

	<p><b>Constitution, Ethics and Probity Committee</b></p> <p><b>31 March 2015</b></p>
<p><b>Title</b></p>	<p><b>Constitution Review</b></p>
<p><b>Report of</b></p>	<p>Head of Governance (Acting)</p>
<p><b>Wards</b></p>	<p>None</p>
<p><b>Status</b></p>	<p>Public</p>
<p><b>Enclosures</b></p>	<p>Appendix A: Article 9 (Chief Officers)                  Appendix B: Responsibility for Functions                  Appendix C: Responsibility for Functions, Annex A (Committees Membership and Terms of Reference)                  Appendix D: Responsibility for Functions, Annex B (Scheme of Delegated Authority to Officers)                  Appendix E: Meetings Procedure Rules                  Appendix F: Public Participation &amp; Engagement Rules                  Appendix G: Access to Information Procedure Rules                  Appendix H: Members Information Management Policy                  Appendix I: Financial Regulations                  Appendix J: Contract Procedure Rules                  Appendix K: Protocols for Member / Officer Relations                  Appendix L: Full Council Procedure Rules</p>
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<p><b>Summary</b></p>
<p>This report seeks discussion and approval of revisions to the Constitution following the review of elements which require updating and review.</p>

## **Recommendations**

- 1. That the Committee recommend to Council 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 K.**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1 The Council adopted a new Constitution at their annual meeting on 2 June 2014 when a Committee System form of governance was introduced. The new system has now completed nearly three full cycles of committee meetings:
  - June – July 2014;
  - September – December 2014; and
  - January – March 2015
- 1.2 At the Committee meetings held on 2 September and 25 November 2014, a number of changes were proposed to ensure the smooth running of committees most of which were approved for referral to Council. These changes to the constitution were adopted by Council on 23 September and 16 December 2014 respectively.
- 1.3 Since the November meeting of the Committee, a number of other issues have been identified. Changes to improve clarity in a number of areas are proposed in section 1.4 below.

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

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
1	Article 9, Chief Officers	Page 25	<p>The Commissioning Restructure and Associated Senior Management Positions report considered by the General Functions Committee on 13 October 2014 approved the deletion of a number of senior officer posts and the creation of new posts.</p> <p>As authorised by the General Functions Committee, the Chief Executive approved interim arrangements in December 2014 pending the final implementation of the Commissioning Restructure on 1 April 2015.</p> <p>The new senior officer structure will be effective from 1 April 2015 and Chief Officers need to be enabled to take decisions.</p>	<p>Amend section 9.01 (b) to reflect the new senior officer structure</p> <p>Updating titles of statutory officers in section 9.01 (c)</p> <p>Create a new section 9.01 (d) to include 'Other Officers' in the classification of Chief Officers</p> <p>Amend section 9.05 to reflect new officer responsible for the discharge of statutory functions.</p> <p>Amend section 9.06 to reflect new officer responsible for the discharge of statutory functions.</p> <p>Create a new section 9.08 to enable chief officers (other than those with statutory officer designations) to discharge the statutory functions that sit within their portfolio of responsibility.</p>
2	Responsibility for Functions, Annex B, Scheme of Delegated Authority to Officers	Page 77	<p>As set out in 1. above, the new senior officer structure needs to be reflected in the Constitution.</p> <p>As the all Commissioning Directors report into the Strategic Director for Commissioning, that post holder will be empowered to discharge all of the</p>	<p>Amend section 1.11 to reflect new officer post title.</p> <p>Amend section 1.13 to clarify wording around different categories of delegated decisions.</p>

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
			<p>functions exercised by the Commissioning Directors.</p> <p>The responsibility of statutory officers remains largely unchanged.</p>	<p>Amend delegated authority to the Chief Executive to reflect changes to the Strategic Commissioning Board.</p> <p>Delete responsibilities of Strategic Director for Communities.</p> <p>Create responsibilities for the Strategic Director of Commissioning with authority to discharge any of the functions delegated to the Commissioning Directors.</p> <p>Designate the Commissioning Director for Children &amp; Young People as the statutory Director of Children's Service and include additional responsibilities as approved in the Commissioning Restructure.</p> <p>Designate the Commissioning Director for Children &amp; Young People as the statutory Director of Children's Service and include additional responsibilities as approved in the Commissioning Restructure.</p> <p>Designate the Commissioning Director for Adults &amp; Health as the statutory Director of Children's Service and include additional responsibilities as approved in the Commissioning Restructure.</p>

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
				<p>Add new sections detailing the responsibilities of the Commissioning Director for Environment and the Commissioning Director for Growth &amp; Development.</p> <p>Delete the responsibilities of the Strategic Director for Growth &amp; Environment.</p> <p>Amend the post title of the Director of Public Health to accord with the new title designated in the Commissioning Restructure.</p>
3.	Responsibility for Functions, Annex B, Scheme of Delegated Authority to Officers	Page 77	<p>The Openness of Local Government Bodies Regulations 2014 require that officer decisions:</p> <ul style="list-style-type: none"> <li>• to grant a licence;</li> <li>• which affect the rights of an individual; or</li> <li>• the award of a contract or expenditure which materially affects the authorities financial position</li> </ul> <p>must be published including date, reasons and alternative options</p> <p>Whilst in practice the Council already adhere to these requirements through the arrangements for publish full and summary delegated powers reports, the amendments ensure full compliance with the Regulations.</p>	Amend section 1.6 to add the officer decisions prescribed in the regulations to the list of matters where formal reporting of officer decisions will take place

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
4.	Responsibility for Functions, Pension Fund Compliance Statement	Page 36	<p><u>Issue</u> The Public Service Pensions Act 2013 requires the establishment of Pension Boards to assist local authorities with the effective management of local pension funds. Detailed proposals for the composition of the local pension board will be considered by the General Functions Committee at their meeting on 23 March 2015. The report to the General Functions Committee contains three options for membership of the board; the various options are reflected in the tracked changes in the Pension Fund Compliance statement. The final composition option agreed by the General Functions Committee will be reported verbally to this Committee, and the version of the Pension Fund Compliance Statement reported to Council on 14 April 2015 will reflect the agreed composition option.</p>	<p>Amended section 1.2 of the Pension Fund Compliance Statement to include a reference to the Local Pension Board</p> <p>Add to new section 2.3 to include the council's responsibilities in relation to the Local Pension Board. Once the preferred option has been agreed by the General Functions Committee, two of the three options will need to be deleted.</p> <p>Add a new section 2.4 to detail the responsibilities of the Local Pension Board.</p>
5.	Responsibility for Functions, Annex A	Page 41	<p>Residents Forum chairmen have requested that the deadlines for submitting local matters (or issues) is moved back to 10am <b>five</b> working days before the meeting for the following reasons:</p> <ul style="list-style-type: none"> <li>i) to allow officers additional time to prepare more detailed responses to issues; and</li> <li>ii) enable time for the Forum chairmen to review the responses prior to publication</li> </ul> <p>Members have requested that if the deadline for submitting issues is changed to five working days</p>	<p>Amend the terms of reference of Residents Forums to include the requested changes.</p> <p>Amend the wording relating to post-Forum responses to clarify that further written responses will be provided only where the Forum Chairman has undertaken to provide these.</p> <p>Amend wording to include a provision for Chairmen to accept urgent items at their discretion.</p>

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			<p>before the Forum, there should be a new provision which allows forum Chairmen to accept urgent items at their discretion.</p> <p>In some circumstances issues raised at Forums are resolved by:</p> <ul style="list-style-type: none"> <li>i) providing a written response in advance of the meeting; and/or</li> <li>ii) the verbal response provided by an officer or the Forum Chairman at the meeting.</li> </ul> <p>It is proposed that discretion be given to the Chairman to stipulate when a further written response should be provided to the issue raised, or whether the matter is closed following discussion at the Forum. Introducing this mechanism would ensure that follow-up actions were only undertaken when Forum Chairman deemed this appropriate.</p>	<p>Amended wording to give discretion to the Forum Chairman to stipulate when a further written response should be provided to the issue(s) raised.</p>
6.	Public Participation & Engagement Rules	Page 109	<p>The current restrictions and exceptions for public comments and questions prevent members of the public from speaking on matters going before the Licensing Committee. It is proposed to remove that restriction as members of the public may wish to comment or ask questions on borough-wide licensing policy issues. A restriction would be retained in relation to Licensing Sub-Committees as there is a separate procedure for making representations on licensing applications prescribed in the Licensing Act 2003.</p>	<p>Amend section 5.2 to remove the restriction around submitting comments/ questions at the Licensing Committee.</p>

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
7.	Public Participation & Engagement Rules	Page 109	There is currently a lack of clarity around when public comments should be taken at committees (i.e. at the start of the meeting, or at the beginning of the relevant agenda item). The current rules also don't specify whether comments or questions will be taken first during the 'public questions and comments' part of the meeting. The proposed changes clarify the arrangements.	Move section 2.3 and create new expanded section 1.4 to outline how public comments and questions will be structured at committees
8.	Full Council Procedure Rules	Page 207	The Leader of the Council no longer has any delegated decision-making powers and cannot therefore report to the Annual Council meeting on his decision to appoint a Deputy Leader. The decision to appoint a Deputy Leader should therefore be taken by the Council.	Amend section 1 (e)
9.	Responsibility for Functions, Annex A	Page 41	<p>There is no reference in the terms of reference of the Community Leadership Committee to their role in determining applications for buildings / land to be listed as an Asset of Community Value (Community Right to Bid)</p> <p>A summary of the legislation relating to the 'community right to bid' is detailed in section 5.3.4 below.</p>	Amend the terms of reference of the Community Leadership Committee to include this function
10.	Responsibility for Functions, Annex A	Page 41	Consideration/approval of health and safety policies currently sits within the remit of the Policy & Resources Committee. Under previous governance arrangements, these functions were the	Delete 'Health and Safety' from the terms of reference of the Policy & Resources Committee and add to the terms of reference of the General Functions

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			<p>responsibility of the General Functions Committee. It is proposed that the General Functions Committee resume responsibility for considering and agreeing health and safety policies.</p>	Committee
11.	Responsibility for Functions, Annex A	Page 41	<p>The current wording of the constitution requires theme committees to develop (above inflation) fees and charges for those areas under their remit for consideration by the Policy &amp; Resources Committee. In practice, this process has been complex to manage due to the timing of theme committees and the Policy &amp; Resources Committee, and the requirement for public consultation on some fees and charges. It is proposed that the theme committees assume responsibility for: i) agreeing above inflation fees and charges; and ii) proposing new charges for those areas under their remit as this would streamline the process.</p> <p>It is also proposed to clarify that decision routes for the following fees and charges:</p> <ul style="list-style-type: none"> <li>• Licensing Committee – recommend above inflation licensing fees and charges to the Policy &amp; Resources Committee for approval;</li> <li>• Planning Committee – recommend above inflation planning and building control fees and charges to the Policy &amp; Resources Committee for approval;</li> <li>• General Functions Committee – recommend</li> </ul>	Amend terms of reference of theme committees, the Licensing Committee, Planning Committee and General Functions Committee to reflect the decision-making arrangements proposed.

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			above inflation land charges fees to the Policy & Resources Committee for approval.	
12.	Public Participation and Engagement Rules	Page 109	Officers are proposing to clarify the procedure for speaking at planning committees and area committee meetings. In relation to area committees, the changes are proposed to allow speakers on Area Committee Budgets applications to address area committees on their applications. The rules as currently drafted don't permit this. The proposed changes will also allow residents to address area committees on highways schemes which are presented to them for determination.	Delete section 4.1 as requests to speak could be made on items that are no planning applications or tree preservation orders.  Revise section 4.4 to clarify the rules as they apply to planning committees and remove references to Members rights to address committees as these are covered in Meetings Procedure Rules  Revise subsequent sections to remove reference to planning committees
13.	Meetings Procedure Rules	Page 99	The Openness of Local Government Bodies Regulations 2014 requires the council to permit the recording and filming of proceedings at meetings. Whilst in practice the council already permit the recording and filming of proceedings at meetings, it is proposed that the Meetings Procedure Rules be amended to include a policy for recording / filming at meetings.	Add a new section 17 to detail the Council's policy in relation to recording and filming of proceedings at meetings
14.	Access to Information Procedure Rules	Page 117	The Access to Information Procedure Rules, as currently drafted, refer both to the rights of elected Members and members of the public in relation to accessing council information. They also make	Amendments to give effect to the proposed changes  Details of the Members Information

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			<p>inappropriate references to the public interest test (which arises from the Freedom of Information Act 2000) when referring to the exempt provisions in the Access to Information Act 1985. The changes proposed will have the effect of:</p> <ul style="list-style-type: none"> <li>i) Detailing the public's rights of access to committee information in the Access to Information Procedure Rules (Appendix G); and</li> <li>ii) Removing any references to elected Members rights of access to non-Committee information from the Access to Information Procedure Rules and detailing these in the Members Information Management Policy (Appendix H)</li> </ul>	<p>Management Policy (to be considered at the General Functions Committee on 23 March 2015) are appended for the committee's information</p>
15.	Protocols for Member Officer Relations	Page 193	The changes detailed at 14. above also require revisions to the Protocols for Member Officer Relations	Amendments to support the changes to the Access to Information Procedure Rules and Members Information Management Policy referred to above
16.	Responsibility for Functions	Page 31	Section 6.7 of Responsibility for Functions details that town and country planning matters cannot be referred by the Planning Committee. However, the Planning Committee is included in the table of committees/sub-committees that can refer items which is a seeming conflict. Whilst the Planning Committee is restricted from referring town and country planning matters, it has other responsibilities which can be referred up (i.e.	Amend section 6.7 to stipulate that non-planning matters can be referred by the Planning Committee

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
			commons registrations, designating neighborhood area, etc.)	
17.	Contract Procedure Rules	Page 169	<p>The 2014 EU Procurement Directives came into effect on 17 April 2014.</p> <p>The UK Government prioritised the Public Sector Directive for early implementation because it deregulates and simplifies the rules for where most procurement spend and activity takes place. The UK's implementing regulations, the Public Contracts Regulations 2015, were laid in Parliament on 5 February 2015 and took effect from 26 February 2015.</p> <p>They are a major overhaul of current procurement practices and set out the legal framework for future procurement activity. The changes include:</p> <ul style="list-style-type: none"> <li>• An introduction of new procedures</li> <li>• Amendments to advertising requirements including those below thresholds</li> <li>• The ability to reserve contracts for mutual and social enterprises</li> <li>• The removal of Part A and Part B, and the introduction of a light touch regime for specified contracts</li> <li>• A new obligation to consider dividing contracts into lots</li> <li>• Clarity around specifications and the use of social labels</li> </ul>	<p>Amendments to the Contract Procedure Rules to reflect new regulations</p> <p>Merge Contract Procedure Rules and Procurement Code of Practice.</p> <p>Subject to the changes being approved by the Committee, delete Procurement Code of Practice as a separately published section of the Constitution</p>

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
			<ul style="list-style-type: none"> <li>• Changes to mandatory and discretionary exclusions</li> <li>• Amendments to timescales</li> </ul> <p>As a consequence the Council's Contract Procedure Rules have been reviewed to ensure they are compliant with the new regulations. As part of the review the Council's Procurement Code of Practice was also amended. The Code of Practice is now incorporated in the revised Contract Procedure Rules and other guidance documents and it is recommended to abolish this document as it is repetitive and open to confusion.</p>	
18.	Responsibility for Functions	Page 31	<p>Members Rights to Refer Matters to a Parent Body was revised at Council in December 2014 to allow committees to refer matters to the parent body after the vote had been taken (section 6.3). However, section 6.2, which details the procedure for the Chairman of an Area and/or Area Planning Committee to refer matters to the parent body, requires this the referral to happened <u>before</u> the vote is taken.</p> <p>It is proposed to amend section 6.2 to align with section 6.3 to ensure that the referral happens after the vote in both cases.</p>	Amend section 6.2
19.	Responsibility for Functions, Annex A	Page 41	Officers have recommended that the Community Leadership Committee be given responsibility for	<i>No changes proposed. Amendments will be made subject to the Committee's</i>

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			approving all grants to the voluntary sector, rather than current arrangements which require the relevant theme committee to approve grants in their remit over £5,000	<i>approval</i>
20.	Responsibility for Functions, Pension Fund Compliance Statement	Page 36	At present, there is no explicit reference in the terms of reference of the Pension Fund Committee to the requirement for them to approve the Pension Fund Statement of Accounts. In 2014, this resulted in the Pension Fund Statement of Accounts being considered by the Audit Committee rather than the Pension Fund Committee as should have been the case.	Amend the Pension Fund Compliance Statement (which includes the responsibilities of the Pension Fund Committee) to include approval of the Pension Fund Statement of Accounts
21.	Responsibility for Functions, Annex A	Page 41	Merge the functions of the General Functions Committee with those of the Remuneration Committee, except for functions relating to dealing with Chief Officer Appointments, Discipline and Capability matters.	Merge the terms of reference of the General Functions Committee with those of the Remuneration Committee, except for functions relating to dealing with Chief Officer Appointments, Discipline and Capability matters
22.	Responsibility for Functions, Annex A	Page 41	<p>Under the Localism Act 2011, there is an eight-week statutory deadline for responding to Community Right to Bid nominations. These ask the Council to determine whether land or buildings pass certain statutory tests and should as a result be registered as Assets of Community Value.</p> <p>Meetings of the full Community Leadership Committee do not always fall within this timeframe</p>	<i>No changes proposed. Detailed proposals will be made subject to the Committee's approval of the proposal</i>

No.	Section	Reference	Issue Identified / Proposed by	Changes Made
			<p>and another decision-making route must therefore be found in these cases.</p> <p>The Chairman of the Community Leadership Committee and officers have proposed the establishment of a Community Leadership Sub-Committee, comprising the chairman, vice-chairman and opposition spokesperson, to convene only for the purposes of considering Community Right to Bid applications in cases where there is no full meeting of the Community Leadership Committee scheduled which falls within the eight week statutory deadline.</p>	

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 The Constitution, Ethics and Probity Committee are required under their terms of reference to proactively review and keep under review all aspects of the Constitution. These proposals are recommended to ensure the smooth running of the Council.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 None considered. The options proposed in this report have been put forward as a result of experience so far in operating the Constitution, for the Committee to consider whether changes are required.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 The recommendations will form part of a report for Full Council to make final approval.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 Barnet London Borough Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded, properly accounted for, and used economically, efficiently and effectively. By keeping the Constitution under review it ensures that the framework in which the Council is governed supports the delivery of corporate priorities and performance.

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

- 5.2.1 There are no resource implications as a result of these proposals.

### **5.3 Legal and Constitutional References**

- 5.3.1 Legal implications as they relate to the recommended amendment to the Terms of Reference of the Performance & Contract Management Committee are detailed in 1.6 (8) above.

- 5.3.2 Council's Constitution, Responsibilities for Functions, Annex A – the Constitution, Ethics and Probity Committee terms of reference includes responsibility to "proactively to review and keep under review all aspects of the Council's Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to the Council".

- 5.3.3 The Openness of Local Government Bodies Regulations 2014 provides new

rights for people to record and film council meetings. It is proposed to amend the Council's Constitution to comply with these rights.

5.3.4 Part 5, Chapter 3 of the Localism Act 2011 provides for a scheme called 'assets of community value'. This requires unitary councils to maintain a list of 'community assets'. It has also become known as the 'community right to bid'. Community assets can be nominated by groups with a connection with the community. Individuals cannot nominate community assets. If the nomination is accepted, local groups will be given time to come up with a bid for the asset when it is sold. The right to bid only applies when an asset's owner decides to dispose of it. There is no compulsion on the owner to sell it. The scheme does not give first refusal to the community group; and it is not a community right to buy the asset, just to bid. This means that the local community bid may not be the successful one.

#### **5.4 Risk Management**

5.4.1 The process of managing changes to the Constitution through the Constitution Ethics and Probity Committee ensures that the proposals are developed through Member participation and consideration.

5.4.2 The proposed amendment to the Meetings Procedure Rules relating to the introduction of rules for to the management of urgent late items of business for committees will introduce additional controls around the publication of late information for committees. This will ensure that only genuinely urgent decisions come before committees as late items of business thereby mitigating against the risk of committee decisions being liable to challenge.

#### **5.5 Equalities and Diversity**

5.5.1 The decision making processes of the Council, as enshrined within the Constitution, need to be transparent and accessible to all sectors of the community.

#### **5.6 Consultation and Engagement**

5.6.1 None in the context of this decision.

### **6. BACKGROUND PAPERS**

6.1 General Functions Committee, 13 October 2014, Commissioning Restructure and Associated Senior Management Positions:  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CIId=174&MIId=7800&Ver=4>

- 6.2 Chief Executive, Delegated Powers Report, 19 December 2014, Commissioning Restructure – Interim Arrangements:  
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=5688>
- 6.3 General Functions Committee, 23 March 2015, Establishment of Local Pension Board:  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=174&MId=7802>
- 6.4 The Openness of Local Government Bodies Regulations 2014:  
<http://www.legislation.gov.uk/uksi/2014/2095/contents/made>  
<https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide>
- 6.5 General Functions Committee, 23 March 2015, Members Information Management Policy:  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=174&MId=7802>