

COUNCIL	AGENDA ITEM 11
18 MAY 2009	PUBLIC REPORT

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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 arising from consideration by the Constitution Review Group (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 which are recommended following consultation with the Constitution Review Group, including proposals submitted by the Monitoring Officer and matters raised by individual members of the group, are 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 The alternative to making the changes is to continue with an out of date Constitution, which would not be in accordance with good practice.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 TO REFLECT CHANGED FACTUAL CIRCUMSTANCES

Current provision	Proposed provision	Reason for change
<p>Part 3, Delegations Section 3, Executive Functions, paragraph 3.4.7</p> <p>Current provision authorises the Cabinet Member for Education and Children’s Services to appoint representatives of the Council to school governing bodies, in accordance with agreed democratic arrangements and in consultation with the three political Group Secretaries, and provides for any appointments which do not have consensus to be referred to Council for determination.</p>	<p>To amend the delegation as follows:</p> <p>To appoint representatives of the Council to school governing bodies, in accordance with agreed democratic arrangements and in consultation with the three political Group Secretaries, where the number of nominations exceed the number of vacancies.</p>	<p>To provide a simpler and more streamlined process for making appointments to school governing bodies.</p>
<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 3.25.5</p> <p>Relates to managing partnerships and programmes in pursuance of the Community Safety Strategy agreed as part of the Council’s responsibilities under the Crime and Disorder Act 1998.</p>	<p>To transfer delegation to the Executive Director – Operations.</p>	<p>To reflect senior management arrangements.</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>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.27.3</p> <p>Current delegation authorises the Executive Director – Operations to manage the Council’s Trees and Woodlands Service and to determine issues relating to trees within the context of landscape management.</p>	<p>To transfer delegation to the Commercial Services Director.</p>	<p>To reflect senior management arrangements.</p>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.21</p> <p>No current provision</p>	<p>To authorise the Executive Director – Children’s Services to appoint representatives of the Council to school governing bodies in accordance with agreed democratic arrangements and in consultation with the three political Group Secretaries, in cases where the number of nominations do not exceed the number of vacancies.</p>	<p>To provide a simpler and more streamlined process for making appointments to school governing bodies.</p>
<p>Part 3, Delegations Section 3, Executive Delegations to Officers, paragraph 3.27.5 (f)</p> <p>Currently no 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 4, Section 1 Council Rules of Procedure, paragraph 11.4</p> <p>Relates to the number of questions allowed at Council meetings</p>	<p>To clarify that Members may submit a maximum of two questions at Ordinary Council Meetings in respect of Executive Business.</p>	<p>To correct an omission in the recent re-drafting of the Council Procedure Rules.</p>
<p>Part 4, Section 8 Overview and Scrutiny Procedure Rules, paragraph 13.5</p> <p>Relates to the process for Scrutiny Committee to discuss requests for call-in.</p>	<p>Includes provision for individual Scrutiny Panels to consider requests for call-in which relate to their particular area of responsibility.</p>	<p>To reflect new arrangements following the Scrutiny Review.</p>

<p>Part 4, Section 8 Overview and Scrutiny Procedure Rules</p> <p>No current provision</p>	<p>Include provision:</p> <ul style="list-style-type: none"> To hold joint meetings of Scrutiny Panels, where a matter for consideration falls within the remit of more than one Scrutiny Panel; To enable Members of joint meeting to appoint a joint chairman for each meeting. 	<p>To reflect new arrangements following the Scrutiny Review.</p>
<p>Article 11 – Management Structure Updating of responsibilities for various service areas:</p> <p>No current reference.</p> <p>Reference to ‘environmental management’ currently listed as responsibility of Executive Director – Operations.</p> <p>Current responsibility of Executive Director – Strategic Resources includes Investigations Team, Strategic Human Resources, and the Performance Improvement Team.</p>	<p>Include Business Support, Revenue and Benefits, and the Human Resources Shared Service Team functions within the responsibilities of the Executive Director – Strategic Resources.</p> <p>To include environmental management within joint areas of responsibility for:</p> <ul style="list-style-type: none"> Executive Director of Strategic Resources; Commercial Services Director; Executive Director of Operations. <p>To transfer responsibility as follows:</p> <ul style="list-style-type: none"> Investigations Team to the Solicitor to the Council Strategic Human Resources to the Deputy Chief Executive; Performance Improvement Team to the Deputy Chief Executive. 	<p>To reflect senior management arrangements.</p> <p>To reflect senior management arrangements.</p> <p>To reflect senior management arrangements.</p>
<p>Currently no provision</p>	<p>To authorise the Corporate Property Officer to approve all licences for works by the Council on non-Council owned property.</p>	<p>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.</p>

Currently no 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.
Currently no provision	To enable political groups to nominate a fixed percentage of their representation on a committee as substitutes (with a minimum of one) providing relevant training has been undertaken.	Clarification and operational advantages. This will remove the need for members giving apologies at a meeting to resign and subsequently needing to withdraw that resignation in order to be reinstated for the next meeting.

AMENDMENTS 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 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 instruments in connection with conveyancing);</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>(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>Delete and replace with the 'Radio Equipment and Telecommunications Terminal Equipment Regulations 2000'.</p> <p>Delete</p> <p>Delete</p> <p>Delete</p>	
<p>Currently no provision</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>

CHANGES RECOMMENDED FOLLOWING CONSULTATION WITH THE CONSTITUTION REVIEW GROUP AND PROPOSALS SUBMITTED BY THE MONITORING OFFICER

Current provision	Proposed provision	Reason for change
<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>	<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.</p>	<p>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>
<p>Part 4, Section 1 Council Rules of Procedure, paragraph 11.5</p> <p>Scope of Questions -</p>	<p>To include provision for the Chief Executive, should he/she feel that a question under paragraph 11 is about a matter that does not have a significant impact upon the wider community of Peterborough, to refer to the Mayor in accordance with the existing procedure (except for questions relating to ward matters).</p>	<p>To provide clarity on the scope of questions.</p>
<p>Part 4, Section 1 Council Rules of Procedure, paragraph 13.2</p> <p>Petitions – Current provision states that: ‘Every petition must be polite and must be relevant to the Council or a matter which affects Peterborough’.</p>	<p>To amend to read as follows: ‘Every petition must be polite and must be relevant to the Council or relate to a matter which has a significant affect on the wider community of Peterborough’.</p>	<p>To provide clarity on the scope of petitions.</p>
<p>Part 4, Section 1 Council Rules of Procedure, paragraph 15.2</p> <p>Motions on Notice –</p>	<p>To include provision for the Chief Executive, should he/she feel that a Motion does not have a significant impact upon the wider community of Peterborough, to refer to the Mayor in accordance with the existing procedure.</p>	<p>To provide clarity on the scope of Motions on Notice.</p>

<p>Part 4, Section 3 Standing Orders which apply to the Council and Committees, paragraph 9</p> <p>Planning Applications, paragraph 9.1 (a) -</p> <p>Members of the public who wish to speak at meetings of the Planning and Environmental Protection Committee must advise the Chief Executive by 4 p.m. the day before the meeting.</p> <p>Procedure, paragraph 9.1 (b)</p> <ul style="list-style-type: none"> (i) Officers will introduce the item (ii) Representations by the ward Members and/or the Parish Council representative (iii) Members' questions to the Parish Council representative (iv) Objectors' representations (v) Members' questions to objectors (vi) Representations by the applicant, agent and any supporters (vii) Members' questions to the applicant, agent and any supporters; (viii) Officers' comments (ix) Members will debate the application and obtain advice from officers where appropriate; (x) Members will reach a decision. 	<p>Amend to read as follows</p> <p>Any ward Councillor, Parish Council (or other groups defined in local planning policy as operating in a manner similar to a Parish Council) representative, or member of the public who wishes to address the committee must register with the Chief Executive by 12 noon two working days before the meeting.</p> <p>To amend procedure to read as follows:</p> <ul style="list-style-type: none"> (i) Officers will introduce the item; (ii) Representations by ward Members (iii) Members' questions to ward Councillors; (iv) Representations to Parish Council Representative; (v) Members' questions to Parish Council representative; (vi) Objectors' representations; (vii) Members' questions to objectors; (viii) Representations by the applicant, agent and any supporters; (ix) Members questions to the applicant, agent and any supporters; (x) Officers' comments; (xi) Members will debate the application and obtain advice from officers where appropriate; (xii) Members will reach a decision. 	<p>To enable more efficient administration.</p> <p>Clarification of the speaking scheme to separate the role of Parish and Ward Councillors, and to avoid confusion regarding speaking rights.</p>
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<p>Paragraph 9.2</p> <p>‘The total time allowed for speeches from each of the following groups of speakers will not be more than five minutes except that the committee may decide to extend the time allowed for the following people making representations in cases where the applications involve unusual or exceptional circumstances:</p> <ul style="list-style-type: none"> a) parish council representative b) objectors c) applicant or agent and their supporters’ <p>No current provision</p>	<p>Amend to read as follows:</p> <p>The total time allowed for speeches from each of the following groups of speakers will not be more than five minutes unless the committee decides to extend the time allowed due to unusual or exceptional circumstances:</p> <ul style="list-style-type: none"> a) parish council representative b) objectors c) applicant or agent and their supporters. <p>To include additional paragraph as follows:</p> <p>In lieu of speaking, ward Councillors, Parish Council representatives and members of the public may submit representations in writing for consideration by the committee. Written representations will be reported to the committee in an update report and circulated on the day of the meeting. Ward Councillors, Parish Councillors, members of the public, agents or applicants may request, in lieu of attending the meeting, that there response is read by the Clerk in committee. The same time limits apply as per para 9.2.</p>	<p>To simplify the existing provision.</p> <p>To clarify the status of written submissions.</p>
<p>Part 5, Section 3, Member/Officer Protocol, paragraph 12.3</p> <p>Current provision requires committee meetings to commence at 5.00 p.m. in the event of any disagreement between Chairman and Group Representatives.</p>	<p>To provide that committee meetings will commence at their normal start time as approved in the Annual Calendar of Meetings in the event of any disagreement between Chairman and Group Representatives</p>	<p>To provide greater flexibility so that in circumstances where a consensus cannot be reached, the start time defaults to the normal committee meeting start time.</p>

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