



**REPORT OF: DIRECTOR OF HR, LEGAL & GOVERNANCE**

**TO: FINANCE COUNCIL**

**ON: 1st March 2021**

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**SUBJECT: CONSTITUTION UPDATE & APPOINTMENT OF SECTION 151 OFFICER**

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## **1. PURPOSE OF THE REPORT**

To request the Council approve an update of the Constitution to amend the Scheme of Delegation to Chief Officers reflecting the Policy Council approval of a new Organisational and departmental Structure and to amend and confirm the delegation of planning powers ensuring that they reflect Council resolutions. To also ask the Council Forum to note the resignation of Louise Mattinson, Director of Finance and agree that pending a recruitment process that Denise Park, Chief Executive assume the Section 151 responsibilities.

## **2. RECOMMENDATIONS**

The Council is asked to:

Approve the revisions to the Constitution as set out in this report.

To note the resignation of Louise Mattinson and agree that Denise Park, Chief Executive assume the responsibilities of the Section 151 Officer pending the appointment of a new Director of Finance.

## **3. INFORMATION**

### 3.1 Constitution Update

The Constitution was last updated in July 2020.

The Constitution is a key document setting out the governance framework of the Council. From time to time the constitution needs to be updated to reflect changes in legislation, resolutions passed by Council, portfolio changes made by the Leader, and changes made to the Council management structure and delegations.

The Monitoring Officer and Section 151 Officers also review and update generally the Constitution to ensure continued compliance with legislation and in this context to ensure any potential errors or inaccuracies are addressed.

The main changes/updates in this report relate to the re-alignment of the Officer Scheme of Delegation (Section 16) to reflect the revised Officer and Organisational Structure of the Council post the changes approved by the Policy Council in December 2020.

The Constitution makes many references outside of Section 16 to the responsibilities of certain officers. The Constitution has been updated throughout to reflect the job role/title changes reflective of the new Council organisational structure.

During the recent review of the delegations however it was identified also that the drafting of the delegations in respect of planning powers did not accurately reflect the Council resolutions in October 2015 and July 2016. The changes in the scheme of delegations have been analysed thoroughly referring to the early reports of the Planning Cross Party Members Working Group since 2011 and the proposals put forward in November 2014 and January 2015. In addition, the minutes of the Planning & Highways Committee meeting of 19 February 2015 have also been reviewed long with the report to Council on 23 April 2015, particularly in relation to the 'one objection' trigger and commercial applications. It has been determined that the delegation of planning powers in the Constitution should reflect the Council resolutions of 1 October 2015 and 21 July 2016. The exercise of planning powers have correctly and consistently been in accordance with Council resolutions. However, there is some inconsistency between these Council resolutions and the precise wording in the constitution. It is an error which is unintentional and does not affect the validity of decisions made to date under the scheme of delegations. However, the wording in the Constitution should be amended to that it accurately reflects Council resolutions so that there is no ambiguity or confusion. The opportunity has been taken therefore to correct this inconsistency and the Council is requested to endorse its decisions in relation to the scheme of delegation previously made and agree to the rectification amendments which now form part of the constitution update and review.

The changes proposed are set out as `tracked` in the **Appendix** to this report.

### 3.2 Appointment of Section 151 Officer

The Chief Officer Employment Committee (COEC) was advised that the Director of Finance, Louise Mattinson has tendered her resignation and will be leaving the Council in April 2021 to take up a joint role with Chorley and South Ribble Borough Councils. The COEC are progressing arrangements for the recruitment of a new Director of Finance (Statutory s151 chief financial officer).

The council will therefore need to appoint an interim s151 chief financial officer for the period between Louise leaving and a new post holder starting. The COEC recommends to Full Council that Denise Park, Chief Executive, who is a qualified member of a relevant accountancy body (CIPFA), be asked to take on the s151 responsibilities in the interim, supported by appropriate Heads of Service in the Finance function. Denise has undertaken the role on an interim basis on 2 previous occasions pending the appointment of a new s151 officer for the Council.

## **5. POLICY IMPLICATIONS**

Constitutions set out the governance framework for local authorities, which provide the foundations for any local authority that aspires to be effective, progressive and successful.

## **6. FINANCIAL IMPLICATIONS**

None

## **7. LEGAL IMPLICATIONS**

The Local Government Act 2000 requires local authorities to prepare, keep up-to-date and publicise their constitution.

It is clear from the history and analysis of the changes to the scheme of delegation that there is some inconsistency between the Council resolutions of 1 October 2015 and 21 July 2016, and

the current wording of the constitution due to an unintentional error. However, as the decisions made by Members of the Council on 1 October 2015 and 21 July 2016 created a lawful scheme of delegation consistent with the powers available under the powers available to the Council under section 101, Local Government Act 1972 and Part II of the Local Government Act 2000, the unintended error in the constitution does not override the existing decision of the Council to delegate as stated in the reports.

Any legal challenge (by way of Judicial Review) to the determination of planning applications since July 2016 would be unsuccessful as statutory period for initiating such action has expired. Also, judicial review is a discretionary remedy and the court would look into the substance of the decision rather than its form in order to consider the merits of the any judicial review application.

Therefore the determination of planning applications made the under scheme of delegation as approved through Council resolutions are lawful, provided that such determinations were in compliance with relevant legislative planning requirements.

Under the Council Constitution the Full Council approve the appointment of the `Chief Financial Officer` following a recommendation by the Chief Officer Employment Committee. The proposals for the appointment of an interim s151 officer as set out in this report are consistent with the Constitution.

## **8. RESOURCE IMPLICATIONS**

None

## **9. EQUALITY IMPLICATIONS**

The constitution update reflects changes in legislation and guidance. It also reflects various resolutions passed at Council, which would have been subject to an equality assessment, if any.

## **10. CONSULTATIONS**

Council Chief/Senior Officers and Members

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Date: 18<sup>th</sup> February 2021

Background Papers: Constitution & Council Reports