

<b><u>MEETING</u></b>
<b>COUNCIL</b>
<b><u>DATE AND TIME</u></b>
<b>TUESDAY 8TH APRIL, 2014</b>
<b>AT 7.00 PM</b>
<b><u>VENUE</u></b>
<b>HENDON TOWN HALL, THE BURROUGHS, NW4 4BG</b>

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda. The report and agenda pack that was submitted to the 24th March meeting of the Constitution, Ethics and Probity Committee can be found via below link on the Council's website:

<http://barnet.moderngov.co.uk/documents/s13887/Change%20to%20Governance%20System%20Cover%20Report%20-%20Draft%20Constitution.pdf>

Item No	Title of Report	Pages
4.3	REPORT FROM THE CONSTITUTION, ETHICS AND PROBITY COMMITTEE - 24 MARCH 2014	1 - 20

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## Report from the Constitution, Ethics and Probity Committee

24 March 2014

AGENDA ITEM 4.3

Members:

Councillor Melvin Cohen (Chairman)

\*Councillor Joan Scannell (Vice-Chairman, In the chair)

Councillor Jack Cohen	*Councillor Alan Schneiderman
*Councillor Richard Cornelius	*Councillor Mark Shooter
*Councillor Anthony Finn	Councillor Andrew Strongolou
*Councillor Alison Moore	*Councillor Rowan Quigley Turner
*Councillor Barry Rawlings	(substitute)

\*Denotes Members present

### 1. JOINT VENTURE BOARD AND CONSTITUTIONAL ADDITIONS

The Commercial and Customer Services Director introduced the report. The Committee

#### **RESOLVED TO RECOMMEND:**

That the below proposals be included in the drafting of the Constitution:

As Cabinet will no longer exist under the new governance arrangements post 2<sup>nd</sup> June 2014, for the List of Matters from the Joint Venture Agreement that require consent, the consent to agree any reserved matter except for item 8.1.31 (agreement not to pursue a bid) be added to the Policy and Resources Committee Terms of Reference as item 10 of the specific responsibilities.

Under certain circumstances, Clauses 18.3 and 18.4 of the Joint Venture agreement (Appendix B), the Council is obliged to give agreement to the JVCo not to bid as soon as reasonably possible and in any event within 5 business days. Due to this contractual timescale, that this specific task is delegated to the Strategic Director for Growth and Environment in consultation with the Chairman of Policy and Resources Committee and a summary of such decisions be presented to the next Policy and Resources Committee for information.

### 2. CONSTITUTION DEVELOPMENT

The Council, at its meeting on 21 January 2014, agreed changes to each section of the Constitution and noted a revised Constitution that will come into effect from Annual Council on 2 June 2014. The Table in the Report to the Constitution, Ethics and Probity Committee of 24 March 2014 (attached) set out some further proposed changes to the Constitution.

The Head of Governance introduced the report. The Committee having considered the proposed changes to the Constitution

## RESOLVED TO RECOMMEND:

That Council approve the below changes:

No	Section	Reference (papers submitted to Committee)	Changes contained within Document	Recommendation to Full Council
1	Responsibility for Functions	Appendix A Pages 25 to 56	<p><b>1) Policy and Resources Committee (P&amp;R)</b></p> <p><b>a) Internal Transformation:</b> P&amp;R has responsibility for internal transformation programmes. Consideration has been given to the involvement of thematic committees prior to P&amp;R decision as most projects arising out of transformation programmes are likely to have specific themes (e.g. Parking Policy, Early Years Review).</p> <p>It is therefore suggested that an addition is made to the Terms of Reference for each theme committee to recognise their role: – “Discussion of transformation schemes not in service plans but not outside the Council’s budget or policy framework”</p> <p><b>Treasury Management:</b> Amend table under heading (2) to say ‘Treasury Management Strategy’ as ‘activity’ will be included within reports to Performance and Contract Management Committee</p> <p><b>Procurement:</b> Add ‘Corporate Procurement (including agreement of the Procurement Forward Plan and agreeing exceptions to CPRs)’, as this is a Resources issue rather than one relating to the performance of existing contracts.</p> <p><b>Barnet Group:</b> Delete (6) and move the following: ‘approve Annual Report of the Barnet Group Ltd’ as this sits better with Performance and Contract Management, relating to the activities of an external Delivery Unit. Approval of the budget and business plan remains with P&amp;R.</p>	<p>Agreed as per report with the following amendments:</p> <p>Amend the membership column for all committees to read “Chairman, Vice Chairman, <i>Members and substitutes</i> to be appointed by Council.</p> <p>Delete “remainder” to read “Committee to be made up in accordance with proportionality”.</p> <p><u>Policy &amp; Resources Committee</u> (6) Amend to read “Approve budget and business plan”.</p>

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			<p>NOTE: There is an additional recommended addition to the terms of reference contained within the report elsewhere on this agenda in respect of the Joint Venture agreement.</p> <p><b><u>Performance &amp; Contract Management</u></b></p> <ol style="list-style-type: none"> <li>1. Item (2) in the terms of reference only covers external delivery units. It should also include internal delivery units (Adults &amp; Communities; Children's, Education &amp; Skills; Street Scene; Public Health; Commissioning Group; Assurance). Recommended amendments to the ToR are as follows:  "Monitoring of performance against targets by Delivery Units and Support Groups including: Customer Support Group; Re; The Barnet Group Ltd (including Barnet Homes and Your Choice Barnet); HB Public Law; NSL; Adults &amp; Communities; Family Services; Education &amp; Skills; Street Scene; Public Health; Commissioning Group; and Assurance"</li> <li>2. Subject to the approval of the amendment to Item (2) above, Item (3) will need to be amended to refer to external delivery units only</li> <li>3. Item (5) – Thematic committees will be able to agree resources subject to these being approved within the budget and MTFS, and should have responsibility for approving contract extensions, variations etc. as long as they are within budget and compliant with the rules around extensions, variations etc. as set out in the CPRs. This has been incorporated within the Contract Procedure Rules. P&amp;R</li> </ol>	

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			<p>will be required to approve a waiver of CPRs for any procurement activities that are not complaint with CPRs. These have therefore been taken out of this section.</p> <p>4. amend table under heading (6) to include 'Treasury Management Performance'</p> <p>5. Delete under item (6) 'Corporate Procurement (including agreement of the Procurement Forward Plan and ageing exceptions to CPRs)', as this is a Resources issue rather than one relating to the performance of existing contracts.</p> <p>6. Add responsibility previously under P&amp;R 'approve Annual Report of the Barnet Group Ltd' as this sits better under this committee, relating to the activities of an external Delivery Unit.</p> <p><b>Education Children Libraries and Safeguarding Committee</b></p> <p><i>Co-Opted members</i></p> <p>At present, in order to comply with the Local Government Act and other legislation, the Education Overview and Scrutiny Committee provides for Co-opted Members representing the diocesan bodies and parent governors, as follows:</p> <p>Three Voluntary Aided School Representatives - to provide a faith perspective on education matters (Church of England; Roman Catholic; and Jewish Voluntary Aided representatives)</p> <p>Two Parent governor representatives (PGRs) elected by other parent governors to represent the views of all parents and hold the authority to account by consulting with and feeding back to parents on discussions and</p>	

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			<p>decisions relating to education.</p> <p>It is proposed these rights transfer to the new Education Children Safeguarding and Libraries Committee, but that their voting power is clarified. They will be able to speak on all matters but only vote on education matters. Matters on which they are entitled to vote will be clearly signalled on each agenda.</p> <p>In addition the Education Children Libraries and Safeguarding Committee needs to have added a new Term of Reference which was omitted and which is common to all theme committees:</p> <ul style="list-style-type: none"> <li>- Develop Fees and Charges for those areas under the remit of the Committee for consideration by Policy and Resources Committee</li> </ul> <p><b>Audit Committee</b></p> <p>These Terms of Reference have been updated to more accurately reflect the Committee's existing responsibilities in respect of Anti-Fraud work.</p>	
2	Full Council Procedure Rules	Appendix B Page 57 to 68	<p>At the meeting of the Committee on 14 January it was agreed in principle to permit written questions to be submitted to the Leader at Full Council. This is the proposed process to be written into Council Procedure Rules:</p> <p>27.1 Members of the public are permitted to submit written questions to the Leader in accordance with the following provisions:</p> <ul style="list-style-type: none"> <li>• Any question must be delivered by e-mail, to be received by the Head of Governance by 10.30am ten clear working days before the day of the meeting. Any questions submitted after that time will not be considered,</li> <li>• The question should not relate to a matter previously considered</li> </ul>	<p>Agreed as per report with the following amendments:</p> <p><u>The Council Procedure Rules</u></p> <p>1(a) – Amend to read “Electing a Mayor and noting the appointment of the Deputy Mayor”</p> <p>1(g) – Amend to read “Appointing the Chairman, <i>Vice Chairman and members of Committees</i>, and other regulatory <i>bodies</i> and approving their</p>

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			<p>by a committee,</p> <ul style="list-style-type: none"> <li>• The question should not relate to a matter that is within the remit of a committee, or be a matter best addressed by a committee. If this is the case, then the question should be directed to the appropriate committee.</li> <li>• The question must not be in substance a question that has already been considered by the Leader in the preceding 6 months.</li> </ul> <p>Every question will be answered in writing. The Leader may decline to answer a question. Any questions not answered will be directed to the next relevant meeting of the themed committee.</p>	<p>respective terms of reference.</p> <p>5.2 – Amend to read “If the Mayor is absent from a meeting of the Council then the person appointed by the Mayor as Deputy Mayor if still a Councillor shall preside if chosen for that purpose by the Councillors present”</p> <p>5.3 – Amend to read “If the Mayor and Deputy Mayor are absent from the meeting or if the Deputy Mayor being present is not chosen, then another Councillor chosen by the Councillors present shall preside.”</p> <p>19.8 – Replace the words “oral elaboration” with “further comment”</p> <p>27.1 (last paragraph) Amend to read –“The question should not relate to a matter previously considered by a committee and subject to the six month rule”</p> <p>“The Leader may decline to answer a question <i>in exceptional circumstances and should include the reason for not answering the question.</i>”</p>



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3	Part 4, Section 2- Meetings Procedures	Appendix C Pages 69 to 78	<p>Current Overview and Scrutiny Procedure Rules provide for two non-voting representatives appointed by the Barnet Homes Performance Advisory Group to be invited to attend and speak but not vote at any OSC where an issue relating to housing is being discussed.</p> <p>There is no current provision in the proposed new Constitution for this. The views of the Committee are requested but it is proposed that in practice this, and any other co-optee arrangements, can be discharged through a general power for Chairmen to invite expert witnesses to contribute, which will provide a greater measure of flexibility.</p> <p>A new paragraph has therefore been added at 4.4 to make this explicit.</p> <p>This does not affect the existing membership of Audit Committee which includes two independent non-voting members.</p>	Agreed as per report.
4	Financial Regulations	Appendix D Pages 79 to 104	<p>These have been reviewed, principally to ensure that the former functions of Cabinet, Cabinet Resources Committee and Cabinet members have been reallocated to appropriate committees. References to the Audit Commission and Council posts that no longer exist have also been changed suitably.</p> <p>The particular attention of the Committee is drawn to table 4.4.3 which consolidates the scenarios in which virements would be posted. It also makes certain scenarios, which were previously silent, explicit (e.g. capital additions and allocations from contingency under £250k). The scheme of delegation gives powers of approvals as follows:</p> <ul style="list-style-type: none"> <li>- to officers in three scenarios; within service virements where the bottom line does not change, contingency allocations below £250k and between service virements below £250k.</li> </ul>	<p>Agreed as per report with the following amendments:</p> <p><u>4.4.3</u> 3rd Row of 1<sup>st</sup> Table – Delete Performance and Contract Management and amend to read “Virements for allocation from contingency for amounts over £250,000 must be approved by <i>Policy and Resources Committee</i>.”</p> <p>9<sup>th</sup> Row of 1<sup>st</sup> Table – Add at the end of sentence “<i>in consultation with the Chairman of Policy and Resources</i>”</p>

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			<p>- to Performance and Contract Management committee for contingency allocations over £250k, in year capital budget and funding transfers between projects and in year project deletions;</p> <p>- to Policy and Resources for resource allocation decisions, i.e. between service virements over £250k and in year capital additions to the programme.</p> <p>Explanation of the different roles of Policy and Resources Committee and Performance and Contracts.</p>	<p><i>Committee and reported to the next meeting of the Policy and Resources Committee.</i></p> <p>4.4.18 – Amend to read “Chief Officers, in consultation with the Chief Finance Officer (section 151 officer), <i>should be</i> encouraged to explore all feasible.</p> <p>4.4.18 – Delete the last sentence “This may include lobbying Government with new funding proposals”.</p> <p>4.6.6 - Add at the end of sentence “<i>in consultation with the Chairman of Policy and Resources Committee and reported to the next meeting of the Policy and Resources Committee.</i>”</p> <p>5.7.2 (3<sup>rd</sup> bullet point) – Delete the word “should” and replace with “will” and delete “wherever possible”.</p>
5	Contract Procedure Rules	Appendix E Pages 105 to 118	<p>Amendments are required to reflect the new committee system and increase the robustness of the Contract Procedure Rules.</p> <p><b><u>Section 3 – Scope</u></b></p> <p>3.2 The current document referred to Exempted services, but this term is not used or authorised therefore has been removed. Approval by Procurement has been removed as it does not relate to any procurement activity and therefore</p>	<p>Agreed as per report with the following amendments:</p> <p>15.2 – Amend to read “Directors, Assistant Directors, Lead Commissioners and Heads of Service may take decisions on emergency matters (i.e. an unexpected occurrence requiring</p>

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			<p>requires Finance approval only.</p> <p><b><u>Section 7 – Authorisation</u></b></p> <p>7.1 Removal of additions as this is incorrect. Removal of reference to annual budget as this section relates only to authorisation to procure. Reference ‘Cabinet Resources Committee’ changed to ‘Policy and Resources Committee’ as per the Council change to a committee council structure.</p> <p><b><u>Section 8 – Procurement Method</u></b></p> <p>8.2 Additional reference to non-procurement activity in the list to provide complete clarity. Non-procurement defined in definitions.</p> <p><b><u>Section 12 – Contract Signing and Sealing</u></b></p> <p>12.3 Formal change of the OJEU threshold due to currency fluctuation. This is a change effected every two years on the 1<sup>st</sup> January.</p> <p><b><u>Section 13 – Contract Management</u></b></p> <p>13.1 Increasing the robustness of contract management and action if performance dips. Removed the reference to key performance indicators met, and added key performance indicators are monitored and any reduction in performance is acted upon and recorded;</p> <p>13.4 Formal change of the OJEU threshold due to currency fluctuation. This is a change effected every two years on the 1st January.</p> <p><b><u>Section 15 – Waivers</u></b></p> <p>15.4 Removal of ‘and will count as a</p>	<p>immediate action) <i>in consultation with the Chairman of Policy and Resources Committee</i> providing they report to the next available Policy and Resources Committee .....”.</p> <p>16.12 – Delete Article 11 and amend to read Article 9.</p>

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			<p>variation'. A waiver does not necessarily result in a variation of contract and therefore this needs to be removed.</p> <p><b><u>Section 16 – Definitions</u></b></p> <p>Re-arrange into alphabetical order.</p> <p><b><u>Appendix 1 Table A</u></b></p> <p><i>Procurement Value amended where appropriate</i></p> <ul style="list-style-type: none"> <li>• Formal change of the OJEU threshold due to currency fluctuation. This is a change effected every two years on the 1st January.</li> </ul> <p><i>Governance</i></p> <ul style="list-style-type: none"> <li>• A proposed revised series of authorisation thresholds have been developed. These reflect the following principles:</li> <li>• Policy and Resources has overall responsibility for procurement strategy and compliance with CPRs, and will sign off the overall Procurement Forward plan to provide democratic authorisation for tender exercises.</li> <li>• Theme Committees are the main vehicles for individual procurements.</li> <li>• Any procurements not on a Forward Plan must be separately agreed by the relevant theme committee</li> <li>• Having a single set of approval procedures for all contracts above the EU threshold, rather than making a distinction between those under or over £500,000.</li> <li>• Acceptance of tenders, provided within budget and not departing from the agreed authorisation, can be agreed by Officers, but above a certain threshold the Chairman of the theme</li> </ul>	

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			committee must be consulted. This broadly replaces the current powers of individual Cabinet members.	
6	Asset Land and Property Rules	Appendix F Pages 119 to 132	<p>Changes have been made to reflect the new committee structure and the role of the new Assets, Regeneration and Growth Committee. The frequency of meetings will need to be kept under review to ensure that there are as few urgent transactions as possible which will need to be handled by the Urgency Committee.</p> <p>A number of other changes are proposed to improve the drafting and to reflect current market conditions.</p> <p>Section 2 - Application</p> <p>2.1 – Inclusion of appropriation (change of status) as this previously missed from the review.</p> <p>2.3 – First bullet changed to be more specific to disposals and additional bullet added for acquisitions.</p> <p>2.4 – Change due to new Committee structure Cabinet Resources Committee to read Assets Regeneration and Growth Committee.</p> <p>2.6 – Changes to the titles of the documents. Asset Management Strategy is now the Strategic Asset Management Plan (SAMP) and Asset Management Plan is now the now the Annual Work Plan (AWP).</p> <p>2.7 – As above</p> <p>2.8 – As above</p> <p>2.9 – Change Asset Management Plan to Annual Work Plan.</p> <p>2.9 (i) - Clarification of disposals of assets within the Annual Work</p>	<p>Agreed as per report with the following amendment:</p> <p>Appendix 1, Table A (2<sup>nd</sup> bullet point) – Amend to read “Transactions between £25,000 and £100,000 previously authorised by Cabinet Member delegated power are proposed to be dealt with by Officer DPR <i>in consultation with the Chairman of the appropriate Committee</i> (new Row C).</p>

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			<p>Plan.</p> <p>2.9 (iii) - Inclusion of Appropriation (see 2.1 above)</p> <p>2.10 – Clarification of ancillary accommodation eg sports facilities must be wholly used by the school to transfer to Academy status.</p> <p>2.12 - Changes to the titles of the documents as per 2.6 above.</p> <p>2.15 – Reference made to the Procedures as these must link to the Rules.</p> <p>2.16 – This section has been added to describe how to report the result of public advertising in the event that there is opposition to the result and no immediate forum is available to report feedback.</p> <p><u>Section 3 – Scope</u></p> <p>3.3 - Reference made to The Management of Real Estate, Property and Land Procedures as these must link to the Rules.</p> <p><u>Section 4 – Regulation &amp; Legislation</u></p> <p>4.1 – Removed because it is duplicated within 4.2 and 4.3 (now 4.1 and 4.2).</p> <p>4.2 – Changes to the titles of the documents. –see 2.6 above</p> <p>4.3 – (Now 4.2) Corporate Estates now replaced by the Authority’s Estates Service to reflect outsourcing arrangements.</p> <p><u>Section 5- Roles and Responsibilities</u></p> <p>5 – Sentence re-worded to give clarity on roles and responsibility for Directors who manage Council buildings.</p> <p>5.8 – Addition to the rules to make clear</p>	

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			<p>the roles and responsibility of Health and Safety management.</p> <p>5.9 - To ensure that Directors who are responsible for Council buildings work in conjunction with the Authority's Estates Services.</p> <p><u>Section 6 – Asset Value Consideration</u></p> <p>6.2 - Clarity that the valuer has to be registered.</p> <p>6.3 – Correction as it should have read highest price in comparison to Best Consideration. The word 'best' was used incorrectly.</p> <p>6.4 – Extra clarity of when there is a requirement for special consent and now incorporated into 6.3.</p> <p><u>Section 7 – Authorisation</u></p> <p>7.1 – Change of wording to reflect change to Committee structure (CRC to ARG) and change Asset Management Plan to Annual Work Plan.</p> <p>7.3 - (Now 7.2) Clarification as change of use has planning implications and this section actually refers to service delivery from the building. Change due to Committee structure Cabinet Resources Committee to read Assets Regeneration and Growth Committee.</p> <p><u>Section 8 – Asset Acquisition, Variation and Disposal Method</u></p> <p>8.5 – Clarify the process for a variation to a previous decision.</p> <p><u>Section 12 – Waivers</u> Wording added to this section to clarify the process if there is a need for a waiver to the rules to ensure the continuity of Council's business.</p> <p><u>13 – Definitions</u></p>	

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			<p>13.4 – added to included definition of appropriation.</p> <p>13.6 – Asset Management Plan document now call Annual Work Plan.</p> <p>13.9 – The £2million value relates to an approval process and not a definition.</p> <p>13.14 – Addition of leased as this could also be a disposal dependent on length of lease. Best consideration removed as disposal could be less than best. If leased the freehold is retained and not removed from the Asset Register portfolio.</p> <p>13.15 – Asset Management Strategy should read Strategic Asset Management Plan.</p> <p>13.18 – Expanded the definition to include that market testing includes collation of competitive bids.</p> <p>13.23 – Addition of definition of Council's Estates Senior Responsible Officer.</p> <p>Appendix 1 Table A</p> <p>Less than £5,000 for property transactions in Barnet is not relevant in today's market and therefore the lower value has been increase to £10,000 which is still considered low. This will allow the majority of regular commercial lettings to proceed through one common and more efficient process. This will still be a summary DPR sign off.</p> <p>Transactions between £25,000 and £100,000 previously authorised by Cabinet Member delegated power are proposed to be dealt with by Officer DPR. (new Row C).</p> <p>Non value variation post authorisations have been added to capture any</p>	



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			<p>amendments that do not have a financial implication.</p> <p>All other changes on the table have been made to reflect the new Committee Structure.</p> <p>Appendix 2 Table B</p> <p>Less than £5,000 for property transactions in Barnet is not relevant in today's market and therefore the lower value has been increase to £10,000 which is still considered low. This will allow the majority of regular commercial lettings to proceed through one common and more efficient process. This will still be a summary DPR sign off.</p> <p>All other changes on the table have been made to reflect the new Committee Structure.</p>	
7	HR Regulations	Appendix G Pages 133 to 138	<p>These have been reviewed to cover the following:</p> <p>Generic references to 'Human Resources' have been changed to make clear the Head of Paid Service's statutory responsibilities and to ensure a named position has responsibility;</p> <p>References to the Executive have been deleted.</p> <p>One consequence of this is that any Member, and not only those on the Executive, is able to make a well-founded objection to any proposed Remuneration Committee appointments.</p>	Agreed as per report.
7	Members Code of Conduct	Appendix H Pages 139 to 148	<p>Retain the current Code but make changes where reference has been made to Executive to the following paras:</p> <p>1(4), 8.3, 8.4, 9.2, 12.1, 12.2 and Appendix 2, section (i).</p> <p>At 11.1 add a requirement to declare gifts and hospitality offered but declined, as well as accepted, that are over the</p>	Agreed as per report.

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			£25 de minimis level.	
8	Members Planning Code of Practice	Appendix I Pages 149 to 158	No change other than removing reference to Executive at para 1.1	Agreed as per report.
9	Members licensing Code of Practice	Appendix J Pages 159 to 170	No changes proposed.	Agreed.
10	Officer Code of Conduct	Appendix K Pages 171 to 186	No changes proposed.	Agreed.
11	Protocols for Member-Officer Relations	Appendix L Pages 187 to 202	Below paragraphs have been amended as they made reference to Executive: 2.2, 2.4, 5.6, 9.1, 9.2, 13.1	Agreed as per report with the following amendments:  9.9 (6 <sup>th</sup> bullet point) - Amend to read "The Chief Executive deals with appointment, induction, discipline and grievances. <i>The representatives of the Groups will conduct the appraisals. The Chief Executive will ensure the appraisals are undertaken by the Groups.</i>  9.9 (7 <sup>th</sup> bullet point) - Amend to read "Council Officers will not require the assistant to divulge confidential information regarding the group, its dealings or its members.
12	Code of Corporate Governance	Appendix M Pages 203 to 216	The Annual Governance Statement needs to be aligned to the Code of Corporate Governance. It is being reviewed with a view to approval by Audit Committee in July.	Agreed as per report.

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			<p>For the time being, the Code has been amended where it makes reference to Executive or Scrutiny function to ensure that it is compliant with the change to a Committee System:</p> <p>2.1, 2.2, 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, 6.1, 6.3</p>	
13	Public Participation Rules	Appendix N Pages 217 to 224	<p>There is a discrepancy between the procedure set out in Tree Preservation Regulations and the Council's Constitution in respect of Public Comments on Tree Preservation Orders.</p> <p>Section 4.1 of the Constitution states "For requests to speak on planning applications or tree preservation orders at planning Committee or Sub-Committee meetings, the following rules apply." However the term 'tree preservation orders' could be ambivalent, as there are two separate procedures;</p> <p>(i) Applications for consent to undertake treatment of tree(s) already included in an Order</p> <p>(ii) The formal procedure of making / confirmation of a Tree Preservation Order itself.</p> <p>In regards to the latter, the Constitution currently allows public speaking in circumstances that appear to undermine the legislative provisions for the making and confirming of TPOs as currently set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012; which is secondary legislation to the Town and Country Planning Act 1990.</p> <p>These detail that, as soon as practicable after making an Order, specified actions need to be undertaken which include serving / making available copies of the Order and information about how to submit objections or other representations in accordance with Regulation 6.</p>	Agreed as per report.

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			<p>Regulation 6 states that objections and representations to an Order must be made in writing within a specified time period and include particular information; and that only if compliance with the stated requirements could not reasonably have been expected, may any other objections or representations be taken into account.</p> <p>Regulation 7 states that the Council must consider duly made objections and representations before deciding whether to confirm an Order.</p> <p><u>Constitution - Public Comments</u></p> <p>There is no requirement in the Constitutional provisions that any substantive information be submitted – only a request to speak needs to be sent by post or e-mail.</p> <p>Therefore, there is no obligation to submit an objection or representation in accordance with the timeframe and specifications in the Regulations.</p> <p><u>This</u> potentially puts the Council in a position of considering objections or representations that have not been ‘duly made’ as defined by the Regulations and failure to adhere to statutory requirements could result in legal challenge to the validity of a Tree Preservation Order confirmed in such circumstances.</p> <p>Part of the reason for requiring that objections and representations be submitted in writing within a specified timeframe is to allow an opportunity for matters raised to be investigated - which may, for example, involve site visits, further assessment, or cartographical revisions. It would not be possible to undertake such investigations if the first mention of an issue is by a Public Speaker at a Committee or Sub-Committee meeting; and it may not be possible for an Officer to address Speakers or Members queries on new matters.</p>	

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			<p>As there is a six month time limit for confirmation of Tree Preservation Orders, there is potential for an Order to lapse if matters are raised at a very late stage with insufficient time for assessment.</p> <p><u>Proposed amendments</u></p> <p>It is therefore proposed that the wording of section 4.1 be amended to clarify that the requests to speak refer only to planning applications or applications for consent to undertake treatment of tree(s) included in a Tree Preservation Order – but not to making / confirmation of a Tree Preservation Order.</p> <p>It is also proposed that section 5.1, which details exceptions to public speaking arrangements, be amended to include the making / confirmation of Tree Preservation Orders as the procedure for making objections or representations is prescribed by the Town and Country Planning Act 1990 and the <u>Town and Country Planning (Tree Preservation) (England) Regulations 2012.</u></p>	

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