

COUNCIL	AGENDA ITEM 8 (iv) (c)
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CHANGES TO THE CONSTITUTION

R E C O M M E N D A T I O N S
FROM : SOLICITOR TO THE COUNCIL
<p>That Council:</p> <ol style="list-style-type: none"> 1. Notes the changes to the Constitution which are necessary to reflect factual changes since the Constitution was last published. (Appendix 1) 2. Notes the changes to the Constitution which are necessary as a result of legislative changes. (Appendix 2) 3. Approves the changes to the Constitution proposed by the Monitoring Officer (Appendix 3).

1. ORIGIN OF REPORT

1.1 This report is submitted to Council as part of the Monitoring Officer's responsibility under Article 14 of the Constitution to monitor and review the Constitution. It sets out recommended changes to the Constitution for consideration and approval by Council.

2. PURPOSE AND REASON FOR REPORT

2.1 There are a number of changes necessary to the Constitution in order to bring it up to date, including those required following changes in legislation.

3. UPDATING THE CONSTITUTION

3.1 Changes to the Constitution which are necessary in order to reflect changes in factual circumstances are set out in Appendix 1 to this report.

3.2 Changes to the Constitution which are necessary in order to reflect changes in legislation are set out in Appendix 2 to this report.

3.3 Changes to the Constitution proposed by the Monitoring Officer, including changes necessary as a result of the new committee arrangements as set out in Appendix 3 to this report.

4. ANTICIPATED OUTCOMES

Implementation of the recommendations in this report will ensure that the Council's governance arrangements remain robust. Implementation will also reduce the risk of successful challenge to any decisions taken by making sure that the Constitution is up to date and is in accordance with the law.

5. REASONS FOR RECOMMENDATIONS

It is good practice to review the Constitution on a regular basis to ensure that it supports good decision making, transparency and openness.

6. ALTERNATIVE OPTIONS CONSIDERED

It is important that the Constitution is up to date and accurate. The alternative to making the changes is to continue with an out of date Constitution, which would not be in accordance with good practice. There is no alternative to ensuring that the Constitution reflects changes in legislation as the Council must operate in accordance with the law.

7. IMPLICATIONS

7.1 Legal

The proposals in this report comply with all legal requirements.

7.2 Financial

There are no financial implications.

8. BACKGROUND DOCUMENTS

None.

AMENDMENTS REQUIRED TO REFLECT CHANGED FACTUAL CIRCUMSTANCES

Current provision	Proposed provision	Reason for change
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 30.20.1 (a – g)</p> <p>Property Matters – Current provision authorises the Solicitor to the Council and the Executive Director to act jointly.</p>	<p>To authorise the Executive Director – Strategic Resources to act in consultation with the Solicitor to the Council</p>	<p>To clarify the delegation so that it may be exercised by the Executive Director – Strategic Resources as it relates to land and property matters which fall within that directorate.</p>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 30.20.1 (g)</p> <p>Property Matters – Current provision authorises the Solicitor to the Council and the Executive Director – Strategic Resources to act jointly.</p>	<p>New provision gives authorisation solely to the Solicitor to the Council to:</p> <p>‘Allow subsidised or free use of the Council’s meeting rooms contrary to the usual conditions on occasions where this is in the Council’s best interests, in accordance with the Council’s Room Hire policy’.</p>	<p>To reflect senior management arrangements.</p>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.23.3 (b)</p> <p>Current provision authorises the Deputy Chief Executive to ‘negotiate and implement partnership frameworks to deliver SRB funding programme management in accordance with the policy agreed by the Council and its partners’.</p>	<p>To delete reference to SRB funding and amend to read as follows:</p> <p>‘to negotiate and implement partnership frameworks to deliver growth funding programme management in accordance with the policy agreed by the Council and its partners’</p>	<p>To reflect changes in funding streams.</p>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.23.4</p> <p>Current provision authorises the Deputy Chief Executive, in consultation with the Leader of the Council and relevant Cabinet Member to determine:</p>	<p>To delete paragraph 3.23.4</p>	<p>Conclusion of project.</p>

<p>a) whether an interim innovation centre should be established;</p> <p>b) where it should be located;</p> <p>c) what financial or other assistance should be provided.</p>		
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.18.1</p> <p>Relates to delegations to the Solicitor to the Council.</p>	<p>To ensure the Solicitor to the Council has same powers as directors.</p>	<p>To reflect senior management arrangements and ensure consistency.</p>

AMENDMENTS REQUIRED TO REFLECT CHANGES IN LEGISLATION

Current provision	Proposed provision	Reason for change
<p>Part 3, Delegations Section 1, Functions Reserved to Full Council, paragraphs 1.1.4 (g) and 1.1.4 (h)</p> <p>Refers to plans included under Statutory Guidance and Plans included by Local Choice</p>	<p>To remove the Food Law Enforcement Plan (currently included under Statutory Guidance) and the Health and Safety Law Enforcement Plan (currently included by Local Choice) and transfer to the delegated authority of the Cabinet Member for Environment.</p>	<p>There is no longer a requirement under Statutory Guidance to include as a function of full Council.</p>
<p>Part 3, Delegations Section 2, Delegations to Officers, paragraph 2.4.3.1 (a) (xv)</p> <p>No current provision</p>	<p>Include provision for the Executive Director – Operations to:</p> <ul style="list-style-type: none"> (i) take decisions in respect of applications for a minor variation to a premises licence/club premises certificate in all cases; (ii) take decisions relating to applications for the mandatory alcohol condition requiring a Designated Premises Supervisor in respect of a premises licence to be disapplied if there is no police objection. 	<p>To reflect changes in legislation</p>
<p>Part 3, Delegations Section 2, Delegations to Officers, paragraph 2.4.3.1 (a) (xvi) and paragraphs 2.5.2.1 (r) (vi)</p> <p>No current provision</p>	<p>Include provision for the Executive Director – Operations to:</p> <ul style="list-style-type: none"> (i) issue Closure Notices to premises operating in breach of their licensing conditions and apply for an Order to close the premises should the illegal behaviour not cease. 	<p>To provide clarity in respect of delegated authority.</p>

	<p>Include provision for the Executive Director – Operations to:</p> <p>(i) exercise functions conferred by the Criminal Justice and Police Act 2001</p>	
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.27.5 (f)</p> <p>No current provision</p>	<p>Include provision for the Executive Director – Operations to take appropriate action and issue all notices (including notices of entry) under the Environmental Protection Act 1990.</p>	<p>To authorise action to be taken in accordance with legislation.</p>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.27.16 (a-ggg)</p> <p>Refers to the authority of the Executive Director – Operations to exercise powers conferred by Acts, Orders and Regulations:</p> <p>(f) Business Names Act 1985 (requirement to identify the proprietor of a business name);</p> <p>(h) Companies Act 1985 (control of the formation and conduct of limited companies)</p> <p>(dd) Insurance Brokers (Registration) Act 1977 (restriction of the name Insurance Broker to those appropriately authorised and registered);</p> <p>(ii) Mock Auctions Act 1961 (definition of competitive bidding and penalties for conducting or promoting a mock auction);</p> <p>(nn) Protection of Animals Act 1911 and 1982 (mistreatment of animals)</p> <p>(uu) Solicitors Act 1974 (an unqualified person not to prepare certain</p>	<p>Delete</p> <p>Delete</p> <p>Delete</p> <p>Delete</p> <p>Delete</p> <p>Delete</p> <p>Delete</p>	<p>To reflect changes in legislation.</p>

<p>instruments in connection with conveyancing);</p> <p>(xx) Telecommunications Terminal Equipment Regulations 1992 (regulations for marking approved and non approved equipment);</p> <p>(yy) The Tourism (Sleeping Accommodation, Price Display) Order 1977 (price display provisions);</p> <p>(zz) Theft Act 1968 (offences for obtaining goods, services or money by theft or deception);</p> <p>(ddd) Trading Representations (Disabled Persons) Act 1968 and 1972 (making false representations of disability when selling goods).</p> <p>No current provision</p>	<p>Delete and replace with the 'Radio Equipment and Telecommunications Terminal Equipment Regulations 2000'.</p> <p>Delete</p> <p>Delete</p> <p>Delete</p> <p>To authorise the Executive Director – Operations to exercise powers and duties, in respect of the following:</p> <ul style="list-style-type: none"> • Consumer Protection from Unfair Trading Regulations 2008; • Business Protection from Misleading Marketing Regulations 2008; • Housing Act 1004, Part V (requirements for Home Improvement Packs and Energy Performance Certificates); • Water Industry Act 1991 • Fireworks Act 2003 • Products of Animal Origin (Third Country Imports) (England) Regulations 2006 	<p>To reflect new legislation.</p>
<p>Part 4, Section 9 Scrutiny Committee and Scrutiny Commission Procedure Rules, paragraph 8</p> <p>No current provision</p>	<p>Include provision for the following items to be designated as 'excluded matters' from Scrutiny Committee / Commission agendas:</p> <ul style="list-style-type: none"> • Any matter relating to a licensing or planning 	<p>To reflect new legislation.</p>

	<p>decision;</p> <ul style="list-style-type: none">• Any matter relating to an individual body where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman);• Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of a Scrutiny Committee or Commission.	
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**PROPOSALS SUBMITTED BY THE MONITORING OFFICER AND CHANGES RESULTING
FROM NEW COMMITTEE STRUCTURE / ARRANGEMENTS**

Current provision	Proposed provision	Reason for change
No current provision	To authorise the Corporate Property Officer to approve all licences for works by the Council on non-Council owned property.	To ensure that all works to non-council owned properties are in support of the objectives of the Council and align with the Corporate Asset Management Plan and Corporate Property Strategy.
No current provision	To authorise the Solicitor to the Council to make changes to the Local Land Charge fees, including making changes to existing charges and the introduction of new charges and fee arrangements for new land charge services.	Clarification of delegation arrangements in respect of fee setting.
No current provision	To amend paragraph 3, Article 14 'Monitoring and Reviewing the Constitution' to authorise the Monitoring Officer to make consequential changes to the Constitution following changes to the law and changes to the management / committee structure of the Council which may take place from time to time.	To enable prompt action following changes and ensure accuracy.
<p>Part 3, Delegations Section 2 – Regulatory Committee Functions, paragraph 2.6.2</p> <p>Planning and Environmental Protection Committee</p> <p>No current provision</p>	To include provision for the Executive Director – Operations to set up and establish any Joint Planning and Environmental Protection Committee and to negotiate and determine the Terms of Reference of such Joint Planning and Environmental Protection Committees with neighbouring councils and local planning authorities, following consultation with the Solicitor to the Council and Chairman of the Planning and Environmental Protection Committee.	To allow for the preparation of the future growth agenda in Peterborough and the surrounding area and to enable the Council, along with its neighbouring local planning authorities, to make the necessary arrangements for the consideration of future major cross boundary planning applications.

<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.18.1 (I)</p> <p>Refers to the authority of the Solicitor to the Council to sign documents. Current provision states:</p> <p><i>'to sign on behalf of the Council any deed or other document authorised by the Council or which is necessary or desirable to give effect to any decision of the Council. This arrangement is in addition to that contained in the Council's Standing Orders relating to the sealing of documents'.</i></p>	<p>To amend to read:</p> <p>'to sign on behalf of the Council any deed or other document, which in his/her professional judgement, is necessary or desirable to sign'.</p>	<p>To enable a simpler and more streamlined process in respect of authorising deeds or documents.</p>
<p>Part 4, Section 7, Executive Procedure Rules and Section 9, Scrutiny Committee and Scrutiny Procedure Rules</p> <p>Refers to the authority of the Chairman of the Environment Capital Scrutiny Committee to make decisions in relation to special urgency, call in and urgency.</p>	<p>To be amended to read:</p> <p>The Chairman of the Environment Capital Scrutiny Committee, or in his/her absence, the Chairman of the Scrutiny Commission for Rural Communities.</p>	<p>To enable a simpler and more streamlined process in respect of matters relating to special urgency, call-in and urgency.</p>