

Report Title	Constitutional Amendments
Meeting	Extraordinary Council
Meeting Date	22 nd October 2026
Report Author	Howard Culshaw
Directorate	Resources
Lead Executive Member(s)	
Wards Affected	All
Public. Part Exempt, or Fully Exempt	Public
Appendices (if any)	1 - Articles of the constitution, Area Committee and Development Management Committee functions 2 - Scheme of delegation 3 - Area Committee Report

1. Executive Summary

To advise Council of the mandatory requirements arising from the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026, which come into force on 31 October 2026, and to seek approval to the amendments required to the Council's Constitution and planning decision-making arrangements. The Regulations implement the national scheme of delegation introduced under sections 319ZZC to 319ZZF of the Town and Country Planning Act 1990.

The Council's Constitution and scheme of delegation operate within, and are subject to, the statutory framework governing the discharge of the Council's functions. Section 101(1) of the Local Government Act 1972 expressly provides that the Council's power to arrange for the discharge of its functions is subject to express provision contained in that Act or any Act passed subsequently. The Council cannot therefore use its Constitution or local scheme of delegation to confer a decision-making function upon a committee or officer where subsequent primary or secondary legislation requires that function to be discharged differently.

Section 9P(1) of the Local Government Act 2000 places a statutory duty on the Council to prepare and keep its Constitution up to date.

Therefore, constitutional amendment is required: -

- 1.1 To remove provisions which purport to confer committee jurisdiction or member call-in rights where the Regulations require officer determination.

- 1.2 To establish a clear and lawful Schedule 2 referral process.
- 1.3 To identify the Nominated Officer and Nominated Member and any substitutes.
- 1.4 To ensure there are lawful local delegation arrangements for functions which remain outside the national scheme.
- 1.5 To ensure the Council's published Constitution accurately states how planning functions are lawfully discharged.

2. Recommendations

For the reasons set out in this report, Council is recommended to:

- 2.1 Note that the national scheme of delegation comes into force on 31 October 2026 and that compliance is a statutory requirement, not a matter of local discretion.
- 2.2 Approve the amendments to the Constitution necessary to give effect to the 2026 Regulations as set out in Appendices 1 and 2.
- 2.3 Confirm the arrangements for the Nominated Officer and Nominated Member, together with any lawful substitute arrangements, for the Schedule 2 referral process.
- 2.4 Authorise the Monitoring Officer, in consultation with the Assistant Director of Planning, Building Control and Regulatory Services to make any consequential or technical amendments within the scope of the Monitoring Officer's constitutional authority which are necessary to maintain consistency with the Regulations and statutory guidance.
- 2.5 Note the legal consequences set out in section 3.7 and 3.8 of this report if the Constitution is not amended or if planning decisions are subsequently taken contrary to the statutory scheme.

3. Information: the Rationale & Evidence for the Recommendations

Mandatory requirements from 31 October 2026

3.1 Schedule 1 applications

Applications and functions within Schedule 1 are subject to mandatory officer delegation. They cannot be brought before any Planning Committee merely because an existing local constitution permits a member call-in, an objection

threshold has been met, a petition has been received or another local referral trigger applies.

3.2 Schedule 2 applications

Schedule 2 applications are also delegated to officers by default. They may reach Planning Committee only through the referral arrangements permitted by the Regulations. The statutory scheme requires the relevant Nominated Officer and Nominated Member to perform the gateway role. A Schedule 2 application that is not lawfully referred remains for officer determination.

For a Schedule 2 application to be referred, the statutory gateway must be satisfied. The gateway concerns whether the application raises one or more issues of economic, social or environmental significance to the local area, or one or more significant planning matters having regard to the development plan and other material considerations. The Constitution as amended identifies the lawful arrangements for operating that referral process, including identification of the Nominated Officer and Nominated Member and appropriate substitute arrangements.

3.3 Existing member call-in and objection triggers

Existing constitutional mechanisms cannot be used to circumvent the Regulations. The national scheme replaces local arrangements to the extent that they are inconsistent with the statutory allocation of functions. The Constitution therefore needs to be amended so members, officers, applicants and the public can identify accurately the lawful route by which an application may reach committee.

3.4 Functions outside Schedules 1 and 2

The national scheme does not automatically convert every planning function into an officer function. For example, enforcement, s106 agreements, Tree Preservation Orders and dealing with matters relating to designated Conservation Areas fall outside the scheme of delegation. Where a function falls outside Schedules 1 and 2, delegation arrangements may continue to determine whether that function is exercised by officers or committee, subject to the Regulations and any other applicable statutory requirement.

3.7 Position if the Constitution is not amended

Failure to amend the Constitution does not postpone the Regulations. They apply from 31 October 2026 irrespective of whether the Council's Constitution has been updated. Nor does an unamended Constitution preserve an existing member call-in right where that right conflicts with the national scheme. Accordingly, if the Council does not establish an effective Schedule 2 referral process, the practical consequence will be that all applications (Schedule 1 and 2) remain with officers for determination

If officers and members act in accordance with the Regulations but the constitution is outdated, aside from reflecting poor governance and uncertainty with decision making, it is contrary to Section 37 of the Local Government Act 2000. This could also result in adverse findings by External Audit regarding best value for money.

3.8 Legal consequences of non-compliance with the legislation

Failure to comply with Section 9P(1) of the Local Government Act 2000

This would create governance and audit concerns because the Council's published Constitution would no longer accurately reflect the statutory arrangements governing the determination of planning applications. Although the statutory scheme would prevail over any inconsistent provision in the Constitution, leaving the Constitution unamended could cause uncertainty for Members, officers and the public as to where decision-making responsibility lies, as well as creating unnecessary governance, audit and potential public law risk

Judicial review

Government statutory guidance expressly states that where an authority does not comply from 31st October 2026 and a Planning Committee determines an application which must be delegated to officers, the decision may be open to challenge by judicial review by a person aggrieved and may be quashed. This creates potential delay, re-determination, costs and reputational consequences for the Council.

Equally, Planning Officers as members of the Royal Town Planning Institute would have difficulty signing decision notices under such circumstances as that would be in contravention to their professional Code of Conduct.

Monitoring Officer

Section 5(2) of the Local Government and Housing Act 1989 requires the Monitoring Officer to prepare a report where it appears that a proposal, decision or omission by the authority or relevant committee/officer constitutes, has given rise to, or is likely to or would give rise to a contravention of an enactment or rule of law. If the Council proposes or decides to continue operating in a way which would contravene the 2026 Regulations, the Monitoring Officer would need formally to consider whether the statutory reporting duty has arisen.

4 Link to Council Plan Priorities: (Providing High Quality Services and Facilities, Proud and Connected Communities and Places, Good Growth, Housing and Healthy Communities and Preparing for Local Government Reorganisation)

Providing High Quality Services – the constitution underpins every decision the council makes and all its work.

5 Implications

5.1 Financial Implications

Non-compliance carries a potentially greater resource and financial exposure through legal challenge, wasted committee and officer time, re-determination of applications and possible costs associated with judicial review.

5.2 Legal and Governance Implications

The proposed amendments are necessary to align the Council's governance arrangements with a statutory national scheme. They should not be viewed as a discretionary local policy preference. While the Council retains choices in areas expressly left to local determination, it cannot lawfully retain constitutional provisions which purport to disapply or contradict mandatory requirements in the Regulations.

5.3 Climate and Biodiversity Implications

None.

5.4 Human Resources Implications

None

5.5 Equality and Diversity Implications

None

6. Consultation

Area committees and service managers.

7. Alternative Options Considered

None.

8. Statutory Officer Sign off (please put an x in the relevant box below)

Section 151 Officer	
Monitoring Officer	

9. Background Documents

None.

Contact Officers

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