
- 5.3 Oversight of the Constitutional Review including the re-drafting of the Constitution has been undertaken in consultation with a Councillor Working Group, which includes representation from all political groups on the Council.
- 5.4 The Working Group received a presentation from the CFGS on the contents of the draft Constitution, before reviewing each section in detail at five separate sessions supported by the Head of Democracy.
- 5.5 Extensive consultation has also been undertaken with Service Directors and Heads of Service across the Council, particularly in respect of the Officer Scheme of Delegations. Specific input has been required from Legal Services, Procurement, Finance, HR and Organisational Development, Property Services, Planning and Licensing to ensure that the extent of delegation and exceptions are appropriate.
- 5.6 Prior to the finalisation of the draft, a final round of consultation has been undertaken with all councillors, as well as the Council Cabinet and the Corporate Leadership Team.

## **Other options**

- 6.1 To not adopt the revised Constitution. This is not advised as the CFGS review has highlighted that some areas of the Council's existing Constitution are out of date or no longer fit for purpose.

- 6.2 To request that further consultation and re-drafting is undertaken on the draft Constitution prior to re-consideration by the Full Council.

### **Financial and value for money issues**

- 7.1 None directly arising. The provisions contained within the draft Constitution can be implemented within the resources currently allocated to democratic support.
- 7.2 The draft Constitution seeks to achieve value for money for local taxpayers by ensuring decision making processes are both transparent and efficient, enabling the Council to make the best use of the resources available to it.

### **Legal implications**

- 8.1 Section 9P of the Local Government Act 2000 requires local authorities to prepare and keep up to date a document which contains:
- a) A copy of the authority's standing orders;
  - b) A copy of the authority's Code of Conduct, under Section 28 of the Localism Act 2011;
  - c) Such information as the Secretary of State may direct;
  - d) Such other information as the authority considers appropriate.
- 8.2 The Local Government Act 2000 (Constitutions) (England) Direction 2000 applies additional requirements on the contents of local authority constitutions specified by the Secretary of State – these requirements include a summary and explanation of the purposes and content of the Constitution; descriptions of the roles, responsibilities and powers of the authority, its committees and individual office holders; a description of the rights and responsibilities of residents, including their right to vote in elections, access information and attend meetings; and, rules and procedures for the management of the Council's financial, contractual and legal affairs.
- 8.3 In addition to the requirements under the Ministerial Direction, there are several other legislative requirements specifying the content of local authority constitutions. These include public rights to film and report on council meetings; provisions relating to the constitution of licensing committees; procedures relating to the employment and dismissal of senior officers; and, the establishment of Health and Wellbeing Boards.
- 8.4 The draft Constitution has been written and reviewed to ensure compliance with statute. Irrespective, in circumstances where the Constitution may differ the legislative requirements would take precedence.

### **Climate implications**

- 9.1 The draft Constitution incorporates reference to the Climate Emergency declared by the Council on 22 May 2019. 'Assessing the impact of human rights, equality,

diversity and sustainability, including having due regard for the Climate Emergency' is listed as one of the decision-making principles of the Council.

- 9.2 In addition, it is listed as a responsibility of all councillors to 'have due regard for the desirability of the Council exercising its functions in a way that is designed to reduce the impact of its activity on the climate and the environment'.
- 9.3 Inclusion of these provisions will strengthen the Council's commitment to tackling the climate emergency and support the stated policy ambition of achieving net-zero by 2035.

### Socio-Economic implications

- 10.1 The draft Constitution also incorporates the Council's voluntary adoption of the Socio-Economic Duty under Section 1 of the Equality Act 2010, following the resolution of Council made on 25 May 2022.
- 10.2 'Having due regard to the desirability of exercising its functions in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage' is listed as both a decision-making principle and a responsibility of all councillors at Parts 5 and 8 of the Constitution respectively.
- 10.3 These provisions will embed the Council's commitment to the socio-economic duty in its constitutional arrangements.

### Other significant implications

- 11.1 Failure to update and modernise the Council's Constitution may lead to poor governance and decision making, undermining public confidence in the Council as a democratic institution.

This report has been approved by the following people:

Role	Name	Date of sign-off
<b>Legal</b>	Olu Idowu, Head of Legal and Insurance Services	22 December 2023
<b>Finance</b>	Alison Parkin, Director of Financial Services (S151 Officer)	28 December 2023
<b>Service Director(s)</b>	Emily Feenan, Director of Corporate Governance, Property and Procurement (Monitoring Officer)	22 December 2023
<b>Report sponsor</b>	Paul Simpson, Chief Executive	8 January 2024
<b>Other(s)</b>	Linda Spiby, Head of Procurement	
	Liz Moore, Head of HR and Organisational Development	20 December 2023
	Paul Clarke, Head of Planning	21 December 2023
		18 December 2023

<b>Background papers:</b>	<a href="#">Constitutional Review, Council, 20 July 2022</a> <a href="#">Constitutional Amendments, Council, 24 May 2023</a> <a href="#">The review and redrafting of constitutions: guidance for English authorities, Centre for Governance and Scrutiny, 17 April 2023</a>
<b>List of appendices:</b>	Appendix 1 – Draft Council Constitution