

To: Council

Date: 14th April 2014

Report of: Monitoring Officer

Title of Report: Constitution Review 2014

Summary and Recommendations

Purpose of report: This report recommends changes to the Council's constitution to reflect changes in the law and also to provide clarification.

Report Approved by:

Finance: David Watt

Legal: Jeremy Thomas, Head of Law and Governance

Policy Framework: An effective and efficient Council

Recommendation(s): Council is RECOMMENDED to approve the amendments to the Constitution outlined in:-

Appendix 1 – Contract Procedure Rules;
Appendix 2 – Planning Code of Practice;
Appendix 3 – Other Committee procedures;
Appendix 4 – Miscellaneous proposed changes; and
Appendix 5 – Access to Information and key decision procedures

Appendices

Appendix 1 – Contract Procedure Rules
Appendix 2 – Planning Code of Practice
Appendix 3 – Other Committee procedures
Appendix 4 – Miscellaneous proposed changes
Appendix 5 – Access to Information and key decision procedures

Summary of report

1. This report proposes changes to the Council's Constitution following a review. The changes that are recommended have been discussed between Group Leaders. The opportunity has also been taken to clarify parts of the Constitution, to put right clerical errors and to make the Constitution follow the law. I have delegated authority to make such changes (Procedure Rule 2.5).
2. The report is in three parts. The first part proposes changes to the Contract Procedure Rules. Revised Rules (track changed) forms **Appendix 1**. The second part proposes changes to the Planning Code of Practice and to planning procedures. A revised Code and procedures, (track changed) form **Appendices 2 and 3**. The third part proposes miscellaneous changes. Where it aids clarity these changes are shown in **Appendix 4**. Otherwise the changes are described in the report. **Appendix 5** shows (track changed) the proposed changes to the Access to Information and Key Decisions Section of the Constitution.

Contract Rules (Appendix 1)

3. The changes to the Contract rules are proposed to comply with
 - The changes to the EU rules
 - Transparency guidance by Central government
 - Best practice in procurement

Planning – Code of Practice and Procedures (Appendices 2 and 3)

4. Paragraph 24.3(b) (Declaring Interests) sets the requirement to declare a Code interest in the context of the Code as a whole. Paragraph 22.5 of the Code says that 'the matter of interests must be viewed within the context of the Code as a whole and regard should be paid to the perception of the public'. Paragraph 22.5 of the Code appears here as a footnote¹.
5. The third paragraph of paragraph 24.5 (Need for councillors to make up their minds at committee) is deleted because we are proposing that no member of the area planning committee that determined a planning

¹ **22.5 Members' code of conduct and public perception**

Even if a councillor does not have a disclosable pecuniary interest in a matter, the members' code of conduct says that a member "must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself" and that a member "must not place yourself in situations where your honest and integrity may be questioned". What this means is that the matter of interests must be viewed within the context of the Code as a whole and regard should continue to be paid to the perception of the public.

application called in to the Planning Review Committee may substitute for a member of that committee. This addresses paragraph 22.5 of the Code as it relates to public perception.

6. The additional words in paragraph 24.8(a) (Lobbying by councillors) reflects the expectations that councillors should have of officers, as contained (in particular) in paragraph 23.3 of the Code on Councillor-Officer Relations (councillors can expect of officers 'professional advice, not influenced by political issues or preference').
7. The additional wording in paragraph 24.8(b) (Lobbying of councillors) recognises that on occasions councillors may express an opinion on an application before it falls to be determined. It sets out how councillors should caveat expressions of opinion.
8. The rewording of paragraph 24.10 (Planning applications by the Council) removes the rather opaque reference to the Council following 'Government guidance' in dealing with its own planning applications. It makes the consideration position clear and sets out the one exception to that position.
9. The new paragraph on member briefings (paragraph 24.13) sets out the purpose and limitations of briefings. These briefings are a recent initiative for the Council.
10. The rewording of the preamble to paragraph 24.14 (Site visits) provides clearer reasons why a site visit might be necessary.
11. The rewording of paragraph 24.15 (Officers' reports to committee) reflects what planning reports actually contain.
12. Paragraphs 24.16 – 24.20 say how planning committees should operate in respect of public speaking and involvement; and consideration and determination of an application; and how to proceed when the committee decides additional conditions should be imposed or if the committee decides to refuse a planning application against officer advice.
13. The rewording of parts of the Code of Practice summary that is reproduced with planning committee agenda deal with administrative practice in relation to planning committee meetings.

Miscellaneous Changes (Appendices 4 and 5)

14. Procedure Rule 2.8 (Publishing the Constitution) says that paper copies of the Constitution will be placed in Council offices 'and other places where the public can look at it'. In practice a paper copy is available only in the Town Hall reception and in the Customer Services reception area. The words underlined above are proposed for deletion.

The Constitution is of course generally available to view and to download on our website.

15. Procedure Rule 4.5 lists the responsibilities of the Board. The Leader has agreed these changes to those responsibilities:-

- Appointing representatives to outside bodies – the Leader will make any in year changes, after letting Group leaders know of vacancies. The annual review and appointment of representatives to outside bodies will continue to be the responsibility of the Board.
- Setting fees and charges – the Board’s responsibility for this will only be engaged to the extent that the budget has not set fees and charges. The Board will remain responsible for agreeing the strategy for setting fees and charges.

16. Procedure Rules 5.4 to 5.7 say that the licensing committees are responsible for setting licence fees. Council sets fees and charges at Budget time. The report recommends that the references to the licencing committees setting fees are deleted.

17. In Procedure Rule 7.8 (Powers and Duties of the Standards Committee) the report recommends an additional power, namely ‘To receive reports from and advise the Monitoring Officer on training for members on ethical issues’. This then ties up with Procedure Rule 9.4(b) (Role of the Monitoring Officer – Leading on Ethical Issues) which says that the Monitoring Officer shall advise the Standards Committee on the need for training for councillors on ethical issues.

18. In Procedure Rule 11.10 (h) (Addresses that are not about something that is for decision at the meeting) there is an inconsistency in that there no time limit by when a reply to an address by a member of the public should be provided. A 10 working day time limit would be consistent with time limits elsewhere.

19. Procedure Rules 11.10 to 11.12 (Addresses and Questions by the Public at Council Meetings) are silent on whether questions and addresses on personal circumstances are permitted. Clearly it is inappropriate for anyone’s personal circumstances to be raised and discussed at Council meetings. The Procedure Rules referred to are proposed to be reworded as shown in Appendix 4 to make it clear that the personal circumstances of an individual may not be the subject of an address or a question at Council. A similar change is recommended in respect of questions asked at the Board (Procedure Rule 12.7 refers).

20. Council receives reports on the work done by partnerships upon which the Council is represented. There is no Procedure Rule relating to this. Appendix 4 contains such a Rule.

21. Procedure Rule 11.18 (k) combines the procedure for adjourning a motion with the procedure for adjourning a meeting. It would aid clarity if the procedures were separated.
22. Recent Government Regulations require all councils to have a recorded vote on any decision relating to the Budget or Council Tax. Appendix 4 contains wording proposed to be added to Procedure Rule 11.19(d) (Voting at Council Meetings) to facilitate this.
23. The Head of Paid Service wishes to reserve to himself approval of any staffing changes that could give rise to severance payments, early retirement, redundancy or pay re-grading for officers. The report recommends an addition to paragraph 9.3 of the Constitution, such that the Head of Paid Service must approve all such changes, in Appendix 4.
24. The Head of Paid Service also wishes to reserve to himself the approval (or otherwise) of the entering into a contract other than a contract of employment for the appointment of an officer. This is to prevent an officer being engaged by way of a private service contract for example. The report recommends an addition to paragraph 9.3 of the Constitution to effect this change in Appendix 4.
25. Section 15 of the Constitution is reproduced, with track changes, in its entirety as Appendix 5. The changes shown reflect the provisions of the Executive Regulations (Meetings and Access to Information) Regulations 2012. In particular the Section has been changed because publication of a Forward Plan is no longer a legal requirement. However, it is a legal requirement for 28 days' notice to be given of the taking of a key decision and of the taking of a report in part or in whole in private. This is done by notification in the monthly executive work programme which, for convenience, we call the forward plan.

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Background papers: none

Version number: 1

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