

Report of Head of Legal and Democratic Services and Monitoring Officer

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To: COUNCIL

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Changes to the council's constitution

Recommendations

That Council:

1. agrees to amend Article 4 of the current constitution with immediate effect to provide for full Council to be responsible for the adoption or approval of a plan or strategy (other than a plan or strategy forming part of the policy framework), where Council determines that it should take the decision whether to adopt or approve that plan or strategy;
2. agrees to amend the full Council section of Part 2: Decision Making of the revised constitution agreed by Council on 15 December 2016 with effect from 1 March 2017 to provide for full Council to be responsible for the adoption or approval of a plan or strategy (other than a plan or strategy forming part of the policy framework), where Council determines that it should take the decision whether to adopt or approve that plan or strategy;
3. authorises the Head of Legal and Democratic Services to update the constitutions to reflect the agreed amendments;
4. authorises the Head of Legal and Democratic Services to make any minor or consequential amendments to the constitutions for consistency and to reflect the council's style guide;
5. determines that Council should itself take the decision whether to adopt or approve any proposals for unitary local government for Oxfordshire (including submitting the same to the Secretary of State and all further decisions following the Secretary of State's response), having considered recommendations of the Cabinet.

Purpose of Report

1. This report proposes revisions to the current constitution and also the revised constitution which will come into effect on 1 March 2017, as agreed by Council on 15 December 2016 to ensure it is open to Council to reserve significant plans or strategies such as policy decisions on local government reorganisation to itself rather than them being decided by Cabinet and asks Council to determine that Council itself should take the decision whether to adopt or approve (including to make) a proposal to the Secretary of State for unitary local government for Oxfordshire, having considered recommendations of the Cabinet. This includes any decisions that need to be taken following the Secretary of State's response to such a proposal.

Strategic Objectives

2. The constitution underpins all the council's decision-making and therefore supports all its strategic objectives.

Background

3. The Local Government Act 2000 and regulations made under it specify which decisions must or may be made by full Council (or other non-executive decision-making bodies such as committees) and which ones must or may be taken by Cabinet. In general terms, all decisions are ones for Cabinet unless there are specific legislative provisions by virtue of which they are non-executive decisions i.e. to be taken by full Council or another non-executive decision-making body such as a committee. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the 2000 Regulations") are updated from time to time when new legislation comes into force in order to specify whether new functions are matters for Council or Cabinet. However, the regulations do not always keep pace with new legislation and there can from time to time be a lack of clarity around responsibility for decision-making.
4. In the near future, officers are planning to bring forward a report on proposals for a new unitary council for Oxfordshire and they have therefore been considering whether this should be a decision for Cabinet or full Council. There is nothing in the 2000 Regulations which expressly provides that the relevant functions under the Local Government and Public Involvement in Health Act 2007 and the Cities and Local Government Devolution Act 2016 are not the responsibility of the Cabinet and this leaves some doubt. This report therefore proposes a mechanism for agreeing that the decisions to adopt or approve (or make) proposals to the Secretary of State (including any decisions resulting from the Secretary of State's response to these proposals) should be matters for full Council. Other day to day matters (for example finalising the submission documents and agreeing matters of detail) will remain the responsibility of the Cabinet or be delegated to officers.
5. Article 4 of the current constitution (dated August 2016) defines the policy framework and does not include policies on local government reorganisation. It is strongly arguable that a decision to agree proposals that could result in the abolition of the council would of itself fall outside the policy framework and

therefore require a full Council decision as specified within the constitution. To avoid any doubt, this report recommends a change to the constitution to provide a further or alternative mechanism to enable full Council to resolve that certain decisions should be reserved to it rather than being taken by Cabinet.

6. At its meeting on 15 December 2016, Council agreed a revised constitution and agreed that it would come into effect on 1 March 2017. The revised constitution contains similar provisions on policy decisions and this report proposes a corresponding change to the revised constitution to achieve the same effect from 1 March 2017 onwards.
7. Regulation 5(1) and paragraph 1 of Schedule 4 of the 2000 Regulations provide that Council may decide from time to time that it should take decisions itself on whether to adopt or approve a plan or strategy (to the extent it is permitted to do so by law). Notwithstanding the current and revised constitutions already contain the plans and strategies which form the policy framework, this does not prevent Council from seeking to alter the plans and strategies in cases in which new ones arise, which Council considers should be decided upon by it.

Proposed change to the constitution

8. Council is recommended to add a new provision to the current constitution with immediate effect and to the revised constitution with effect from 1 March 2017 to provide for full Council to be responsible for “the adoption or approval of a plan or strategy (other than a plan or strategy forming part of the policy framework), where the Council determines that it should take the decision whether to adopt that plan or strategy.” Council is also recommended to authorise the Head of Legal and Democratic Services and Monitoring Officer to update the constitutions to reflect the agreed amendments and to make any minor or consequential amendments to the constitutions for consistency and to reflect the council’s style guide.
9. Under this new provision, Council is asked to determine that it should itself take the decision on the adoption or approval of any proposal on a new unitary council for Oxfordshire rather than Cabinet reaching the decision. As is the case for policies and strategies within the policy framework, Cabinet will be responsible for formulating the proposals and making recommendations to Council for decision.
10. It is not anticipated that Council will need to rely on this new provision very often but it would provide clarity on and a mechanism for Council reserving other significant policy or strategy decisions to itself in the future if it decided to do so.

Financial Implications

11. The democratic services budget for printing will meet the costs of producing copies of the amended constitutions.

Legal Implications

12. Section 9P of the Local Government Act 2000 requires the Council to keep its constitution under review.
13. The statutory basis for decisions being the responsibility of full Council or Cabinet is set out in the body of this report. Council has the power pursuant to paragraph 1 of Schedule 4 and Regulation 5 of the 2000 Regulations to decide that it should be responsible for the adoption or approval of a plan or strategy (other than a plan or strategy of a description referred to in regulation 4(1)(b) or Schedule 3 of the 2000 Regulations), where the Council determines that it should take the decision whether to adopt that plan or strategy.

Conclusion

14. This report sets out proposals to amend the constitution. Officers recommend Council to approve the proposed changes and proposed dates for implementation and to authorise the Head of Legal and Democratic Services to make these changes and any further minor or consequential amendments. Council is also asked to determine that Council should itself take the decision on whether to adopt or approve any proposals for unitary local government for Oxfordshire (including submitting the same to the Secretary of State and all further decisions following the Secretary of State's response), having considered recommendations of the Cabinet.

Background Papers

None