



ADUR & WORTHING
COUNCILS

Key Decision [Yes/No]

Ward(s) Affected:

Amendments to the Constitution

Report by the Monitoring Officer

Executive Summary

1. Purpose

1.1. This report seeks to update Members of the Joint Audit & Governance Committee on proposed amendments made to Adur District Council's and Worthing Borough Council's Constitutions by:-

- (a) the Joint Councils' Working Group originally created by the Joint Governance Committee in May 2022, which has now met further to consider another review of the Constitutions;
- (b) the Monitoring Officer under a delegated authority to "make minor and inconsequential amendments to the Constitution at any time" following the last report relating to Constitutional amendments to the Joint Audit and Governance Committee on 13th July 2023; and
- (c) amendments proposed by the Monitoring Officer which are more than minor or consequential and require Member approval.

2. Recommendations

2.1. The Joint Audit and Governance Committee is asked to consider the matters raised in this report and:-

- a) note the use of the Monitoring Officer’s delegation to make minor and inconsequential amendments.
- b) endorse the amendments to the Constitutions proposed by the Working Group and the Monitoring Officer and recommend the revised Constitutions to both Full Councils for their approval.
- c) Consider if the Committee is to make any additional recommendations to Adur and Worthing Councils having regard to paragraph 6.1 below.

3. Context

3.1. The Monitoring Officer has a duty to maintain an up-to-date version of the Councils’ Constitutions and to ensure that the Constitutions are publicly available. The Monitoring Officer has the authority, as set out in Article 11 Paragraph 11:03 of each Constitution, to “make minor and inconsequential amendments to the Constitution at any time”.

3.2. At a meeting of the Joint Governance Committee on 31st May 2022, approval was given for the creation of a Working Group to consult on proposed changes to amend and modernise the Constitutions to ensure that the Constitutions were legally compliant, complete, supported effective and sound decision-making and reflected the character, culture and priorities of the two authorities. The recommendations arising from the initial work of the Working Group were taken to a meeting of the Joint Governance Committee in September 2022. The Working Group has since met further, on 25th September 2023, 22nd November 2023 and 9th January 2024, to review the Constitutions and consult on some additional amendments.

3.3. The Working Group currently comprises the following members:

	Conservative	Labour	Liberal Democrat	Green	SBRA
Adur District Council	Cllr Neil Parkin Cllr Kevin Boram	Cllr Lee Cowen Cllr		Cllr Gabe Crisp	Cllr Julia Watts

	Cllr Andy McGregor	Catherine Arnold Cllr Debs Stainforth			
Worthing Borough Council	Cllr Kevin Jenkins Cllr Nigel Morgan	Cllr Dan Hermitage Cllr Sam Theodoridi	Cllr Hazel Thorpe		

4. Minor and Inconsequential Amendments made by the Monitoring Officer under Delegated Authority

Members are asked to please note that the following minor amendments have already been made under the Monitoring Officer's delegated authority, with the exception of the minor and inconsequential amendments to the Budget Procedure Rules referred to in this section and the amendments to the Joint Committee Agreement which have been made in tracked changes and which are yet to be updated.

Part 1 - Summary and Explanation

- WBC - Paragraph 1.0 amended to reflect the increased population of Worthing.

Part 3 - Responsibility for Functions

- WBC - Cabinet Portfolios updated.
- ADC - Cabinet Portfolios - "Adur Homes Management Board" amended to "Adur Homes Advisory Board" (to reflect the updated details made for this board in Part 8 of the Constitution - see below).

Part 4 - Procedure Rules

- ADC - Council and Committee Procedure Rules - A typographical error has been amended at paragraph 11.3(c) to read 'Chair' where it previously said 'Mayor'.
- Budget Procedure Rules -
 - WBC - Paragraph 7.3 - "Chair" has been amended to "Mayor".

- ADC and WBC - Paragraph 7.10 - “amended proposals” changed to “proposed amendments”.
 - ADC and WBC - Paragraph 7.12 - “amended proposals” changed to “proposed amendments”.
 - ADC and WBC - Paragraph 7.16 - “proposal” changed to “proposed amendment”.
 - ADC and WBC - Paragraph 7.18 - “...have moved amendments...” amended to “...are to propose amendments...” so the paragraph now reads “This process continues until the Leader of each Group and any ungrouped Members who are to propose amendments have had the opportunity to speak and the budget and all proposed amendments have been proposed and seconded”.
 - ADC and WBC - Paragraph 7.19 - Grammatical errors have been corrected and are set out in track changes Constitution document attached at Appendix 1.
 - WBC - Paragraph 7.19 - “Executive” changed to “Cabinet”.
- ADC and WBC - The Officer Scheme of Delegations was amended at 2.6.8 to state that consultation should be with the Assistant Director Finance (and Assistant Director Legal & Democratic Services), rather than the Assistant Director Regenerative Development.
 - ADC and WBC - Proper Officer Functions -
 - Amended for Part 1, s.48 Care Act 2014 to amend typographical error and to make consultation with the Director for Sustainability and Resources a requirement.
 - Amended for Pet Animals Act which now reads “Pet Animals Act 1951 (as amended)”.
 - ADC and WBC - In August 2023 the Contract Standing Orders were amended to confirm the financial limits were exclusive of VAT (as opposed to inclusive of VAT).

Part 5 - Codes and Protocols

- WBC - Petition Scheme amended to correct previous erroneous mentions of ‘the District of Adur’ in the WBC version of the Petition Scheme.

Part 8 - Members' Allowances Scheme

- ADC - Adur Homes Advisory Board details updated.

Part 9 - Joint Committee Agreement

- ADC and WBC - Previous mentions of 'JGC' amended to 'JAGC' (shown within track changes documents at Appendix 1 of this report).
- ADC and WBC - Minor amendments to punctuation (shown within track changes documents at Appendix 1 of this report).

Other minor amendments

- Amending miscellaneous references to the Proper Officer to read the Director for Sustainability & Resources (rather than the Director for Communities).

5. Working Group Amendments

Part 2 - Articles of the Constitution

- ADC and WBC - Paragraph added at 2.02 (Eligibility of Councillors) to confirm that "for the purposes of this Constitution the Council has resolved that the disqualification criteria appropriate to Councillors shall also apply to removal of the title of Honorary Alderman or Alderwoman by majority resolution at an Ordinary Meeting of the Council".
- ADC and WBC - Paragraph 4.02 (the Policy Framework) amended to include the Crime and Disorder Reduction Policy (s6 Crime and Disorder Act 1988) within the Policy Framework.

Part 3 - Responsibility for Functions

- ADC and WBC - All mentions of 'Portfolio Team Members' under powers of the Cabinet have been amended to 'Portfolio Policy Advisors'.

Part 4 - Procedure Rules

- Council and Committee Procedure Rules -

- ADC and WBC - The Cabinet and Committees - Paragraph 8.3 added to clarify that “although the Constitution refers to the Chair of [Full Council for ADC] the Cabinet and Committees, the Chair may choose to adopt a title of Chairman, Chairwoman or Chairperson as is their preference”.
 - ADC and WBC - Leader’s Report - Paragraph 13.1(d) amended to confirm “any Member may ask one question, following which, if time remains, a Member may ask a second question”.
 - WBC - Voting - Paragraph 24.1(d) (this was agreed in an earlier review but not included in the WBC Constitution) to read that, regarding majority votes, “if a Member is not present continuously for the duration of the item on the agenda, they are unable to cast a vote and if they are present when the vote is taken, must indicate that they are abstaining from the vote”.
 - ADC and WBC - Recorded Vote - Paragraph 24.5 amended to read “On the request of any Member of the Council made before the vote is taken and upon 5 other Members signifying their support by standing (unless unable to), the voting on any question shall be by roll-call and shall be recorded in the minutes of the meeting to show how each Member present and voting cast their vote. The name of any Member present and abstaining from voting will also be recorded”.
- ADC and WBC - Budget Procedure Rules - The substantive agenda items for the Budget Setting Council Meeting have been amended to include at Paragraph 7.3 Public Questions and Members’ Questions.
 - ADC and WBC - Overview and Scrutiny Procedure Rules - Paragraph 17.9 relating to call-in procedure has been amended to read “having considered the decision, the Overview and Scrutiny Committee may refer the decision back to the decision-making person or body for reconsideration, setting out in writing the nature of its concerns, or where the Committee is unable to reach a determination, it may raise a motion to refer the matter to Full Council...”.
 - ADC and WBC - Joint Overview and Scrutiny Procedure Rules - Paragraph 18.9 relating to call-in procedure has been amended to read “having considered the decision, the Joint Overview and Scrutiny Committee may refer the decision back to the decision-making person

or body for reconsideration, setting out in writing the nature of its concerns, or where the Committee is unable to reach a determination, it may raise a motion to refer the matter to Full Council or either of both Councils...” .

- ADC and WBC - Licensing Sub-Committee Hearings Procedure Rules - Paragraph 6.5 added to read “the presumption is that all hearings will be held in person unless there are exceptional circumstances, such as pandemic or other unforeseen event. In such circumstances, where the business cannot reasonably be postponed, the hearing may be held remotely in accordance with the Licensing Protocol for Remote Hearings”.
- ADC and WBC - Member Complaints and Standards Sub-Committee Procedure Rules - Paragraph 3.4 added under Initial Assessment of Complaint “where in the opinion of the Monitoring Officer and Independent Person a complainant has a sensitive interest and/or there are exceptional circumstances to retain the complainant’s anonymity/confidentiality and the retention does not prejudice an initial assessment of the complaint, then these details will remain confidential during the initial assessment stage”.
- ADC and WBC - Officer Employment Procedure Rules - Paragraph 2.4.1(d) amended ‘notify’ to ‘consult’ and now reads “where the Council proposes to appoint a Head of Paid Service, Monitoring Officer, Statutory Chief Officer, Non-Statutory Chief Officer or Deputy Chief Officer, and it is not proposed that the appointment will be made exclusively from their existing Officers, the Head of Paid Service or their delegate will consult with the Leader of the Council in advance of any recruitment process for the appointment of a non-statutory Chief Officer”.
- ADC and WBC - Joint Councils Contract Standing Orders - Standing Order 3 relating to Special Circumstances and Emergencies -
 - Sentence added at paragraph 3.1 confirming “use of this provision must be compliant with the Access to Information Rules found at Part 4 of this Constitution”.
 - Paragraph 3.3.2 (as this is Officer reporting on use of urgency provisions) removal of reference to consultation with the Joint Strategic Committee and now reads “for contracts over

£100,000 (exclusive of VAT) and below the Public Procurement Threshold the Monitoring Officer and the s151 Finance Officer must approve the award and the Director for Service (or their delegated nominee) must consult with appropriate Executive Members or their Leader, who must be satisfied that the matter is Urgent or is a Special Circumstance having regard to the above definition, and if so satisfied, a direct award under this CSO exemption will be authorised”.

- Paragraph 3.3.3 amended to delete the words “unless committee approval is already obtained” at the beginning of the paragraph and now reads “The use of this CSO is to be reported as soon as practicable to the next Joint Strategic Committee following the consultation with the Executive Members and the publication of the Officer Decision”.

- ADC and WBC - Joint Councils Financial Regulations and Article 12.03 (b) of the Constitution - These have been updated to amend the Key Decision limit for contracts to £75,000 and over (currently £100,000 and over). Members are asked to note for this section that there was debate at the Working Group meeting as to the appropriate figure for a Key Decision with some Members proposing a reduction to £50,000. The Senior Leadership team have been asked to comment on the proposed amendment and have requested that the figure (if reduced) is not reduced to less than £75,000 for reasons of expediency in certain circumstances of spend (not limited to) items including reactive maintenance and repairs. Officers would still be required to publish a Decision Notice in such circumstances providing 5 clear working days notice in advance of any spend and consult with Members in advance of commitment, to meet transparency requirements.

Part 5 - Codes and Protocols

- ADC and WBC - Probity in Planning - Section added at paragraphs 15 to 15.5 relating to the deferral of planning decisions (set out in track changes documents in Appendix 1 to this report).

Part 9 - Joint Committee Agreement

- To update the review date.
- Officer job titles updated to reflect current titles

- Proper Officer amended to Director for Sustainability & Resources (this role had previously been undertaken by the Director for Communities).
- JGC has been amended to JAGC
- Assistant Directors added (as senior officers) at Paragraphs 7.3 and 11.3(f)
- Deleted 'fax' at paragraph 20.1
- Schedule 2 Paragraph 7 'Assistant Directors' added

6. A further proposal from the Working Group to change the order of the Full Council Agenda

- 6.1 Members at one of the Working Group meetings also made a request for a change to the order of the Full Council agenda to require public questions and deputations; Members' questions; and motions; to be dealt with in advance of the recommendations from the Cabinet and Committees which require Council decisions.

It is the Monitoring Officer's view that decisions to be made by Full Council should be the priority business of the Council in advance of Members' Questions and Motions. Members are asked to note that the Council Procedure Rules enable 'the maximum number of motions available as (two per group to the three largest political groups and any other group one per group). Taking an average of 30 minutes per motion, this has a realistic time estimate of 2-3 hours. This would be in addition to 1 ½ hours for public questions, deputations and member questions, before Committee recommendations can be considered, debated and decided by Members.

As the 'three hour rule' requires Members to vote on whether or not to continue with the meeting it would be problematic indeed if decisions were not made within this time frame. In addition to this rule, Members will note that a Motion may be made without notice at a Full Council meeting to change the order of an agenda and it would (in the Monitoring Officer's view) be more appropriate to consider such a motion on a case by case basis at each meeting.

7. Further amendments not from the Working Group requiring Member consideration and approval (and which are more than minor and inconsequential)

- WBC and ADC - Budget Procedure Rules - Annual Process for Setting the Budget - Paragraph 6 amended to read:-

The process by which the budget shall be set is as follows:

- 6.1 The Budget Strategy for the forthcoming year is considered and agreed by the Council in July each year.
 - 6.2 In December each year detailed financial proposals to meet the Budget Strategy for the forthcoming year are considered by the Joint Strategic Committee. Any proposals that are approved by the Committee are built into the draft budget proposals for the Council by the Chief Financial Officer and the draft Budget Strategy is updated accordingly (if required).
 - 6.3 In January of each Budget cycle the Joint Overview and Scrutiny Committee will, by way of consultation, consider the draft budget proposals and provide any comment to the Cabinet.
 - 6.4 The meeting of the Cabinet will recommend a draft budget to the Council and the level of Council Tax. The Director for Sustainability & Resources will then refer them, at the earliest opportunity, to the Council for decision. The Cabinet meeting held to determine the Cabinet's budget proposals to Council must be held a minimum of 12 working days prior to the Council meeting being held to consider the budget for the Council.
 - 6.5 After the Cabinet meeting and before the Council Budget Setting Meeting the Joint Strategic Committee will meet to consider the Cabinet proposals and recommend the draft budget for the joint services of the Council, which it wishes to provide jointly with [Worthing Borough Council / Adur District Council]
- WBC and ADC - Budget Procedure Rules - Paragraph 7.14 notification of minor amendments to proposed amendments to be made by 12 noon the day before the meeting, rather than 9am on the day of the meeting. With Democratic Services circulating copies of all amendments by 5.30pm on the day before the meeting, rather than at noon on the day of the meeting.

8. Financial Implications

- 8.1. There are no financial implications arising from this report.

9. Legal Implications

- 9.1. Article 11, paragraph 11.03 of the Councils' Constitutions sets out the functions of the Monitoring Officer and states "the Monitoring Officer

has the delegated authority to make minor and inconsequential amendments to the Constitution at any time”.

Legal Officer: Joanne Lee

Date: 05/03/2024

Background Papers

- [Adur District Council Constitution](#)
- [Worthing Borough Council Constitution](#)

Appendices

- [ADC Constitution with Track Changes](#)
- [WBC Constitution with Track Changes](#)

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Sustainability & Risk Assessment

1. Economic

Matter considered and no issues identified.

2. Social

2.1 Social Value

Matter considered and no issues identified.

2.2 Equality Issues

Matter considered and no issues identified.

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified.

2.4 Human Rights Issues

Matter considered and no issues identified.

3. Environmental

Matter considered and no issues identified.

4. Governance

The risk of not having up-to-date Constitutions is that procedures and practices may not be transparent, fair and consistent and may increase the risk of legal challenge.