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| | <p>COUNCIL</p> <p>15 July 2014</p> |
| <p style="text-align: right;">Title</p> | <p>Review and Adoption of the Constitution</p> |
| <p style="text-align: right;">Report of</p> | <p>Head of Governance</p> |
| <p style="text-align: right;">Wards</p> | <p>All</p> |
| <p style="text-align: right;">Status</p> | <p>Public</p> |
| <p style="text-align: right;">Enclosures</p> | <p>Revised Constitution with Changes Tracked Appendix A – Introduction to Constitution Appendix B – Article 7 Appendix C – Responsibility for Functions Appendix D – Responsibility for Functions Annex A Appendix E – Full Council Procedure Rules Appendix F – Meeting Procedure Rules Appendix G – Budget and Policy Framework Appendix H – HR Regulations</p> |
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| <p>Summary</p> |
| <p>Various revisions are required to the Constitution to reflect proposed changes to the composition of committees and their size.</p> |
| <p>Moreover, an independent legal review of the Constitution has highlighted a small number of areas where the constitution needs to be changed.</p> |
| <p>The Council is required to formally adopt the revised Constitution in its entirety.</p> |

Recommendations

1. That Council agree that the Constitution be amended to incorporate the changes set out in this report and the track change versions attached at Appendix A to Appendix H.

2. That, subject to these amendments, the Council adopt its Constitution.

1. WHY THIS REPORT IS NEEDED

- 1.1 The constitution has been reviewed independently. The outcome of that review has been that some omissions/inaccuracies require amending immediately whilst others can be considered by the Constitution, Ethics and Probity Committee in due course.
- 1.2 A schedule of proposed amendments is included at paragraph 1.4.
- 1.3 In addition, having considered the advice on calculation of proportionality, a number of changes to the Committee structure are proposed to ensure the Council is operating lawfully and as efficiently as possible, specifically:
- To retain the principle of having members representing each ward, Area Planning Committees as proposed to be reconstituted so they will be exempt from proportionality rules. The East and West Planning Sub-Committees are to be replaced by three Area Planning Committees, covering the three parliamentary constituencies. These will be committees rather than sub-committees and hence appointed directly by Council, although the Chairmen will still be able to refer applications to the Planning Committee.
 - The proposal is that all committees, other than Policy and Resources Committee, are to have an odd number of members.

1.4 The following table represents the changes proposed to the section of the Constitution and the reasons for the changes:

| No. | Section | Reference | Issue Identified | Changes Made |
|-----|---|------------------------------------|---|---|
| 1 | Introduction | Appendix A Pages 141 to 146 | <ol style="list-style-type: none"> 1. Duty to undertake to comply with the Code of Conduct was in Section 52 of the LGA 2000, the application of which is now limited to Wales. So there is no longer a specific statutory power to require members to give such an undertaking. 2. The description of Council functions has not been updated since the change to a Committee system. So it only lists what were non-executive functions. This should be updated. 3. Description of Area Sub-Committees and Forums needs updating. | <p>Removed reference 'have to agree' replace with 'have agreed'.</p> <p>Deletion of the sub-section headed "Council Functions". Included the following "the council functions are set out in detail in the Responsibility for Functions section of the Constitution".</p> <p>Also clarified that "some functions of Council can be delegated to committees or officers."</p> <p>Section 'Area Sub Committees and Forums' updated to read 'Area Committees and Forums'.</p> |
| 2 | Article 7 – Committee, Sub-Committees, Area Committees and Forums and the Local Strategic | Appendix B Pages 147 to 148 | Now that the planning committees are proposed to be three area planning committees then Council needs to appoint them. | Removed 7.03 "The standing Sub-Committees which are set out in the table Responsibility for Functions of this Constitution to discharge the functions described in that table shall be appointed annually by a Special Joint Meeting of the parent Committees concerned, which |

| No. | Section | Reference | Issue Identified | Changes Made |
|-----|------------------------------|--------------------------------|---|---|
| | Partnership | | | <p>will meet immediately following the Annual Meeting of the Council.”</p> <p>Remove 7.04 “Area Planning Sub-Committee members can be appointed by members of the Planning Committee at Full Council.”</p> <p>Remove 7.05 “A member of an additional sub-committee or panel must be a member of the sub-committee appointing it.”</p> <p>Add to 7.06 “Chairman and Vice Chairman” to be appointed by Full Council to Committees or Subcommittees.</p> |
| 3 | Responsibility for Functions | Appendix C Pages 149 to 158 | <p>Functions of Council – should include approval of the Pay Policy Statement – Section 39(1) Localism Act 2011.</p> <p>Through-out document reference to Area Sub-Committees to be deleted as they are not a sub-committee to any standalone Committee.</p> <p>Clarifying at what point in the process a decision can be referred up to Full Council or the relevant parent. The advice is that the decision can only be referred up before a decision has been made - a decision is taken on an issue and it is not then normally re-taken by a different organ of the same public body.</p> | <p>Add to 1.20 in Full Council responsibilities “approval of annual pay policy statement”.</p> <p>Removal of “sub” through-out Constitution.</p> <p>In section 6.3 the bolded additions have been made “a specified number of Members of a Committee or Sub-Committee (see the table below) may require that a matter on which the Committee or Sub-Committee had proposed an action which was as yet untaken is referred up to the next meeting of Full Council</p> |

| No. | Section | Reference | Issue Identified | Changes Made |
|-----|--|--------------------------------|---|---|
| | | | | <p>or the relevant Committee to which the Committee or Sub-Committee would ordinarily reports, subject to the exceptions set out in 6.5, 6.6 and 6.7, 6.8 and 6.9 below.”</p> <p>In addition, within 6.7 of the section the following bolded addition has been made “The third exception is the Planning Committee, where no matter relating to the regulatory and enforcement functions of the Council relating to town and country planning may be referred up to the Council meeting except where required by law.”</p> |
| 4. | Responsibility for Functions – Annex A | Appendix D Pages 159 to 186 | <p>Annex A – Composition of Committees – throughout, membership of each Committee has been defined in places when this is a matter for each Group Leader to determine in respect of those seats allocated proportionally to his/her group. Council cannot prescribe this, so this should either be deleted or labelled as a convention rather than a rule.</p> <p>Remuneration Committee - Pay Policy Statement – This needs to be amended to make it clear that the Committee recommends the Pay Policy Statement to Full Council for approval – Section 39(1) Localism Act 2011</p> | <p>Changes have been made to each Committee to reflect convention for specific Committees such as Remuneration and Group Leaders Panel.</p> <p>Under responsibility for functions of the Remuneration Committee include under (a)” the annual pay policy statement for full Council approval”</p> |
| 5. | Full Council Procedure Rules | Appendix E Pages 187 | <p>Annual Meeting</p> <p>1(a) First on the agenda should be apologies for absence</p> | <p>Under 1(a) add in Apologies for absence and</p> |

| No. | Section | Reference | Issue Identified | Changes Made |
|-----|---------|-----------|---|--|
| | | to 198 | <p>and any declarations of interest, before any "proper" business.</p> <p>Ordinary Meetings</p> <p>Add after 1. Apologies for absence</p> <p>Declarations of interest should come before approval of the minutes of the last meeting, in case a member has an interest in any minute which is then subject to debate as to its accuracy.</p> <p>Role of the Mayor</p> <p>Casting Vote – Schedule 12 to the Local Government Act 1972 makes no requirement that the Mayor should have voted on the matter at first instance in order to have a casting vote. So this requirement should be deleted.</p> <p>Mover speaking on amendments – This is at odds with Paragraph 20.5 and debating all amendments before voting on each amendment. Suggest that after the mover of the amendment, it would be appropriate to give the mover of the substantive motion the right to respond (or to accept the amendment), rather than leaving him/her to the end of the debate.</p> | <p>under 1(b) Declarations of interest.</p> <p>Under Part 1 Statutory business (1) “apologies for absence”, and (4) declarations of interest and renumber order.</p> <p>Remove “provided s/he has voted when the motion or amendment was first put to the vote” from 15.1.</p> <p>Deleted at 21.3 “also has the right to reply at the close of the debate on each amendment, but must not otherwise speak on the amendment. At the end of the debate, the Mayor will call on the original mover of the Business Item to exercise his or her final right to reply.”</p> <p>Added in 21.3 after “the mover of the original</p> |

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| | | | | business item” “has the right to respond or to accept the amendment”. |
| 6. | Meeting Procedure Rules | Appendix F Pages 199 to 208 | <p>5.1 – Order of Business – it is suggested that apologies for absence and disclosures of interests be first on the agenda, before adoption of minutes as a correct record.</p> <p>7 – Members' Rights to Attend when they are not a member of the Committee – Add that, when a meeting excludes press and public, any member present who is not a member of the Committee must also withdraw, unless specifically invited by the Committee to remain. This will protect against any possible DPA breaches.</p> | <p>Meeting Rule 5.1 amended to state “apologies for absence, declaration of interests and the confirmation of the previous meetings are the first items of business at the meeting....”</p> <p>Add to Meeting Rule 7.2 “then Councillors who are not members of the Committee must also withdraw unless invited by the committee to remain.”</p> <p>Other changes have been made to reflect proposed changes in the size and names of Committees and substitute Member arrangements.</p> |
| 7. | Budget and Policy Framework Procedure Rules | Appendix G Pages 211 to 214 | Urgent Decisions – make it clear that the consent of the Chairman of Policy and Resources or of the Mayor is consent to the need for an urgent decision, not their agreement to the particular decision, as this would amount to delegation of decision-making to a single member. | Added in bold within 6 (a) (ii) if the Chairman of Policy and Resources Committee is of the opinion agrees that the need for a decision is a matter of urgency. |
| 8. | HR Regulations | Appendix H Pages 215 | Well Founded Objection – This amounts to a veto on the part of a single Councillor, and as such is unlawful. As any appointment of the Head of Paid Service has to be by | Delete 2.1.3 (b) – delete “where no well-founded objection has been made by any member of the council”. Also delete “Well founded objections from any member of the |

| No. | Section | Reference | Issue Identified | Changes Made |
|-----|---------|-----------|---|--|
| | | to 220 | <p>resolution of full Council, it is open to any Councillor to make objection at full Council, and Council can determine whether that objection is sufficient to persuade them not to make the appointment. On that basis, this provision is redundant and should be deleted.</p> <p>Well-Founded Objection – See comment above on 2.13. This rule also assumes that the Remuneration Committee defers the appointment in order to give notice to all members of the intended appointment and to await any objections. Delete this requirement.</p> | <p>Council that would disqualify the candidate and which are substantiated will be communicated to the Council as part of the report from Remuneration Committee.”</p> <p>Delete 2.1.4 (b) “An offer of employment as a chief officer shall only be made where no well-founded objection from any member of the Council has been received. “Appointment of Chief Officers is a function reserved to the Remuneration Committee. Well founded objections from any member of the Council that would disqualify the candidate and which are substantiated will be communicated to Remuneration Committee so that action can be taken.”</p> <p>Add under section “2.1.7 Dismissal” the following:</p> <p>“(b) Any decision to dismiss the Head of Paid Service must be taken by full Council</p> |

| No. | Section | Reference | Issue Identified | Changes Made |
|-----|---------|-----------|---|---|
| | | | Dismissal – It should say that any decision to dismiss the Head of Paid Service must be taken by full Council, and that dismissal of Chief Officers shall be by decision of the Chief Officers Appointments Panel, which in the case of Barnet Council is the Remuneration Committee. | (c) Decisions to dismiss a Chief Officer shall be taken by the Remuneration Committee”. |

In addition to the review of the Constitution the following table highlights changes to the Constitution that were necessary following review of the proportionality report elsewhere on the agenda:

| No. | Section | Reference | Changes contained within Document | Changes Made | | | | | | | | | | | | | | | | | | |
|---|------------------------------|--------------------------------|---|--|-----------|-------------------------|--------------------------|-------------------------------------|----|----|---|----|---|-----------------------------------|----|---|-------------|----|----|--------------------------------|----|---|
| 1 | Responsibility for Functions | Appendix D Pages 159 to 186 | <p>The size of each Committee has been reviewed in most cases to ensure an odd number.</p> <p>The Appeals Committee has been deleted from the Constitution as it has not met for a number of years.</p> | <p>The following have been amended:</p> <table border="1"> <thead> <tr> <th>Committee</th> <th>Current Membership size</th> <th>Proposed Membership size</th> </tr> </thead> <tbody> <tr> <td>Performance and Contract Management</td> <td>10</td> <td>11</td> </tr> <tr> <td>Children's Education Libraries and Safeguarding</td> <td>10</td> <td>9</td> </tr> <tr> <td>Adults and Safeguarding Committee</td> <td>10</td> <td>9</td> </tr> <tr> <td>Environment</td> <td>10</td> <td>11</td> </tr> <tr> <td>Assets Regeneration and Growth</td> <td>10</td> <td>9</td> </tr> </tbody> </table> | Committee | Current Membership size | Proposed Membership size | Performance and Contract Management | 10 | 11 | Children's Education Libraries and Safeguarding | 10 | 9 | Adults and Safeguarding Committee | 10 | 9 | Environment | 10 | 11 | Assets Regeneration and Growth | 10 | 9 |
| Committee | Current Membership size | Proposed Membership size | | | | | | | | | | | | | | | | | | | | |
| Performance and Contract Management | 10 | 11 | | | | | | | | | | | | | | | | | | | | |
| Children's Education Libraries and Safeguarding | 10 | 9 | | | | | | | | | | | | | | | | | | | | |
| Adults and Safeguarding Committee | 10 | 9 | | | | | | | | | | | | | | | | | | | | |
| Environment | 10 | 11 | | | | | | | | | | | | | | | | | | | | |
| Assets Regeneration and Growth | 10 | 9 | | | | | | | | | | | | | | | | | | | | |

| No. | Section | Reference | Changes contained within Document | Changes Made | | |
|-----|------------------------------|--------------------------------|--|--|-----|--------|
| | | | | Housing | 10 | 9 |
| | | | | Community Leadership | 10 | 11 |
| | | | | Licensing | 10 | 11 |
| | | | | Audit Committee | 5-7 | 7 |
| | | | | Planning | 10 | 11 |
| | | | | Health Overview and Scrutiny | 10 | 9 |
| | | | | Constitution, Ethics and Probity | 8 | 7 |
| | | | | Appeals | 10 | Delete |
| | | | | Pensions | 6 | 7 |
| | | | | Chipping Barnet Area Planning Committee | N/A | 7 |
| | | | | Finchley and Golders Green Area Planning Committee | N/A | 7 |
| | | | | Hendon Area Planning Committee | N/A | 7 |
| 2 | Responsibility for Functions | Appendix D Pages 159 to 186 | The section amended to include Partnership Boards It is considered more appropriate for reserved matters of | Partnership Boards added to title of the section. Move 'to consider reserved matters of the Joint Venture Company (JVCO)' from the Terms of | | |

| No. | Section | Reference | Changes contained within Document | Changes Made |
|-----|------------------------------|--------------------------------|--|--|
| | | | the Joint Venture Company (JVCO) to come to Performance and Contract Management | reference of Policy and Resources to those of Performance and Contract Management. |
| 3 | Responsibility for Functions | Appendix D Pages 159 to 186 | Co-Opted Members on the Children’s Education Libraries and Safeguarding Committee currently having voting rights, the proposal is that this is changed. | Under Children’s Education Libraries and Safeguarding under Membership delete the following “but only vote on those identified on the agenda as being education matters” and replace with “but cannot vote”. |
| 4 | Responsibility for Functions | Appendix D Pages 159 to 186 | <p>Currently the Terms of reference of the Health Overview and Scrutiny Committee include:</p> <p>The Health Overview and Scrutiny Committee is authorized pursuant to Regulation 30 Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013/218 to establish together with the health overview and scrutiny committees of one or more other local authorities a joint overview and scrutiny committee. Any such joint overview and scrutiny committee shall have such terms of reference and shall exist for so long, as the appointing Overview and Scrutiny Committees may agree.</p> <p>It is proposed that this be clarified and amended so that Full Council (which meets more regularly) is able to establish such a committee. However appointment to all committees is a matter for Full Council.</p> | <p>Insert the words Full Council is authorised’ in the first sentence.</p> <p>Add a sentence ‘appointment of Members to any such Committees established can only be made by Full Council’.</p> |

2. REASONS FOR RECOMMENDATIONS

- 2.1 These recommendations are put forward to ensure that the Council's Constitution complies with relevant legislation.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 An alternative of not rectifying known legal disparities or incorrect application of the proportionality rule would leave the Council at risk of having its decisions legally challenged.

4. POST DECISION IMPLEMENTATION

- 4.1 If agreed, the changes proposed will take immediate effect for the remainder of the meeting. Further changes will be reviewed by Constitution, Ethics and Probity Committee.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

An accurate Constitution with correctly constituted committees will assist the Council in meeting all of its Corporate Plan priorities.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- There are no specific resource implications and most of the Rules in the Constitution governing the Use of Resources are unchanged as a result of this exercise.

5.3 Legal and Constitutional References

- 5.3.1 Proportionality Rules are governed by the 1989 Local Government and Housing Act and the 1990 Local Government Committees and Political Groups Regulations and Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218).

- 5.3.2 Only Full Council may adopt or amend the Constitution - Constitution, Responsibility for Functions.

5.4 Risk Management

- 5.4.1 The actions proposed in this report, together with regular review through the Constitution Ethics and Probity Committee, mitigate the risk that the Council takes decisions that it is not entitled to by law, or is otherwise ineffectively governed.

5.5 Equalities and Diversity

- 5.5.1 A compliant and fit for purpose Constitution assists the authority in meeting its Public Sector Equalities Duty under the 2000 Act.

5.6 Consultation and Engagement

5.6.1 None

6. BACKGROUND PAPERS

6.1 None.