

# Proposed Changes to Council Constitution

Full Council 3 April 2024

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## Summary

**Lead Member:** Councillor Ben Chapelard, Leader of the Council

**Lead Director:** Lee Colyer, Director of Finance, Policy and Development

**Head of Service:** Claudette Valmond, Head of Legal Partnership and Monitoring Officer

**Report Author:** Claudette Valmond, Head of Legal Partnership and Monitoring Officer

**Classification:** Public document (non-exempt)

**Wards Affected:** All

Approval Timetable	Date
Management Board	19 February 2024
Constitution Review Working Party	28 February 2024
Audit and Governance Committee	12 March 2024
Full Council	3 April 2024

## Recommendations

Officer recommendations as supported by the Cabinet Member, the Constitution Review Working Party and the Audit and Governance Committee that:

1. Full Council approves the amendments to the Constitution as set out in paragraphs 2.1 to 2.14 of this report.
2. Full Council authorises the Monitoring Officer to make all necessary and consequential changes to the Constitution to give effect to the above recommendation.

# 1. Introduction and Background

- 1.1 Following the review and final recommendations of the Local Government Boundary Commission for England, in May 2023, the number of Councillors will be reduced from 48 to 39 and the number of Wards from 20 to 14.
- 1.2 In response to this, a cross party committee known as the Governance Review Committee was formed in June 2023 to review the Council's current governance arrangement, to identify options for a new committee structure and to bring forward a set of final recommendations.
- 1.3 On 28 February, Full Council approved the recommendations contained in the Governance Review report - Appendix A to this report (**the Governance Review Report**).
- 1.4 Recommendation 4 of the Governance Review Report states:  
*"That Council note that any consequential changes to the Constitution and/or Terms of Reference for any Committee or Board, because of the new arrangements, will be brought to Full Council at its meeting on Wednesday 3 April 2024."*
- 1.5 This report sets out the consequential changes to the Constitution arising from the recommendations in the Governance Review Report.

# 2. Proposed changes to the Constitution

That the following changes be made to the Constitution to take effect after the May 2024 elections:

- 2.1 All references in the Constitution to 48 Councillors be deleted and replaced by 39.
- 2.2 The number of seats and the quorums for the Committees and Boards in the Constitution (as set out in the table at paragraph 4.34 of the Governance Review Report) be amended or retained as set out in that table.
- 2.3 Cabinet will comprise the Leader of the Council with a minimum of 3 and up to 7 other Councillors. The quorum for Cabinet will be 3 which must include the Leader or Deputy Leader with 2 other Councillors.
- 2.4 The number of Cabinet Advisory Boards are reduced to 2 with their names and remits determined by the Leader and Chief executive following the allocation of portfolios by the Leader to Cabinet Members. The Leader is to report the name and remit of the Cabinet Advisory Boards to the annual meeting (for noting only) and any subsequent changes will be reported by the Leader to the next Full Council meeting.
- 2.5 The Members to be appointed to the Cabinet Advisory Boards will be nominated and appointed in the usual way at the annual meeting of the Council.
- 2.6 Cabinet Members will not chair Cabinet Advisory Boards meetings.

- 2.7 The Chair and Vice Chair of the Cabinet Advisory Boards will be appointed at the first meeting of each Cabinet Advisory Board which will be in person.
- 2.8 Cabinet Advisory Board meetings will, at the Chair's discretion (on advice from officers) be held remotely or in person subject to the first meeting of the municipal year being held in person. There will be no hybrid option for attendance at Cabinet Advisory Board meetings.
- 2.9 Cabinet Members shall attend Cabinet Advisory Board meetings where there is an item on the agenda that falls within their portfolio. Such Cabinet Member(s) may participate in the debate but not vote at the meeting.
- 2.10 Substitute Members will be appointed to the Licensing, Overview and Scrutiny and Planning Committees and substitute Members will be required to undertake appropriate training prior to seating on such committees. The existing provisions in the Constitution on the appointment of substitute Members are amended to reflect this change.
- 2.11 The requirement for the Planning Committee to comprise equal numbers of Members from the eastern and western areas of the borough is deleted and replaced by a requirement for Group Leaders, where possible to ensure representation from the urban and rural areas when making appointments to Planning Committee.
- 2.12 For the purpose of determining the rural and urban representation on the Planning Committee, the following areas are to be added to the Constitution as the rural and urban areas:
- Rural:** Rural Tunbridge Wells (3) Paddock Wood (3) Pembury and Capel (3) Cranbrook, Sissinghurst and Frittenden (3) Hawkhurst, Sandhurst and Benenden (3) Rusthall and Speldhurst (3)
- Urban:** Park (3) Pantiles (3) St James' (3) St John's (2) Sherwood (3) Culverden (3) High Brooms (1) Southborough and Bidborough (3)
- 2.13 The General Purposes Committee is discontinued for the reasons specified in the Governance Review Report. Following a review of the functions and responsibilities of the various Council committees it is proposed that the functions and responsibilities of the General Purposes Committee be transferred to the Overview and Scrutiny Committee and where appropriate the Audit and Governance Committee and to make any necessary changes to their respective terms of reference.
- 2.14 If the General Purposes Committee is discontinued, all references to that committee are to be deleted from the Constitution.

### 3. Options Considered

- 3.1 The proposed amendments detailed in paragraphs 2.1 to 2.14 (all inclusive) are considered necessary to give effect to the recommendations, committee structure and number of seats set out at section 4 of the Governance Review Report.
- 3.2 A 'do nothing approach' was considered but this is not an option as Full Council has resolved to adopt Option 3 set out in the Governance Review Report which is to:
- a. Reduce the number of seats on some (or all) committees.
  - b. Review the current committee structure, taking into consideration the results of the research activities set out within section 2 of the Governance Review Report.

Doing nothing would be contrary to and frustrate the resolution passed by Full Council to adopt the recommendations in the Governance Review Report which would be detrimental to the Council conducting its business.

- 3.2.1 In relation to the General Purposes Committee, it was proposed in the Governance Review Report that this committee be discontinued and its functions and responsibilities transferred to the Audit and Governance Committee. This was subject to the Monitoring Officer undertaking a review of the functions of the General Purposes Committee to determine whether the Audit and Governance Committee was the most appropriate committee to transfer the functions of the General Purposes Committee. The functions of the General Purposes Committee are very wide and an ideal committee for functions that do not neatly fit elsewhere. Tonbridge and Malling, as an example, have a General Purposes Committee responsible for the same functions as the Council.
- 3.2.2 Having reviewed the remit of a number of the Council's committees, it is considered that the following functions of the General Purposes Committee could be incorporated into the Overview and Scrutiny Committee and in very limited cases the Audit and Governance Committee (subject its terms of reference being widened). Details of the Committee where the functions of the General Purposes Committee could be transferred and the reasons are set out below:
- (a) **Functions relating to Health and Safety at work (Function C)** – The Overview and Scrutiny Committee currently nominate to and consider updates from Kent County Council's Health Overview and Scrutiny Committee and Health and Wellbeing Board. They also have the power to make reports and or recommendations to Full Council/Cabinet in connection with matters within their terms of reference. The Council could therefore consider transferring this function to the Overview and Scrutiny Committee. As this function is not to be the responsibility of an authority's Executive, this committee could refer reports to Full Council.

- (b) **Functions relating to Elections (Function D) except numbers 7, 11 and 14-16** – This could sit with the Overview and Scrutiny Committee as one of this committee’s functions is to “Consider any matter affecting the Borough of Tunbridge Wells or its inhabitants”. This could be extended to matters relating to elections. As per the terms of reference for General Purposes Committee, Full Council would exercise the function relating to elections on recommendation from this Committee.
- (c) **Functions relating to the Name and Status of areas and individuals (Function E)** – Again, this function could potentially meet the existing Overview and Scrutiny Committee function of “Consider any matter affecting the Borough of Tunbridge Wells or its inhabitants”.
- (d) **Power to make, amend, revoke or re-enact byelaws (Function F)** - another potential for Overview and Scrutiny within the same function as the above. The governance powers afforded to Audit & Governance Committee are taken from Part 1, Chapter 7 of the Localism Act 2011 and appear to relate to governance in accordance with Code of Conduct, interests etc., accordingly, this function may not sit neatly with the Audit and Governance Committee.
- (e) **Power to promote or oppose local or personal bills (Function G)** - As above, this could fit within the scope of “Consider any matter affecting the Borough of Tunbridge Wells or its inhabitants”.
- (f) **Miscellaneous Functions (Function I) except numbers 1, 2, 4, 6, 8, 10, 16, 30A, 31, 32, 36, 38, 39, 42, 45, 46, 47 and 48** - By their very nature, miscellaneous functions fall neatly into the functions of the General Purposes Committee. In the absence of such a committee, it is proposed that this function sits within Overview and Scrutiny or Audit and Governance. As per the terms of reference for General Purposes Committee, Full Council would exercise the miscellaneous functions on recommendation from the Committee.
- (g) **Delegation of the General Purposes Committee Functions to Officers** - The Scheme of Delegation to Officers at Annex C to Part 3 of the Constitution sets out the delegation of General Purposes Committee functions to officers. This function does not sit neatly into Overview and Scrutiny or Audit and Governance but as stated at paragraph 2.3.4 below, overview and scrutiny committees have the power to delegate functions to sub-committees.
- (h) **Annex C, Page 38 of the Constitution, (Table 2 – Delegation to the Chief Executive ), paragraph 14** states *“To undertake such statutory or other consultation which may be required or thought to be desirable with a view to making changes to the staff establishment whether by way of dismissal or otherwise provided that it is done in consultation with the Chair, or in their absence the Vice Chair, of the General Purposes*

Committee.” This does not fit neatly with any of the committees, but for the same reasons indicated above, the only committee that this consultation could be transferred to, due to its wider and more generic terms of reference is the Overview and Scrutiny Committee. All other committees have very specific functions as set out in the Constitution.

- (i) **Part 3 of the Constitution, within the table found at 2.84(b)**, the General Purposes Committee has a responsibility to review and approve the Child Protection Policy every three years. This does not fit neatly into the Audit and Governance or Overview and Scrutiny committees and the terms of reference of the committee decided on will need to be amended.

3.2.3 Whilst the Governance Review Committee has recommended that the functions of the General Purposes Committee should be transferred to the Audit and Governance Committee, subject to the Monitoring Officer exploring the functions of the General Purposes Committee to determine where these could be transferred, the majority of the functions do appear to fit more neatly into the widely drafted remit of the Overview and Scrutiny Committee. If notwithstanding the comments at paragraphs 2.3.2 and this 2.3.3, it is decided that the General Purposes functions should all be transferred to the Audit and Governance Committee, then, the terms of reference of that committee will require amendment. Another alternative is to distribute the functions between the Audit and Governance and Overview and Scrutiny committees with the necessary amendments to their terms of reference being made.

3.2.4 It should be noted that overview and scrutiny committees have the power to delegate to sub-committees which is an option for any miscellaneous functions that do not neatly fit elsewhere within the Overview and Scrutiny or Audit and Governance committees.

## 4. Preferred Option and Reason

The preferred option is as set out in paragraph 3.1 above as the amendments to the Constitution outlined in paragraphs 2.1 to 2.14 are considered necessary to give effect to the recommendations, committee structure and number of seats set out at section 4 of the Governance Review Report as was approved by Full Council on 28 February 2024.

## 5 Consultation on Options

- 5.1 The proposed changes to the Constitution arise from the governance review undertaken by the Governance Review Committee. The consultation with Members and officers is detailed in the Governance Review Report.

- 5.2 Top Team, Deep Think, Finance and Governance CAB, Overview and Scrutiny Committee and Cabinet have been consulted on the proposed changes contained in the Governance Review Report and the recommendations contained in the Governance Review Report have been approved by Full Council.
- 5.3 The Constitution Review Working Party and the Audit and Governance Committee have respectively resolved that the recommendations in this report be referred to Full Council for approval.

## **6 Implementation**

If approved by Full Council on 3 April 2024, the proposed changes will come into effect after the May 2024 elections and the Constitution will be amended to reflect the changes.

## **7 Appendices and Background Documents**

Appendices:

- Appendix A: The Governance Review Report
- Appendix B: Amended pages of Part 1 of the Constitution
- Appendix C: Amended pages of Part 3 of the Constitution
- Appendix D: Amended pages of Part 4 of the Constitution

## **8 Cross Cutting Issues**

### **A. Legal (including the Human Rights Act)**

There are no legal implications.

The Local Government Act 2000 (as amended by the Localism Act 2011) sets out the various forms of governance that a council can adopt. In this case, there are no changes to the Council operating a Leader and Cabinet form of executive.

Claudette Valmond, Head of Legal Partnership, 1 March 2024.

### **B. Finance and Other Resources**

The proposed changes to the Constitution arising from the governance arrangements can be delivered within the approved budget and resources.

Lee Colyer, Director of Finance, Policy and Development, 21 March 2024.

### **C. Staffing**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.

### **D. Risk Management**

The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered. The changes proposed are to ensure the effective running of the Council, when deciding whether to recommend approval of the changes the Constitution Review Working Group will need to consider the risk of not recommending approval of the proposed amendments to the Constitution.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.

### **E. Environment (inc. Biodiversity) and Sustainability**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.



## **F. Community Safety**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.

## **G. Equalities**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.

## **H. Data Protection**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.

## **I. Health and Safety**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.

## **J. Health and Wellbeing**

No implications.

Claudette Valmond, Head of Legal Partnership, 21 March 2024.