

## **BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE**

**12 APRIL 2018**

### **COMMUNITY GOVERNANCE REVIEW – REVIEW OF PROCESS**

Report from: Perry Holmes, Chief Legal Officer

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**Summary:**

This report reviews the conduct of the Community Governance Review relating to the proposal to establish a Rochester Town Council.

#### **1. Budget and policy framework**

1.1 The completion of a Community Governance Review and the associated decisions about the formation or otherwise of new Town and Parish Councils is a matter for Council. However, Business Support Overview & Scrutiny Committee have asked for a report reviewing the recent process undertaken which is within its remit.

#### **2. Background**

2.1 The Local Government and Public Involvement in Health Act 2007 (as amended by the Legislative Reform (Community Governance Review) Order 2015, devolved decision making powers relating to certain parish matters from central to local government. These powers include the creation and grouping of parishes and everything pertaining to their electoral arrangements. This is referred to as “the Act” in the remainder of this report.

2.2 This decision making process is laid out in the Act as a Community Governance Review (CGR). It can be instigated in one of three ways: by a petition from local electors demanding a review; by the Principal Authority agreeing to a request for a review; or by a Principal Authority resolving to conduct a review.

- 2.3 A petition was submitted from 1623 local government electors requesting that a CGR be conducted to consider the establishment of Rochester Town Council. The petition was verified as a valid petition within the terms of the Act and as such the Council was obliged to carry out a CGR in accordance with the Act. The terminology “Town Council” is one of the authorised alternative styles for a Parish Council allowed for by the Local Government Act 1972 and was explicitly referred to in the petition as being the preferred style.

### **3. Conduct of the Community Governance Review**

- 3.1 A principal authority may undertake a CGR unprompted by a request, application or petition. However, a CGR must be undertaken and terms of reference agreed, on receipt of a valid petition unless the council is already undertaking a CGR or has concluded a previous CGR within a two year period ending with the day on which the petition was received.

#### **Validation of petition**

- 3.2 The original petition submitted in October 2015 was ruled to be invalid because it did not contain the required number of signatures. The petitioners had assumed that entries on an online petition would be acceptable but as the law clearly refers to a “signature”, the online entries were deemed invalid. Officers accept that the situation regarding online entries for CGR petitions should be made clearer to any organisers that make contact in the future.
- 3.3 The petition was resubmitted in May 2016 and the organisers agreed to accept that the validation and subsequent conduct of a CGR would be delayed due to the proximity of the PCC elections and then the unscheduled Referendum on the UK’s membership of the European Union on 23 June 2016. A CGR is meant to be completed no later than 12 months after receipt of the petition, although there is some uncertainty about whether that time counts from when the petition is validated or not. The process of validation is lengthy and time consuming. The petition was completed with handwritten entries making some of them difficult to read and each one had to be manually checked on the electoral registration software using whatever could be read of the name and address to check the person was registered. This was made more difficult because some petitioners had only signed with their initial or had given incomplete addresses. Each entry was then marked on a paper copy of the register of electors to identify duplicate entries. Petition organisers are not entitled to a copy of the register of Electors for the petition area so cannot supply their elector number if they were minded to. The legislation does not specify the format for the submission of names and addresses.
- 3.4 Officers would suggest that the suppliers of the electoral registration software are asked if they can develop a method whereby the petition entries are marked electronically on the database in future in a way

similar to which the assenters to candidates' nominations are dealt with. Officers would also suggest to the organisers of future petitions that they try to get the full names and addresses of all those who sign the petition and ask them to print their name to minimise the number invalidated. Ultimately the numbers of entries that were invalid are set out below:

Not on the Register of Electors	152
Address not within petition area	8
Insufficient details to identify elector	14
Entry did not contain signature of petitioner	4
Duplicate entries	65

### **Establishment of working group and Terms of reference for Review**

- 3.5 In undertaking the Review, the Council was guided by Part 4 of the Act, the relevant parts of the Local Government Act 1972, and Guidance on Community Governance Reviews issued in accordance with section 100(4) of the Act by the Department of Communities and Local Government and The Electoral Commission in April 2008. Whilst this legislation sets out what the local authority must do in terms of conducting the CGR and the Guidance sets out what the Council must consider when making its decision on the outcome of the Review, there is no specific guidance about how the Review is overseen within the Council's decision-making structure.
- 3.6 On the recommendation of officers, Full Council agreed in January 2017 to delegate authority to the Chief Legal Officer (CLO) to conduct the CGR in consultation with an informal cross party Member and officer working group. It was noted that the CLO and the working group would finalise the process, a communications and consultation strategy, consider the representations received and formulate the recommendations for consideration by Council on the outcome of the CGR. The Working Group comprised 7 Councillors, based on the normal proportionality rules the breakdown of membership across the two main political groups was 5:2.
- 3.7 Officers on the Working Group were the Chief Legal Officer, the Head of Elections and Member Services, the Planning Manager (Policy) in Regeneration, Culture, Environment & Transformation Directorate and relevant officers from the Communications, Finance and Legal Services teams. Feedback from members of the working group indicates that the membership of the Working Group was sufficient for the task but would need to be considered each time a CGR was undertaken to ensure it reflects the particular needs of the Review. It would appear from desk research undertaken on other CGRs concluded across the country that the majority of Councils have chosen this sort of a delivery method for

the conduct of CGRs. Officers would therefore suggest that a similar Working Group is established to consider any future CGR proposals

- 3.8 It is a requirement of the legislation that formal Terms of Reference (ToR) for the Review are agreed and published. Due to the timescales involved, officers drafted ToR and sought informal approval of them from each of the Leaders of the political groups prior to the Council meeting in January 2017 so that formal approval was obtained at that meeting. In other circumstances it would be preferable for the Working Group to be established and for the Group to formulate the ToR for approval by Council but timescales will always be quite short for this activity. The content of the ToR was closely aligned to the legislative requirements of the Review and the Guidance issued as well as mirroring other examples found across the country.

### **Consultation arrangements**

- 3.9 The legislation requires the local authority to consult the local government electors in the petition area on the proposal, and any other person or body (including a local authority) which appears to the principal council to have an interest in the review. The Working Group took the view that it would be useful to consult businesses and other amenity organisations in the proposed area. Whilst recognising that they would not be impacted by any additional precept if the new Town Council was established, the Working Group nonetheless felt that they may have views on the effectiveness of a Town Council to assist their own organisation and on whether it would ensure that the community governance arrangements in the area reflected the identities and interests of the local community. A total of 916 such organisations were consulted.
- 3.10 The petition area did not align exactly to the polling districts into which wards are divided for polling purposes which made it difficult and time consuming to readily identify all the relevant electors and other organisations for consultation purposes. Whilst this was pointed out to the petition organisers as early as when they submitted the first petition in 2015, they had decided to try to align the petition area to the area of the Rochester upon Medway Council which of course would not necessarily align with current ward and polling district boundaries.
- 3.11 Whilst the legislation and the Guidance set out most of the requirements for the conduct of the CGR, neither of them set out how the consultation must be undertaken

### **The consultation survey**

- 3.12 The Working Group took the view that in the timescales available and the nature of the issue, the most effective and efficient way of capturing the views of local electors and other organisations was to conduct a survey. With the support of officers, 5 main questions were developed

to ascertain respondents' views on the key issues – the existing community governance arrangements, the proposal for Town Councillors, the impact of an additional precept, the proposed boundary for the new Town Council and whether the existing community governance arrangements should be retained or changed. To reflect the complexity of the issue and to assist the Working Group in capturing the reasons for the responses given, text boxes were provided to capture respondents' comments and a map of the proposed area was also included. The questions were framed so as to be impartial and clear.

- 3.13 The survey was sent to all the local government electors and other identified organisations but included a link to enable people to complete it online. Each pack was assigned a unique, random code to minimise duplication and post codes were required to be completed to ensure that responses were from those in the proposed petition area . A pre-paid response envelope was also included.
- 3.14 A 12 week period was set for the consultation period which is an industry standard and 2594 valid responses were received. This included 24 responses from amenity groups, other organisations and businesses and 6 responses where it was not possible to identify whether they were from an organisation or an individual.

Table 1 below shows the breakdown of responses by Wards or parts of Wards included in the consultation:

<b>Ward (or part)</b>	<b>No. of electors consulted</b>	<b>No. of responses</b>	<b>% of electors responded</b>	<b>% of all responses</b>
River	911	99	10.87	4
Rochester East	7912	704	8.89	27
Rochester South & Horsted	5198	687	13.22	26
Rochester West	8064	1104	13.69	43

- 3.15 2190 respondents opted to fill in the paper questionnaire and respond by post, representing 84.4% of all responses and 404 online responses were received (15.6%). It is disappointing but not necessarily surprising that a much smaller proportion of people completed the survey online. Having provided a paper survey with pre-paid envelope to each elector is likely to have reduced the online response rate but the working group were conscious that they wanted to maximise the response rate and ensure that respondents were not left to incur the postage costs.
- 3.16 Feedback on the survey indicates that the questions were effective in providing evidence on each of the specific areas the Working Group needed to take into consideration and the text boxes gave context to the responses provided. For any future Reviews, consideration would be given to the manner of any survey to elicit the views of the local

electorate. However, the factors the Council must take into account when making its decision are unlikely to change so the nature of the questions may be relevant in future as well.

- 3.17 Table 2 below shows a breakdown of the respondent profile which broadly matched the petition area although the older age group was slightly more represented in the responses:

	<b>No. of responses</b>	<b>% of responses</b>
Male	1269	50
Female	1189	47
Prefer not to say	91	4
Aged 17 – 54	998	41
Aged 55 and over	1424	59
Long term health condition	572	23
No long-term health condition	1681	67
Prefer not to say	274	11
White	2162	93
BME	152	7

Figures may not add up to 100% due to rounding

### **Information leaflet**

- 3.18 In recognition of the complexity of the issues and the need for local electors to have sufficient information on which to base their responses to the survey, the Working Group decided that they would provide a leaflet containing impartial information on the background to the Review, and the possible powers of a Town Council. It was acknowledged that for many of the local people one of the main deciding factors was likely to be the additional precept set by any new Town Council and what powers it would have. Whilst wishing to be as impartial as possible, the Working Group took the view that it could not simply replicate the information that the petition organisers had made available, since it was not the role of the Council to publicise their campaign. The leaflet included instead some examples of precepts from existing Town Councils of similar sizes to the proposed Rochester Town Council in the South East region.
- 3.19 There was some feedback via completed survey responses that insufficient information about the possible precept was made available to assist electors in making their decision. However, the Working Group is clear that it provided what it could, as impartially and accurately as possible and that it would have been expected that the petition organisers would have circulated more information about their suggestions for proposed powers and precept.

## **Distribution**

- 3.20 In order to ensure that survey packs were delivered to each household and within a specific timescale reliable electoral registration canvassers were engaged to deliver the packs to the local electors in the petition area. Royal Mail was used to deliver the packs to businesses and organisation. Around 30 amenity groups received packs via email including a link to the online survey or details on how to get a paper copy. This arrangement cost less money than if Royal Mail had been used and guaranteed delivery by a specific date. Electoral registration canvassers could be used in future reviews although this might depend on the timing of any such consultation which might clash with the peak of canvassing related to the annual electoral registration audit.

## **Web page**

- 3.21 The Council is obliged to publish much of what is produced in relation to the CGR and a specific web page was established on which copies of the Terms of reference, survey and leaflet were uploaded along with general information about the Review and some Frequently Asked Questions to try to ensure electors had as much information as possible. During the period 1 July 2017 to 20 February 2018 the web pages received 1313 page views” the vast majority of which were during the consultation period July – October 2017.

## **Feedback on and response to consultation**

- 3.22 Whilst the response rate of 11.27% was disappointing as was reported to Council in January 2018, it suggests that the proposal for a new Parish Council does not engage the electors in the area sufficiently to take part. 19491 electors chose not to participate. The Working Group are confident that all the electors in the petition area, as well as the other organisations it consulted, were given ample opportunity to provide their comments and views on the proposal given the timescales and circumstances.
- 3.23 The CGR achieved some coverage in the local newspaper, including several letters to the Editor and editorial content. This raised the profile of the issues but does not seem to have affected the extent to which people felt the need to respond to the survey.
- 3.24 The consultation arrangements for any future CGRs will obviously need to reflect the circumstances and timescales. Consideration could be given to a roadshow, exhibition at community hubs, adverts in the local media. However any factor is the availability of funding. The Government did establish a New Burdens Fund specifically to cover the costs of CGRs triggered by petitions but it is not clear how long this will be available, nor is there any guarantee that all the costs incurred by an authority on the conduct of a CGR will be reimbursed.

- 3.25 As there was a lack of internal resources to undertake the analysis of the responses to the consultation M.E.L Research were engaged after a competitive tendering exercise. This worked effectively with the Working Group receiving clear analysis in the format requested.
- 3.26 During the consultation period 62 people made contact, primarily by email, with a range of queries. The vast majority were from people who had either lost or mislaid their survey or claimed not to have received it and wanted the unique code so they could respond. A small number of people wanted a unique code but were either not in the petition area or not eligible to take part because they were not on the register of electors. A handful of people contacted us for a copy of the survey before they had all been distributed.
- 3.27 Given that less than 1% of the local electors contacted us about non-receipt of their survey pack officers are confident that the use of canvassers was successful. The people who contacted us but were not in the petition area were slightly aggrieved that they had not been consulted and all lived in properties very near the boundary of the petition area. Whilst those conducting future reviews may consider widening the consultation to those outside the petition area, this is a difficult issue because of having to decide how much of a wider area is chosen and because only those inside the petition area will be subject to any additional precept. It is suggested this is consider on its merits of the situation each time a review is undertaken.

### **Evidence gathering**

- 3.28 The Guidance referred to earlier contains comprehensive advice about what matters the Council must take into consideration when conducting the Review and making its decision. This related specifically to the impact of the existing and proposed community governance arrangements and whether they do or will reflect the identities and interests of the community in the area, are effective and convenient governance of the area, and the impact of community governance arrangements on community cohesion and the size, population and boundaries of a local community or parish.
- 3.29 The Working Group were conscious that the responses to the consultation would provide some evidence on these issues but that it would need to gather evidence about the existing community governance arrangements, the extent to which they were effective, convenient and representative of the local area. Officers devised a matrix and undertook significant amounts of desk research and requested information from Ward Councillors to gather evidence against each of the factors. This matrix was eventually submitted as part of the Working Groups report and is felt to provide a useful summary of what they were able to gather to assist them with their deliberations.



- 3.30 The City of Rochester Business Forum held a public information meeting on 28 September 2017 that was attended by approximately 100 people and the Chief Legal Officer explained the background to the Review and answered some audience questions relating to how the town council could be established, when the first elections might be held to the newly established town council, the impact of a new town council on city status bid and how much a new town council could cost. One aspect that was raised at that meeting related to alternative community governance arrangements such as area committees or panels, which might increase community involvement as an alternative to a new parish council. In accordance with the statutory guidance, the Working Group undertook some research into these other forms of community representation and found that many of them exist across the country and that their status, format and management arrangements differ widely. However, in the light of the overwhelming result of the consultation that existing arrangements were satisfactory and should remain, the Working Group decided not to do any substantial research on these alternatives.

### **Consideration of evidence by Working Group**

- 3.31 The Working Group met on 4 occasions and feedback from members of the Working Group indicates that the group worked well and had sufficient meetings to enable a full discussion of the proposal and process. Feedback also concluded that the analysis of the result was sufficiently detailed and helpful to the Working Group in forming a clear view.

### **Resources**

- 3.32 As is referred to in paragraph 3.21 above, the Government has made a New Burdens Fund available to date to cover the costs incurred by local authorities when conducting CGRs when triggered by a petition. The current process for seeking funds is to submit a bid prior to the start of the CGR based on estimated costs. However, as the Council had never conducted a CGR before, approval was obtained for the Council to submit an estimate of the costs before the start but a final bid at the conclusion of the CGR when the actual costs were known.
- 3.33 This arrangements has meant that costs incurred to date have shown as a pressure on the Democratic and Governance 2017-18 revenue budget but officers are confident that they can submit a comprehensive bid and evidence of the costs incurred so that all the costs are reimbursed.

3.34 The net costs of the CGR have been £39,000 broken down as follows:

	£
Printing and collation of survey, leaflet, pre-paid envelope etc.	6691
Outgoing postage and canvasser delivery	4962
Incoming postage	879
Analysis of survey results	5508
Communications internal design etc.	1743
Miscellaneous costs	29
Officer time spent on CGR	19258

3.35 The spend per elector affected by the petition was £1.77 and £14.97 per response to the survey (including those decided as invalid).

3.36 A significant amount of time was spent by officers on this CGR (around 330 hours which is the equivalent of 46 days). Some of that time was spent on research because it was the first such Review to be undertaken by the Council, but nonetheless the majority of it would be required for any future reviews. Capacity in Democratic and Governance division to undertake this review when the petition was submitted was extremely limited because it coincided with 2 major elections and it was fortunate that the petition organisers were willing to accept the delay despite the legislation being clear that it should be concluded within 12 months. It was necessary to obtain external assistance to analyse the responses of this CGR due to lack of capacity internally. The capacity across the whole Council to undertake future reviews will need to be taken into consideration if any future reviews are triggered.

#### **4. Advice and analysis**

##### **4.1 Sustainability**

The Working Group considered the sustainability implications of the CGR proposals and the outcome recommended.

##### **4.2 Diversity**

A Diversity Impact Assessment (DIA) was completed and included in the report to Full Council.

#### **5. Risk management**

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. The risks arising from the conduct of the CGR were included in the report to Council in January 2018. The following table considers any significant risks arising from this report.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Loss of some organisational learning	Failure to review the CGR process	Comments and views sought from members of the cross-party Working Group prior to submission	D1

## 6. Financial implications

- 6.1 There is no specific budget provision for the conduct of the CGR or the consultation process required. The net cost of the exercise has been £39,000 to undertake an appropriate consultation process and for the other costs associated with the CGR.
- 6.2 As referred to elsewhere in the report, when the Government announced the new measures in the Act, they also established a Community Governance Review New Burdens Fund which is available to support local authorities that are required to undertake a review. A bid has been submitted to the New Burdens Fund to cover all of the identified costs.
- 6.3 If the New Burdens Fund bid is unsuccessful the costs will need to be met from the existing provision for local elections.

## 7. Legal implications

- 7.1 The legal basis for conducting a CGR is set out in the body of the report. There are no other legal implications for considering how the Council conducted the CGR in Rochester

## 8. Recommendation

- 8.1 To note and discuss the review of the Community Governance Review on the proposal for a Town Council in Rochester and any organisational learning as appropriate.

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### Appendices:

None

### Background papers

None