

COUNCIL – 27TH FEBRUARY 2017

Report of the Cabinet

ITEM 6.3 ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION

Purpose of Report

To consider proposed amendments to the Constitution following the annual review.

Recommendations

1. That the changes to the Constitution set out in Appendix A to the report of the Monitoring Officer, attached as an Annex, be made.
2. That the implementation dates for the changes be as follows:
 - item I, in respect of variations to conditions and Section 106 Agreements, for applications received on or after 28th February 2017
 - item II, in respect of planning applications by current and former councillors and officers, for applications received on or after 28th February 2017
 - item III, in respect of the Annual Statement of Accounts, from 28th February 2017
 - item IV, in respect of the discharge of planning conditions, for applications received on or after 28th February 2017.

Reasons

1.&2. To ensure the Constitution is kept up to date and fulfils its intended purposes.

Policy Justification and Previous Decisions

Section 2.4 of the Constitution requires the Monitoring Officer to monitor and review the Constitution. These reviews are currently undertaken approximately annually with the last such review being considered by the Cabinet on 18th February 2016 (minute 102 refers) and Council on 29th February 2016 (minute 84.5 refers).

At its meeting on 16th February 2017, the Cabinet considered a report of the Monitoring Officer, proposing amendments to the Constitution following this year's annual review, for recommendation to Council. That report is attached as an Annex.

The full decision taken by the Cabinet was as follows:

'91. ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION

Considered a report of the Monitoring Officer setting out amendments to the Constitution following the annual review for recommendation to Council (item 10 on the agenda filed with these minutes).

The Monitoring Officer assisted with consideration of the report.

RESOLVED that it be recommended to Council that:

- (i) *the changes to the Constitution set out in the appendix to the report of the Monitoring Officer be made;*
- (ii) *the implementation dates for the changes be as follows:*
- *item I, in respect of variations to conditions and Section 106 Agreements, for applications received on or after 28th February 2017;*
 - *item II, in respect of planning applications by current and former councillors and officers, for applications received on or after 28th February 2017;*
 - *item III, in respect of the Annual Statement of Accounts, from 28th February 2017;*
 - *item IV, in respect of the discharge of planning conditions, for applications received on or after 28th February 2017.*

Reason

To ensure the Constitution is kept up to date and fulfils its intended purposes.'

Implementation Timetable including Future Decisions and Scrutiny

The approved changes to the Constitution will take effect on 28th February 2017 in the manner set out in recommendation 2. above. The Monitoring Officer will publish an updated version of the Constitution incorporating the approved changes.

A further report in respect of the changes to the procedures for certain meetings of the Appeals and Reviews Committee will be brought forward when the conditions identified by the Member Conduct Committee in making the suggestion are met (see paragraphs 12 and 13 of Part B of the attached annex).

A small number of potential changes to the Executive delegations to officers have been identified in the course of this year's review. These will be the subject of a separate report to the Leader, who has the authority to make changes to them. Any changes made will be reported to Council.

Report Implications

The following implications have been identified for this report.

Financial Implications

There are no costs associated with making the recommended changes to the Constitution.

Risk Management

No specific risks have been identified in connection with this report.

Key Decision: No

Background Papers: [Member Conduct Committee, 5th December 2016 – item 5 and minutes 18 and 20](#)

[Policy Scrutiny Group, 22nd November 2016 – item 9 and minute 28](#)

Officers to Contact: Adrian Ward
Head of Strategic Support and Monitoring Officer
01509 634573
adrian.ward@charnwood.gov.uk

Michael Hopkins
Democratic Services Manager and Deputy Monitoring Officer
01509 634785
michael.hopkins@charnwood.gov.uk

CABINET – 16TH FEBRUARY 2017**Report of the Monitoring Officer
Lead Member: Councillor James Poland****Part A****ITEM ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION****Purpose of Report**

To enable the Cabinet to consider and recommend to Council amendments to the Constitution following the annual review.

Recommendation

That it be recommended to Council that:

- a) the changes to the Constitution set out in the appendix to this report be made;
- b) the implementation dates for the changes be as follows:
 - item I, in respect of variations to conditions and Section 106 Agreements, for applications received on or after 28th February 2017
 - item II, in respect of planning applications by current and former councillors and officers, for applications received on or after 28th February 2017
 - item III, in respect of the Annual Statement of Accounts, from 28th February 2017
 - item IV, in respect of the discharge of planning conditions, for applications received on or after 28th February 2017.

Reason

To ensure the Constitution is kept up to date and fulfils its intended purposes.

Policy Justification and Previous Decisions

Section 2.4 of the Constitution requires the Monitoring Officer to monitor and review the Constitution. These reviews are currently undertaken approximately annually with the last such review being considered by the Cabinet on 18th February 2016 (minute 102 refers) and Council on 29th February 2017 (minute 84.5 refers).

The Member Conduct Committee reviewed the procedures for dealing with member conduct complaints and other elements of the Constitution relating to standards and probity at its meeting on 5th December 2016 (minutes 18 and 20 refer). The issues identified by the Committee in respect of the appeals

process for member conduct complaints are described in paragraphs 12 and 13 of Part B of this report.

Implementation Timetable including Future Decisions and Scrutiny

The proposed changes to the Constitution require Council approval and would be submitted to Council on 27th February 2017. Changes will come into effect on the day after the Council meeting. In the case of the changes to how planning applications are dealt with, the change will be for new applications received from that date.

A further report in respect of the changes to the procedures for certain meetings of the Appeals and Reviews Committee will be brought forward when the conditions identified by the Member Conduct Committee in making the suggestion (see paragraphs 12 and 13 of Part B of this report).

A small number of potential changes to the Executive delegations to officers have been identified in the course of this year's review. These will be the subject of a separate report to the Leader, who has the authority to make changes to them. Any changes made will be reported to Council.

Report Implications

The following implications have been identified for this report.

Financial Implications

There are no costs associated with making the recommended changes to the Constitution.

Risk Management

No specific risks have been identified in connection with this report.

Key Decision:	No
Background Papers:	Member Conduct Committee, 5th December 2016 – item 5 and minutes 18 and 20 Policy Scrutiny Group, 22nd November 2016 – item 9 and minute 28
Officers to Contact:	Adrian Ward Head of Strategic Support and Monitoring Officer 01509 634573 adrian.ward@charnwood.gov.uk

Michael Hopkins
Democratic Services Manager and Deputy
Monitoring Officer
01509 634785
michael.hopkins@charnwood.gov.uk

Part B

Background

1. In line with good practice, the Council reviews the Constitution annually. As part of the review consultations have taken place with officers and councillors both individually and through meetings with Group Leaders and the Chair and Vice-chair of the Plans Committee, and of the Member Conduct Committee. The remainder of this report describes the recommended changes to the Constitution and the proposed amendments are set out in the appendix to the report.

Full Council Meetings

2. As well as items which require Council approval, the agenda for full Council meetings can include questions, motions on notice, position statements minutes of other meetings which have been referred for discussion and the ability for councillors to submit petitions. As part of the last review the order of these items was amended and processes refined with the aim of ensuring that full Council meetings operate effectively and provide a forum for councillors to discuss significant issues affecting the Council and the Borough.
3. Two suggestions were made by councillors regarding possible amendments to the procedure rules for full Council meetings. These were considered, along with the operation of Council meetings generally, by officers and Group Leaders. It was concluded that no amendments to the Constitution would be proposed. However, further guidance on the matters raised will be issued to assist councillors. The two suggestions are described below.
4. The first was that a mechanism should be introduced to enable incorrect facts or statistics to be challenged if they are provided when a councillor is responding to supplementary questions and statements. The Constitution currently enables councillors to make points of order (if they believe there has been a breach of the rules) or points of personal explanation (if something they have said or done is being misrepresented). It is not proposed that an amendment to the Constitution is made to expand on the current provisions for points of order or personal explanation. If there is a concern about a response that is given this could be raised as a complaint or through a further question at a subsequent meeting.
5. The second was that the number of councillors required to refer a minute for discussion at full Council should be reduced from five to perhaps three. This procedure is rarely used and could be encouraged by reducing the number of councillors required to invoke it. It is not proposed to make any amendments to the Constitution as it was concluded that the number of councillors required to trigger a minute referral was not a significant barrier to the use of the procedure.

Plans Committee Meetings

6. A number of suggestions have been made by councillors and officers regarding the procedures for Plans Committee meetings and delegations to officers which determine whether a planning application will be determined by the Plans Committee or by officers. These have been considered by officers and the Chair and Vice-chair of the Plans Committee and are summarised below.
7. The first suggestion is that when applications are received to remove or vary conditions or vary Section 106 Agreements for an application that was previously the subject of a Plans Committee decision, there should be a referral mechanism involving the Chair of the Plans Committee and/or ward councillors before a decision is made under delegated powers. This would enable the Plans Committee to retain responsibility for decision making in relation to applications it had previously considered unless the proposed changes were minor. A proposed amendment to the delegations to the Head of Planning and Regeneration is set out in the appendix (item I) that would require any changes to conditions or Section 106 Agreements where the planning permission was granted by the Plans Committee to be considered by the Plans Committee except where, following consultation with the Chair and Vice-chair of the Plans Committee and the relevant ward councillors, the Head of Planning and Regeneration concludes that the proposed changes are minor or technical.
8. As part of this year's review, the criteria for deciding whether applications by current and former councillors and officers are determined by the Plans Committee, rather than by officers under delegated powers, were considered. The current rules are that applications by all current and former councillors, current officers and former officers if they were employed in the previous five years (or ten if employed as a senior officer) are referred to the Plans Committee. The purpose of the rule is to give confidence to the public regarding the impartiality and transparency of decision making. However it is also timely to consider whether the time limits remain proportionate. Suggestions have been made that the limits could be reduced and it has been concluded that this is appropriate. It is therefore proposed that they are amended to cover serving councillors and officers, and people who have served as a councillor in the previous four years or as an officer in the previous two years as set in item II of the appendix to this report.
9. The Constitution currently allows for applicants, objectors, parish/town councils (or recognised community groups in Loughborough) and ward councillors to address the Plans Committee before it considers an application. It has been proposed that members of the Plans Committee should be able to ask questions of speakers following their speeches. This has been suggested in part because this ability is available at Leicestershire County Council for its development control meetings. Such a procedure would have the advantage of enabling members of the Committee to clarify points of fact. However it has been concluded that

these are outweighed by the disadvantages that it would extend the length of meetings and could be abused. In addition the Constitution already includes a provision for the Chair of the Plans Committee to ask speakers or officers to provide clarification on any points that are raised by speakers.

10. As part of last year's review a new call-in procedure for planning applications was introduced. This promotes earlier engagement with ward councillors on planning applications in their wards and amended the mechanism for councillors to refer applications to the Plans Committee. As part of those changes, provisions were included in the Constitution to enable councillors who had called-in an application to nominate another councillor to speak on their behalf at the meeting. It has been proposed that ward councillors, especially those representing single-member wards, could be allowed to nominate other councillors to undertake other functions on their behalf in relation to the call-in process so as to avoid potential conflicts with the requirements of the Planning Code of Good Practice. Currently there are three members of the Plans Committee who represent single-member wards.
11. It has been concluded that no changes to the Constitution will be proposed. The introduction of the call-in process is still in its early days and progress with it is still being reviewed. If this review identifies that amendments to the Planning Code of Good Practice may be required they will be proposed as necessary. However, the conclusion was that councillors who call-in an application to the Plans Committee should not sit on the Plans Committee when that application is considered. In addition, further guidance on how the call-in process and the Planning Code of Good Practice operate together will be issued to councillors.

Procedures for Dealing with Complaints about Member Conduct

12. At its meeting on 5th December 2016, the Member Conduct Committee reviewed the procedure for dealing with complaints about member conduct and in particular the appeal process within the procedure. The appeal process is currently undertaken by the Appeals and Reviews Committee. Having considered the procedure the Member Conduct Committee was generally satisfied that it was operating effectively. However, the Committee wished to suggest including the attendance of one of the co-opted parish members of the Member Conduct Committee at meetings of the Appeals and Reviews Committee when it considered appeals against decisions made by a Member Conduct Panel hearing regarding breaches of the code of conduct by a parish or town councillor. This arrangement would mirror the procedure at Member Conduct Panel meetings.
13. Before this change was proposed the Member Conduct Committee wished to see the vacant position for a third co-opted parish member of the Committee filled and members of the Appeals and Reviews Committee consulted. A proposal for the required changes to the Constitution will be brought forward when those conditions have been met.

Finance Matters

14. A minor amendment is proposed to update the Financial Regulations in line with current practice. Section 16.9(j) describes the process for approving the Annual Statement of Accounts and sets out the information that the Statement of Accounts will contain. The explanatory forward that used to be included is now called a narrative statement. This change is set out in item III of the appendix.

Delegations to Officers of Council Functions

15. New procedures have been introduced for local planning authorities to determine that planning conditions have been discharged. These involve the issuing of a formal decision notice by the local planning authority. It is therefore appropriate to refer to these decisions explicitly in the scheme of delegation to officers. It is proposed that determining all such applications is delegated to the Head of Planning and Regeneration. The proposed delegation is set out as item IV in the appendix.

Member Reference Group for Major Procurements

16. At its meeting on 22nd November 2016, the Policy Scrutiny Group considered a report in respect of councillor engagement in the procurement process for future contracts (minute 28 refers). The Group's view was that it was important that councillors were involved in procurement activity to ensure that there was appropriate oversight. In order for this to be effective it was important that the involvement of councillors took place from the beginning of the procurement process. As a result it was suggested that a member reference group should be established for procurements for contracts above the OJEU threshold (contract value in excess of c£160,000 for provision of services) and that this suggestion could be taken forward through the annual review of the Constitution.
17. Member Reference Groups can be established by Full Council, the Cabinet, the Leader and the Chief Executive, and, in certain circumstances, by other officers. Any procurement where the contract value exceeds £500,000 requires a separate Cabinet report for the procurement process to be agreed. Eleven such contracts are likely to be let over the next two financial years, although many will be awarded under a framework agreement. In order to introduce a proportionate mechanism for establishing member reference groups to support the Council's procurement activities it is proposed that all those Cabinet reports dealing with procurements where the contract value exceeds £500,000 would include a specific recommendation to the Cabinet asking it to consider whether a member reference group should be established or not. This is an operational matter and does not require an amendment to the Constitution.

Appendices

Proposed Changes to the Constitution

Proposed Changes to the Constitution

I Variations to Conditions and Section 106 Agreements

It is proposed that the wording in bold be added to the first Council delegation to the Head of Planning and Regeneration.

‘To determine all planning applications and applications for advertisement consent, listed building consent, conservation area consent and consent to carry out works to protected trees, except where:

.....

(vi) an application is received to remove or vary a condition or to vary a Section 106 Agreement and the planning permission for the development was granted by the Plans Committee and, following consultation with the Chair and Vice-chair of the Plans Committee and relevant ward councillors, the Head of Planning and Regeneration is of the opinion that the variation is non-minor or non-technical.’

Note: This will require a consequential amendment to the second delegation to the Head of Planning and Regeneration with the wording in bold to be added.

‘Subject to the provisions of 1(vi) above, to agree non-material amendments and minor material amendments to planning permissions where no demonstrable harm would be caused to an interest of acknowledged importance.’

II Planning Applications by Current and Former Officers and Councillors

It is proposed that the following changes are made to Council delegation 1(v) to the Head of Planning and Regeneration, with deleted text shown as struck through and added text shown in bold.

‘To determine all planning applications and applications for advertisement consent, listed building consent, conservation area consent and consent to carry out works to protected trees, except where:

.....

(v) the application is submitted by a serving **member of the Council**, ~~or a person who served as a member of the Council at any time during the four year period prior to the submission of the application~~ ~~former member of the Council~~, a serving officer of the Council or a person who served as an officer of the Council at any time during the **two** ~~five~~ year period prior to the submission of the application.

III Annual Statement of Accounts

It is proposed that the following changes are made to Financial Regulation 16.9(j) on the annual statement of accounts, with deleted text shown as struck through and added text shown in bold.

‘The Annual Statement of Accounts

The Section 151 Officer is responsible for ensuring that the Annual Statement of Accounts is prepared in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom* (the Code) and statutory requirements.

The Audit Committee is responsible for approving the Annual Statement of Accounts, which should include:

- **a narrative statement**~~an explanatory foreword~~
- a statement of Accounting Policies
- a statement of Responsibilities for the Statement of Accounts
- the Accounting Statements and notes to the Accounts.’

IV Discharge of Planning Conditions

It is proposed that the following delegation be added to the delegations to the Head of Planning and Regeneration.

‘To determine applications for the discharge of planning conditions.’