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| <b>Subject:</b>                       | Constitution Review  |  | <b>Status:</b>                             | For Publication                          |    |
| <b>Report to:</b>                     | Council  |  | <b>Date:</b>                               | 17 <sup>th</sup> March 2021              |    |
| <b>Report of:</b>                     | Monitoring Officer   |  | <b>Portfolio Holder:</b>                   | Corporate Services                       |    |
| <b>Key Decision:</b>                  | No - reserved for Council  | Forward Plan <input checked="" type="checkbox"/> | General Exception <input type="checkbox"/> | Special Urgency <input type="checkbox"/> |    |
| <b>Equality Impact Assessment:</b>    |  | Required:  | No   | Attached:                                | No |
| <b>Biodiversity Impact Assessment</b> |  | Required:  | No   | Attached:                                | No |
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|-----|---|
| 1.  | <b>RECOMMENDATION(S)</b>  |
| 1.1 | That Council agree to the proposed changes to the Constitution as outlined in Appendix 1. |

## 2. PURPOSE OF REPORT

2.1 To consider proposed changes to the Constitution as outlined herein and at Appendix 1.

## 3. BACKGROUND

- 3.1 The Council's Monitoring Officer is responsible for monitoring and reviewing the operation of the Council's Constitution to ensure that its aims and principles are given full effect and that the same is kept up to date in terms of legislation and the way the Council does business.
- 3.2 The Constitution is reviewed regularly to put into effect relevant and necessary changes but a wholesale review has not been undertaken for some time. This has resulted in inconsistencies in terminology throughout the document which this review now seeks to rectify.
- 3.3 Further as the new Corporate Management Team has now settled in, the Constitution needs to be updated to reflect the specific delegations to officers which have seen some movement from previous delegations.
- 3.4 Whilst the bulk of the changes are typographical, grammatical or merely brings the document up to date, there are some changes which members are requested to give consideration to as they are, by their nature, a change to the current practices and procedures. The changes are identified for ease of reference in the attached Appendix 1. Governance Working Group considered these changes and now recommend the same to Full Council for approval.
- 3.5 Of specific mention, the Contract Procedure Rules have seen an overhaul to bring the constitution up to date with how the Council conducts its business. Again, Appendix 1 outlines the changes but this report seeks to further highlight the proposed changes to the contract values.

### Levels of Contract Values (Part 4 page 142 in the proposed Constitution)

It has been a number of years since changes have been made to the Contract Procedure Rules and as a result the values have not be reviewed to take in account modern pricing

or inflation.

There is no fixed view on values to be attributed to such matters and councils set a variety of levels to reflect their own particular circumstance, practice and size. It is proposed to uplift the low, medium and high value contract values to up to £25k, up to £100k and over £100k respectively as it is considered that such values are appropriate for modern day contracting.

The up to £25k low value threshold has been considered appropriate as this is the level at which the Council is required to advertise on the Contract Finder portal. Officers will be required to obtain 3 written quotes to show competitive pricing unless an exemption applies and prepare a Scheme of Delegation where spend is over the £15k significant decision threshold. It will be for procuring officers to demonstrate that they have followed the CPRs in all cases.

3.6 It is proposed that a further review of the Finance Procedure Rules will be concluded in the next round of reviews. These rules have not been reviewed for some time and the Council's Head of Finance intends to give them a full refresh. There will also be a review of the Members Code of Conduct and ancillary matters to follow taking into account the recommendations made by the Committee on Standards in Public Life and the recent work of the LGA in terms of updating the model code.

3.7 Officers will be required to undertake training in relation to the Constitution to ensure that they fully understand the changes that are to be implemented and as a general refresher to ensure continued compliance.

#### **4. RISK**

4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- Failure to maintain and follow an up-to-date Constitution risks legal proceedings being taken against the Council, and risks members of the community being dissatisfied with the action of the Council.
- Monitoring risks and reviewing systems of controls.
- Failure of officers to keep up to date with changes to the constitution.

#### **5. FINANCE**

5.1 There are no immediate financial implications arising from the report.

#### **6. LEGAL**

6.1 There are no immediate legal considerations attached to the recommendation in this report, other than the considerations as detailed at 4.1.

#### **7. POLICY AND EQUALITIES IMPLICATIONS**

7.1 The report relates to the Council's Corporate Priority of a connected and successful Rossendale. There are no equalities implications.

#### **8. CONCLUSION**

8.1 The Council is required by law to implement a Constitution and it is in the interests of the Council to regularly review and update the document.

## Background Papers

| Document  | Place of Inspection   |
|---|---|
| The Constitution of the Council (current version) | <a href="https://www.rossendale.gov.uk/downloads/download/10710/constitution">https://www.rossendale.gov.uk/downloads/download/10710/constitution</a>   |
| Proposed version with tracked changes             | <a href="https://www.rossendale.gov.uk/downloads/download/11408/proposed_constitution_amendments_17th_march_2021">https://www.rossendale.gov.uk/downloads/download/11408/proposed_constitution_amendments_17th_march_2021</a> |
| Proposed version without tracked changes          | <a href="https://www.rossendale.gov.uk/downloads/download/11408/proposed_constitution_amendments_17th_march_2021">https://www.rossendale.gov.uk/downloads/download/11408/proposed_constitution_amendments_17th_march_2021</a> |

## Summary of Constitution amendments

### Part 1

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- 1.6 – Include Licensing Act 2003

### Part 2

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- 2.04 – Register of Interest – add published on website

### Article 3

- Remove reference to consultation strategy as this no longer exists
- d) Filming – Change to **must** advise Committee and Member Services rather than are advised to
- Complaints – add reference to unlawful or illegal behaviour of councillors and officers
- 3.02 – add Citizens should vote

### Article 4

- Amend to appointment of Leader for 4 years to “be in line with legislation”. Legislation has change and this will future proof the wording.
- List of policies updated

### Article 6

- Leader of Council – remove reference to 4 years and date
- Leader of Council – b) add “If a recommendation to remove him or her as Executive Leader due to a breach of the Code of Conduct for Members is carried” and remove reference to suspension.
- Portfolio Holder responsibilities – confirmed found on the web – link removed to future proof

### Article 11

- Updated titles and inclusion of the Head of People and Policy

### Article 13

- 13.05 – Common Seal – switched priority of signatories to reflect current practice i.e. now CE and MO then Mayor or Deputy Mayor in their absence.

### Part 3

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- Reference to Best Value amended as repealed

- Responsibility for Local Choice Functions – remove s5 Local Government Act 1079 – repealed
- 4.6 and 4.7 – 4-year term for Leader amended as above
- ToR of the Cabinet - 5.1 – add “independent” valuer
- Leader - 5.2 – remove reference to suspension and add detail on recommendation to remove from office is carried and remove reference to 4-year term
- 5.7 – remove reference to housing revenue account
- 5.10 – remove reference to E-government and Government Connect
- 7 – ToR – Regulatory Committees – add “consider and determine” applications
- 10 – ToR – Audit and Accounts – remove 25 and 26. Repetition and goes without saying.
- 11 Governance Working Group – remove repetition, add develop and promote member development

#### Officer Delegation Scheme – Part 1

- Remove reference to “Guidance” as implies it is not a requirement to follow the scheme
- 5.1(b) – Disposal of land at £10k to align with Head of Regenerations delegation relating to disposal of assets
- 5.2 – SOD – remove 3 days to get to MO and replace with not later than 10 working days.
- Former 5.5 replaced as repetitive with new 5.5 to include a requirement to provide CMT minute where there is one as part of record keeping.
- 5.8 – add reference to delegation relating to land at £10k

#### Officer Delegation Scheme – Part 2 – General delegations

- 1.2 – remove authority to delegate to other officers
- 1.5 – remove authority to Chief Executive and others to act in an emergency where delegations do not already exist
- 4.2 – include Head of People and Policy in consultation process for changes to establishment and include approval of honorarium as well as overtime
- 4.4 – remove training approvals - repetitious
- 5 (b)- remove ability to agree fees and charges and (d) – remove reference to CPR rule 31 and make it subject to all CPRs
- 6 – remove reference to use of receipts of Fixed Penalty Notices

#### Officer Delegation Scheme – Part 3 – Specific delegations

- 2.5 – remove reference to Emergency Plan
- 3 – add strategic control of People and Policy and Legal and Democratic Services to Chief Exec
- 4 – Director of Communities – update in terms of current service areas and titles etc

- 5 – Dogs – remove as now covered under The Anti-social Behaviour, Crime and Policing Act 2014 under 7.2
- Update re anti-social behaviour at 7.3
- Remove emergency planning as this sits under the Head of People and Policy
- 9 – remove reference to drainage and add Housing Options, Communities and Customer Services and ICT
- Former 4.4 - Housing Strategy moved to Director of Economic Development
- 5.0 Director of Economic Development – remove reference to regen
- 5.1 remove repetition and renumbering
- 5.5 add housing elements moved from Director of Communities
- Planning elements tidied
- Delegations from Director of Economic Development to Head of Planning, Principal Planner and Senior Planner
- 6 – Monitoring Officer – update DPA 2018
- 8 - Head of Finance – 8.2 add development of MTFS and Capital Strategy and remove reference to client officer for computer contracts, Corporate Property Officer, facilities management and signage.
- 9 – Add management responsibilities of the Head of People and Policy
- 12 – update title to Public Protection Manager

## Part 4

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- 1.1 vi) remove reference to appointing a Leader at every Annual Meeting
- 9.5 – add personal attack on councillor
- 10.1 – only questions not statements – moved form 10.2.5
- 13.3 – add that the Mayor has discretion to allow a councillor to speak again

## Finance Procedure Rules

- General grammar, typographical errors, terminology and consistency amendments but it is proposed to overhaul the rules in the next round of reviews.
- 2.01– updated wording in terms of annual performance plans
- 2.37 – remove reference to Best Value and the repetition
- 2.43 – remove repetition
- 3.03 - add a risk register is to be in pace as part of risk management
- 3.14 - add risk register to be completed for each corporate project
- 3.32 – remove for repetition
- 3.38 – remove reference to Audit Commission and add local audit framework
- 3.77 – remove as repetition
- 4.20 – remove reference to cash as cash is not accepted
- 4.31 – remove need for 2 officers to open correspondence as cash not received
- 4.100 – remove reference to Best Value

- 5.07 and 5.09 – add Council to be aware of implications of being an accountable body in a partnership etc.
- 5.14 – add contract signed by CE, MO or their representative
- 5.22 – add mitigate future risk of clawback in relation to grants

#### Contract Procedure Rules

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- 1.3.11 – remove reference to Supplier Selection Form (and throughout)
- 2.5 – replace reference to civil engineering contract to the JCT Minor Works Building contract as this is more commonly used
- 4.1 viii) – add social value clause
- 4.3 – add equality clause
- 4.4 – add soft market testing clause
- 4.5 – add use of consultants in planning phase
- 5.5 – update use of frameworks
- 6.1 – amend values – Low value £25k, medium value up to £100k, high value over £100k
- 6.3 – add Contract Finder, Find a Tender and relevant journals for advertising tenders
- 6.4 – add 3 written quotes for low value contracts
- 7.3 – add tenders over £25k must as a minimum go on Contract Finder and the Council's website
- Over £100k – add prior approval from CMT and Cabinet
- Procedure for inviting tenders updated
- Preparation of tender documents – add the non-collusion and non-canvassing form
- Joint Procurement updated
- 9.4 – add clause on partnerships and accountable bodies
- Remove reference to OGC – now defunct
- 11 – add electronic tenders to be sent to [tenders@rossendalebc.gov.uk](mailto:tenders@rossendalebc.gov.uk)
- 11.2 – remove the need to record those that have failed to tender in the tender book.
- 14 – acceptance of tenders updated and use of SOD made clear to include CMT sign off
- 15 – add in CMT must consider letters of intent
- Contract extensions – made simpler. Removes clauses such as liquidated damages and insurance as these are covered under the Council's standard terms and conditions
- 26 – Consultants add head of service shall carry out all due diligence
- 27 – Disposal of land - remove reference to Corporate Property Officer
- 27 – remove report to Cabinet on an annual basis. SODs signed off by PH
- Forms removed

6 - Budget Framework, 7 – O&S, Call for Action, Background papers

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout

9 – Standards

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- Further review to follow upon amendments to Code of Conduct

10 - Employment Procedure Rules

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- Amend to Appeal Panel – member panel for Chief Executive and chief officers only. A panel convened and appointed by the Chief Executive for all other officers.

## **Part 5**

Members Code of Conduct and Planning Code of Conduct to follow in next round

### Member-Officer Relations

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- 10 – add reference to Member Enquiry Service

### Chief Finance Officer Protocol

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- Further updates will be proposed following review of Finance Procedure Rules

### Confidential Information

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout

### Independent Person

- Review alongside Code of Conduct but generally still current

## **Part 6**

- General grammar, typographical errors, terminology and consistency amendments to update the position throughout
- Annual change subject to budget setting
- 12 -amend wording of s85 Local Government Act 1972
- Travel and subsistence – 3.2 – no Corporate Procurement Officer so amended to Committee and Member Services.



**Part 7**

- New organisational structure chart inserted
- Glossary - General grammar, typographical errors, terminology and consistency amendments to update the position throughout