

Report to: Council



Date of Meeting 3rd May 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Temporary continuation of virtual meetings

Report summary:

At the Extraordinary Council meeting of 26th July 2021, members agreed to put in place arrangements for the holding of virtual 'consultative' meetings with decision taking delegated to Senior Officers due to concerns around the impact of COVID. The arrangements were time limited to 17th January 2022. At the EGM of 8th December 2021, Council agreed to extend these arrangements until 11th May 2022. This report seeks member's views on how meetings should be held after this date in light of the current COVID situation.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

Council agrees;

- 1) Whether to;
 - a) Continue with virtual meetings as per the current arrangements detailed in Recommendation 3 below until 31st October 2022 (**Option 1**), or
 - b) Move to a hybrid solution but with the current arrangements detailed in Recommendation 3 below continuing until such time as an appropriate IT solution is installed in the Council Chamber, with delegated authority to the Strategic Lead Governance & Licensing in consultation with the Chair of Council, the Portfolio Holder for Democracy, Transparency & Communications and the Chief Executive to progress an appropriate solution and determine the date the hybrid solution shall be used from which shall in any event be no later than 31st October 2022 (**Option 2**).
- 2) That if Members agree Option 2 that a budget of £40,000 (as an upper limit) is agreed to enable the appropriate IT solution to be procured.
- 3) That whichever of Option 1 or Option 2 is agreed the following shall apply;
 - a) Save as provided for in paragraph c) below, that either until 23:59 on 31st October 2022 or such earlier period as may be decided by subsequent decision (including a decision by the Strategic Lead Governance & Licensing where Option 2 is agreed);
 - i) all meetings of the Council and its committees (but not sub-committees), panels and forums and the Cabinet shall be held virtually using available technology but shall be on the basis of being consultative only other than where specific legislation permits decision making at virtual meetings.

- ii) decisions (including all executive and regulatory matters) that would have been taken by those meetings if the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 had continued in force shall be delegated to the Chief Executive or relevant Senior Officer in consultation with those meetings.
 - iii) in taking decisions under paragraph a) ii), the Chief Executive or relevant Senior Officer shall have heard all of the debate having been at the consultative meeting or seen the recording of it.
- b) Until 23:59 on 31st October 2022 (or such earlier period as may be decided by subsequent decision including a decision by the Strategic Lead Governance & Licensing where Option 2 is agreed) the Constitution shall be treated as having been amended to give effect to the above and shall be interpreted purposively on that basis with the final decision on its interpretation to rest with the Chair of Council (having regard to the advice of the Monitoring Officer and / or Head Paid of Service) in accordance with Part 1, Article 5.1.2 of the Constitution.
- c) Paragraph a) above is not intended to apply to any of the following;
- i) the May 2022 Annual Council which will be held in person with arrangements to be agreed in consultation with the Chair, and
 - ii) any sub-committee for quasi-judicial purposes (e.g. Standards Hearing Sub Committee or Licensing Sub Committee when considering taxi licensing matters) where the Chief Executive or the Monitoring Officer shall give specific consideration to what are the most suitable arrangements to use at the relevant time and determine the appropriate way to hold the meeting,
 - iii) decisions that legislation already permits as ones that can be made by virtual meetings (e.g. Licensing Act 2003).
 - iv) where in the opinion of the Chief Executive or the Monitoring Officer either the matter should be decided by Members or it would otherwise be inappropriate for the Chief Executive or a Senior Officer to decide the matter, in which case the Chief Executive or the Monitoring Officer shall give specific consideration to what are the most suitable arrangements to use at the relevant time and determine the appropriate way to hold the meeting,

Reason for recommendation:

To ensure that the Council's decision making arrangements continue to be appropriate to deal with the current COVID situation.

Officer: Henry Gordon Lennox, Monitoring Officer

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning

- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Medium Risk;

Links to background information

[Extraordinary Council 26th July 2021](#)

[Council 8th December 2021](#)

[Michael Gove MP statement in Parliament](#)

[Note from the Chair to all Councillors](#)

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Introduction

1. The previous reports to Council (see background links) covers the wider background. Since those reports, and despite the Government having consulted on a future approach to local authority meetings and a statement from Michael Gove MP in Parliament in January, there has been little sign of the matter being addressed. So the legal position remains as previously reported, essentially that for meetings to be lawful they need to be held in a physical location and for those voting to be physically in attendance and also that members of the public are entitled to attend.

Current approach

2. At the July and December meetings, members agreed that meetings would be held virtually, as they had been throughout the pandemic, with consultative views expressed. The authority to actually take the decision is delegated to the Chief Executive or relevant Senior Officer who then takes a decision taking into account the views of the consultative meeting.
3. Despite there being an increase in administrative work associated with this approach, the arrangements have worked well and there does not appear to have been any significant public concerns or criticisms around the approach, aside from in relation to one planning application. Indeed there are a number of wider benefits too in terms of the opportunity for increased public engagement as well as reduced travel which results in savings in member expenses and benefits in terms of the Council's approach towards climate change.

Looking forward

4. Despite an expectation from Central Government of a return to normal and having to live with COVID, there remains at least localised concern around the illness, its impact on individuals and more widely on the NHS for example. It cannot be ignored that there remains a risk to the public, staff and councillors of returning to physical meetings and that the Council has a responsibility towards protecting individuals. The Council is currently requiring masks to be worn in the Council buildings while moving around and providing sanitiser as an appropriate and responsible precautions designed to minimise infection risk and protect individuals.

5. Members had an informal discussion on the back of a briefing note prepared by the Chair of Council (see background links) where various options were considered. Discussion included the benefits of the current approach and concern over returning to physical meetings for a number of reasons including;
 - a. Better time management – this essentially covered that having virtual meetings meant it enabled those who are in work to attend meetings as there isn't travel time (which for some could be an hour each way) and also because having to look after children or arrange / pay for childcare made attending meetings difficult whereas if they were remote this could be more easily managed. It was not exclusive to those with families but also covered those who had caring responsibilities but also other commitments more generally. It was felt that not having flexibility could be a bar to encouraging people to stand / stand again for election having seen / experienced the flexibility during the pandemic.
 - b. Travelling – there were direct costs savings in terms of reduced member allowances.
 - c. Improved environmental benefits - from reduced travel by up to 60 councillors. This would be aligned to the national and local climate change actions to address climate change.
 - d. Increased democratic engagement – through widening access to meetings and the role / work of councillors to those who would not normally attend physical meetings. Having a virtual meetings had increased the number of individuals who observed Council meetings as well as increasing the number of member attending meetings.
 - e. Improved public openness and transparency – having virtual meetings has increased the ability of the public to observe what the Council does and decisions it takes and is overall more transparent with the recordings of meetings capable of being viewed on YouTube for a good period of time.
 - f. Protection of the vulnerable.
 - g. Resilience – in terms of reduced illness and reduced likelihood of spread of any illness impacting on the ability to deliver operational work.
 - h. Improved access for those with disabilities / impairments (such as poor hearing or sight for example).
6. Balanced against this is the risk that continuing the current arrangements presents in terms of legal challenge. While delegation of decision taking is permissible it cannot be ignored that a challenge could be mounted on the basis that officers were simply 'rubber-stamping' member decisions and not discharging the obligations on them as the decision maker. It has been made clear that this is not the approach and the process which has been put in place mitigates against this – being the use of Senior Officer Decision records – but that would not necessarily prevent anyone aggrieved challenging a decision. That said, the Council can generally seek to remedy a perceived failing and moreover, the High Court can dismiss claims where it is '*highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred*' which further mitigates risk as the Council would likely argue such a position. However, while the likelihood of challenge is considered to be low, it cannot be ignored that the longer the current arrangements persist the increased risk their use presents in terms of challenge and therein reputational issues and potential costs. This is why the risk assessment is medium, although it should be noted that this is the same level of risk assessment as in December 2021.
7. Council is therefore asked to consider how it wishes to proceed in terms of our approach to meetings. A return to the pre-COVID arrangements is generally considered unacceptable (for the reasons above) although it would overcome the potential risk aspect identified. Of the two options presented, Option 2 - the hybrid solution, which essentially means the decision makers are physically present and members of the public have to be permitted to attend - also overcomes the risk aspects identified when the in-room decision making commences. Option 1 - remaining virtual with consultative meetings - is where the risk remains at its greatest. It is

ultimately for members to balance the various benefits that have been identified against the potential risks and determine their preferred approach.

8. In terms of the specifics of the two options. Option 1 has a deadline of 31st October 2022 and continues the existing arrangements, subject to some slight differences as identified below. This will enable a further review of our approach in time. Option 2 is also time bound to 31st October 2022 and, given the views on the suitability of the hybrid solution introduced in May 2021, continues the same arrangements as for Option 1 until a more appropriate IT solution can be put in place to facilitate the use of the chamber at Blackdown House for a hybrid approach. While the 31st October is given as a backstop date (and aligns to the Option 1 date) this is simply to ensure that there is certainty over timing in the event Option 2 is selected given the uncertainties of having to implement an IT solution. However, it is important to note that the intent will be to implement the hybrid as soon as possible. Given the need to determine the appropriate solution, procure, implement and test it is expected that this will take several months but the intent is to work towards 31st July 2022 for a solution being in place. Once in place and working, the hybrid approach can then be implemented using the delegated authority to the Strategic Lead (Governance & Licensing) in consultation with the Chair, Portfolio Holder and the Chief Executive.
9. In relation to either option, the view is that the Annual Council Meeting, like the budget meeting, should be held physically given what it deals with and so this is excluded from the virtual arrangements. A new element to the framework has been included which permits a physical meeting to be called where it is viewed by the Chief Executive or Monitoring Officer as being necessary. This will act as a safety valve and would enable a physical meeting to be called to potentially overcome a possible challenge for example.
10. It is expected that there would be a review a few weeks prior to the expiry date if required (this would not be necessary where the Option 2 hybrid solution had been implemented), as there has been previously, to determine whether there should be a different approach adopted to enable current circumstances to be taken into account. In addition, should Government legislate then a further report would be brought back to the Council with an assessment and to enable consideration of the way forward.

Financial implications:

There are no immediate financial implications in terms of increased budget provision other than that identified in Recommendation 2 requesting a capital budget of £40,000 in relation to an IT solution to accommodate hybrid meetings.

Legal implications:

The legal position is as detailed in the report.