*Proposed changes to the Constitution (Planning Scheme of Delegation) as recommended by the Constitutional Review Working Party

This report makes the following recommendations to the final decision-maker:
1. That the amendments to the Constitution set out in this report be agreed and recommended to Full Council.

This report relates to the following Five Year Plan Key Objectives:
- A Prosperous Borough – by encouraging future growth and investment, progressing the Local development Plan and working with developers to secure suitable development schemes
- A Confident Borough – ensuring robust decision making processes for planning applications are in place such that all relevant matters are properly and thoroughly considered.

Timetable

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit and Governance Committee</td>
<td>29 March 2016</td>
</tr>
<tr>
<td>Council</td>
<td>20 April 2016</td>
</tr>
</tbody>
</table>
1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 Under the Tunbridge Wells Borough Council Constitution, the Audit and Governance Committee is responsible for “oversight of the effectiveness of the constitution and making appropriate recommendations for change”. The Constitutional Review Working Party (“the CRWP”) meets regularly to review the Constitution.

1.2 The CRWP reviewed elements of the Constitution at their meeting on 18 June 2015 at the request of officers and supports the recommended changes set out in this report.

1.3 The Council has a statutory duty to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness.

2. INTRODUCTION AND BACKGROUND

2.1 Several changes (14) to the Constitution were proposed and put to the CRWP. The main reason for the changes was that when the Constitution was redrafted in 2013, some of the revisions omitted wording that remained valid but also significantly increased the threshold for certain types of applications needing to be determined by the Planning Committee where the recommendation is for approval. This means that some significant proposals can be approved by officers under delegated powers (for example, the current proposals for extensions to the Royal Victoria Place Shopping Centre could currently be approved by officers) although the Head of Planning Service has used her referral power to ensure that such decisions are determined by the Planning Committee.

2.2 There have also been many changes to planning legislation and terminology in recent years, so the opportunity has been taken to bring references up to date.

2.3 The proposed changes were accepted without change by CRWP. The details and reason for each change are set out below.

2.4 To show the proposed changes, two versions of extracts from the Constitution are attached to this report. One has tracked changes (Appendix A) and the other is a clean version (Appendix B).

The Proposed Changes

2.5 All proposed changes are to Part 3 of the Constitution.

2.6 Proposed Change 1: Amendment to paragraph 43, page 4 which removes superfluous wording to ensure clarity.

2.7 Proposed Change 2: Additional wording added to para. 1.6 of Table 3 to ensure all relevant functions are covered.
2.8 Proposed Change 3: Changes to para. 8.1 on page 7. This paragraph relates to one of the incidences under which matters are not delegated to the Head of Planning for decision, this being when any Member of the Council requests that an application be determined by the Planning Committee and states the material planning grounds for doing so i.e. a “call-in”. The current wording allows Members to make such a request for “notifications” which are not planning applications but have a time constrained, legislative procedure associated with permitted development. Due to the limited timescales for the determination of notifications and the default position that if no decision is made by the due date, approval is automatically granted, it is recommended that the ability to call-in notifications is removed.

2.9 Proposed Change 4: To clarify and correct terminology in para.8.3 on page 8.

2.10 Proposed Change 5: Para. 8.3(b), page 8. To ensure that the most significant decisions for approval are taken by Members at the Planning Committee, it is proposed that the threshold set out in the Constitution to identify such applications be lowered from 5000 sq.m to 2000 sq.m. In practice, this is the criteria that is already being used with significant/contentious applications that fall below the current 5000 sq.m threshold being referred to the Planning Committee for decision where the recommendation is for approval.

2.11 Proposed Change 6: Para. 8.5, page 8. The proposal is to remove the reference to “notifications” for the same reason as that given under Change 3.

2.12 Proposed Changes 7 - 12: Paras.. 10 - 15, page 8. The proposed changes revert to the wording used in the previous scheme of delegation which is more accurately worded.

2.13 Proposed Change 13 & 14: Schedule 1, page 10 and Appendix to Table 3, page 13. Various updates made to reflect current, relevant Acts.

3. AVAILABLE OPTIONS

3.1 The proposed changes outlined above need to be considered by the Council to ensure that the Constitution is clear, accurate, up to date and provides certainty for all interacting with the Planning Service, but also to ensure that significant planning decisions are made at the right level and that the risk of development being allowed to go ahead by default is limited.

Do Nothing

3.2 After consideration of the issues raised, the Council could choose to do nothing and continue to operate in accordance with the Constitution as currently drafted. This would result in the current inaccuracies, potential for approvals to be made by default and decisions on significant planning proposals being made by officers remaining. Whilst the Head of Planning could continue to use referral powers to ensure these decisions are taken by the Planning Committee, the Constitution does not provide the necessary level of certainty about the decision making procedures for those seeking planning permission which could lead to complaint and/or challenge.

3.3 Furthermore, the “do nothing” option would mean leaving the rules and procedures unchanged thereby potentially failing in the statutory duty to secure continuous improvement in the way in which the Council’s functions are exercised.
Approve as set out

3.4 To ensure that the Constitution is up to date, clear and accurate; provides certainty for all users of the service; that requires significant planning applications recommended for approval to be determined by the Planning Committee where there has been no Member call-in, and that minimises the risk of notifications being approved by default, all recommendations proposed need to be agreed.

Approve some but not all recommendations

3.5 This is an option, the effect of which would be dependent on which recommendations were not taken forward.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 The Committee is asked to approve and recommend to Full Council all the proposed changes to the Constitution to ensure it is accurate, up to date and provides for good decision making.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 The proposed changes were discussed with the Portfolio Holder who supported them and also with CRWP who agreed them without change (The draft minutes from the meeting are attached as Appendix C).

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 The recommendations in this report, if agreed, will be progressed as set out in the Timetable on the front sheet.

6.2 If agreed by Full Council on 20 April 2016, the approved changes to the Constitution will be made.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

<table>
<thead>
<tr>
<th>Issue</th>
<th>Implications</th>
<th>Sign-off (name of officer and date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal including Human Rights Act</td>
<td>The Council is required by the Local Government Act 2000 to have a constitution that is up to date and fit for purpose. The Council also has a statutory duty to secure continuous improvement in the way in which its functions are exercised</td>
<td>Keith Trowell Principal Lawyer and Deputy Monitoring</td>
</tr>
</tbody>
</table>
| **Finance and other resources** | **There are no new financial implications.** | **Lee Colyer**  
**Director of Finance and Corporate Services (s151 Officer)**  
**15/03/16** |
| --- | --- | --- |
| **Equalities** | **Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups. The decisions recommended through this paper have remote or low relevance to the substance of the Equality Act. However, it should be noted that he recommendations in this paper do not alter the need to consider the requirements of the Public Sector Equality Duty within individual planning decisions.** | **Sarah Lavallie**  
**West Kent Equalities Officer**  
**15/03/16** |

### 8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: [Extract from part 3 of the Constitution (November 2015) - showing proposals as tracked changes]
- Appendix B: [Extract from part 3 of the Constitution (November 2015) – clean version]
- Appendix C: [Notes of Constitutional Review Working Party meeting held on Thursday 18 June 2015]

### 9. BACKGROUND PAPERS

- The Tunbridge Wells Borough Council Constitution - December 2013 (as amended November 2015)
- Constitutional Review Working Party 19 February 2016 - Agenda Item 3: Amendments to Planning Delegations
- Notes of Constitutional Review Working Party meeting held on Thursday 18 June 2015