

	<h2>Constitution, Ethics and Probity Committee</h2> <h3>16 March 2017</h3>
<b>Title</b>	<b>Constitution Review</b>
<b>Report of</b>	Monitoring Officer Head of Governance
<b>Wards</b>	N/A
<b>Status</b>	Public
<b>Enclosures</b>	Appendix A - Financial Regulations Appendix B - Article 11 - Finance Contracts Land Disposal and Legal Matters Appendix C - Public Participation and Engagement Rules Appendix D - Responsibility for Functions Appendix E: Appendix E - Responsibility for Functions - Annex A (CLC ToR - Area Committee Budgets) Appendix F - Meetings Procedure Rules (Area Committee Budgets) Appendix G - Contract Procedure Rules Appendix H - Responsibility for Functions - Annex A (Strategic Planning Pre-Applications) Appendix I - Members Planning Code of Practice Appendix J - Responsibility for Functions - Annex A (P&CM ToR) Appendix K - Meetings Procedure Rules Appendix L - Responsibility for Functions - Annex A (CLC ToR - Community Safety Scrutiny) Appendix M - Protocols for Member Officer Relations
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<b>Summary</b>	
This report seeks discussion and approval of revisions to the Constitution following the review of elements which require updating and review.	

<b>Recommendations</b>
<p><b>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 M.</b></p>

**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 system has now been in operation for over two municipal years.
- 1.2 The Constitution, Ethics and Probity Committee has met regularly over that period to ensure that they discharge their responsibility to proactively 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.
- 1.3 Since the Committee last met on 16<sup>th</sup> November 2016 a number of changes have been identified to ensure that the Constitution is updated in accordance with new legislative requirements and best practice.

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	Changes Made
1	Financial Regulations	Section 4.4 – Budget Management and Monitoring	<p>Following the adoption of the Committee System, it was recognised that some financial and budget management functions had incorrectly been moved to be within the remit of the Performance and Contract Management. The reason for this is that those functions had been transposed from the terms of reference of the Cabinet Resources Committee, a body which had executive decision making powers. In June 2015 the Constitution, Ethics and Probity Committee agreed that reference to financial and budget functions be deleted and replaced with Policy and Resources Committee.</p> <p>It has transpired that Section 4.4.3 of the Financial Regulations currently states the Performance and Contract Management</p>	<p>Amend section 4.4.3 of the Financial Regulations to delete 'Performance and Contract Management' and replace with 'Policy &amp; Resources Committee'. Amended section to read as follows:</p> <p>Capital Virements            Policy &amp; Resources Committee approval is required for all capital budget and funding virements and yearly profile changes (slippage or accelerated spend) between approved capital programmes i.e. as per the budget book. The report must show the proposed:</p> <ul style="list-style-type: none"> <li>i) Budget transfers between projects and by year;</li> <li>ii) Funding transfers between projects and by year; and</li> <li>iii) A summary based on a template approved by the Section 151 Officer</li> </ul>

No.	Section	Reference	Issue Identified	Changes Made
			approval is required for all capital budget and funding virements and yearly profile changes. This requires amendment to align with the changes made to the Financial Regulations in June 2015.	
2	Article 11 – Finance, Contracts, Land Disposal and Legal Matters	11.04 – Authentication of Documents; and 11.05 – Common Seal of the Council	Following a review of current arrangements officers are recommending that the sealing procedure detailed in Article 11 be revised to: increase threshold for sealing documents to be consistent with the thresholds in the Contract Procedure Rules; and revise the sections relating to Authentication of Documents and Common Seal of the Council to reflect current practice and improve clarity	Delete sections 11.04 and 11.05 and replace with:  “Any legal document concerning property and any contract with a value exceeding the EU threshold currently £164,176, entered into on behalf of the local authority shall be made in writing made under the Common Seal of the Council attested by at least two Chief Officers or their duly authorised deputies. This is in relation to the Contract Procedure Rules.  An item that requires the Common Seal of the Council may be: <ul style="list-style-type: none"> <li>• All Contracts awarded following a Procurement process with a Contract value above the EU financial threshold shall be sealed (unless the Monitoring Officer or delegated officers direct otherwise)</li> <li>• Contracts, Dynamic Purchasing Systems, approved lists or Framework Agreements</li> <li>• All property documents (i.e. sales, purchases, leases, licences etc.)</li> <li>• A contract which the Monitoring Officer or officer with authority considers it desirable should be sealed, other than as specified above</li> </ul>

No.	Section	Reference	Issue Identified	Changes Made
				<p>Where it becomes apparent to an Officer involved in the sealing or execution of documents that they have a personal interest in a matter to which the document relates a declaration of the existence and nature of that interest should be made as soon as possible.</p> <p>An entry of the sealing of every deed or document to which the Common Seal has been affixed shall be made within the Electronic Sealing Logging System to be provided for the purpose.</p> <p>Sealing usually involves the Assurance Director/Monitoring Officer and the Head of Governance, or one of their nominated deputies for the purpose of authentication. In their absence, the Chief Executive, the Head of Legal or Chief Officer concerned with the matter to which the document relates can be called on to seal documents. The aforementioned officers can authorise in writing for another officer to deputise for them in their absence.</p> <p>Authentication, for this purpose, means the evidence that a document has been properly approved by full council, a committee or an officer with the appropriate delegated authority.</p> <p>The Records Officer will present the relevant documents to the proper officer for sealing, marked with the Common Seal of the Council, for authentication and signing by the two signatories. Alongside the Common Seal two lines should be clearly marked with the term 'Authorised Signatory' for the purpose of sealing.</p> <p>Supporting documentation is required to seal a document, including a sealing note and evidence of authentication.</p>

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				<p>One copy document may be sealed if clearly designated "counterpart" on the cover page.</p> <p>An item can be rejected from sealing if there is insufficient evidence in the sealing note that the document has been properly authenticated.</p> <p>Once sealing has been completed, the names of the Officers which sealed will be listed on the Electronic Sealing Logging System which is maintained and retained by the Records Officer."</p> <p>Renumber subsequent section.</p>
3	Public Participation and Engagement Rules	Section 6 – Restrictions and Exceptions	The Public Participation and Engagement Rules as currently drafted do not restrict persons subject to the Unreasonably Persistent Complainants Policy from submitting questions and comments at committee meetings or items / questions at residents' forums. It is proposed to add a restriction in this regard to prevent persistent complainants from bypassing the council's complaints procedure.	<p>Amend section 6 as follows:</p> <p>"6. Restrictions and Exceptions</p> <p>Public questions, comments and items/questions to residents' forums are not permitted:...</p> <ul style="list-style-type: none"> <li>• If they relate to a matter submitted by someone who has been deemed to be subject to the Unreasonably Persistent Complainants Policy." </li></ul>

No.	Section	Reference	Issue Identified	Changes Made
4	Responsibility for Functions	Section 6 – Members’ Rights to Refer Matters to the Parent Body	As part of the Business Planning 2017 – 2020 proposals the Policy & Resources Committee are recommending to Full Council the deletion of the non-CIL element of the Area Committee Budgets to contribute to revenue savings. If agreed by Full Council on 7 March 2017, deletion of the funding stream will require updates to various sections of the Constitution which deal with this funding stream.	<p>Responsibility for Functions, Section 6.3 – delete existing text and replace with:</p> <p>“The Chairman of an Area Committee may refer applications to the Area Committee Budget to the Environment Committee. When referring the application the Chairman shall provide reasons for the referral.”</p> <p>Amend section 6.4 to remove reference to Area Committees being able to refer matters to a ‘relevant committee’ by deleting ‘...or relevant...’ in the table.</p>
5	Responsibility for Functions, Annex A – Terms of Reference of Committees, Sub-Committees and Partnership Boards	Terms of Reference of the Community Leadership Committee	As per item 4 above.	<p>Amend the terms of reference of the Community Leadership Committee to delete the following:</p> <p>“(14) Determining applications to the Area Committee Budget referred by Area Committees.”</p>

No.	Section	Reference	Issue Identified	Changes Made
6	Meetings Procedure Rules	Section 6 – Members’ Items for the Agenda	As per item 4 above.	<p>Amend Meetings Procedure Rules to remove reference to “...sponsoring an application...” and changing the deadline for submitting items from 12 days to 10 days. Revised wording to read:</p> <p>“Any Member will be permitted to have one matter only (with no sub-items) on the agenda for an Area Committee where the Member is proposing a drawdown from the Area Committee Budget. Members’ Items submitted for these purposes must be submitted 10 clear working days before the meeting. Items received after that time will only be dealt with at the meeting if the Chairman agrees they are urgent.”</p>
7	Contract Procedure Rules	Section 4 – Regulation and Legislation	Added a new sentence to section 4.5 to add a requirement that officers complete a conflict of interest form to ensure compliance with an audit recommendation for all projects	<p>Section 4.5 – add a new final sentence as follows:</p> <p>“A conflict of interest form is to be issued to all officers, and retained for all officers involved with a procurement exercise.”</p>
8	Contract Procedure Rules	Section 5 – Roles and Responsibilities	Amend section 5.1.8 to include the limit of £10,000 to provide clarity regarding which contracts are required to be included on the Annual Procurement Forward Plan	<p>Amend section 5.1.8 as follows:</p> <p>“Ensure that all new Contracts above the published limits, <b>£10,000</b>, and planned during the forthcoming financial year are clearly identified in their Budget and Annual Procurement Forward” Plan (APFP);</p>



No.	Section	Reference	Issue Identified	Changes Made
9	Contract Procedure Rules	Section 8 – Procurement Method	Amend section 8.10 to remove reference to PQQ (Pre-Qualification Questionnaire) and replace with reference to SQ (Selection Questionnaire) following an update to regulations	Amend section 8.10 as to read as follows:  “For Procurements below the EU financial threshold only Suitability Assessment Questions can be asked. This means there can be no SQ stage.”
10	Contract Procedure Rules	Section 9 – Single Tender Action	Insert a new section 9.3 to clarify application of single tender action threshold for works requirements	Insert a new Section 9.3 as follows:  “Single tender actions for contract awards above the EU financial threshold will only be agreed where one or more of the circumstances set out in rule 9.1 apply. Otherwise approval for single tender actions is only likely to be granted for contracts, including works contracts, below the financial threshold for services and supplies contracts (currently £164,176).”
11	Contract Procedure Rules	Section 14 – Contract Management	Insert new sections to the Contract Management requirements to highlight:  1. Insurance terms and conditions requirements following an insurance audit;  2. Emergency planning, business continuity requirements for contract delivery; and	Add new sections 14.4 – 14.6 as set out below and renumber subsequent sections:  “14.4 On each and every procurement the Contract Manager must ensure the agreement has:  a) wording in which the contractor agrees to indemnify the Council for all claims proceedings, actions and other matters relating to the contract, except where the Council is found to be legally liable; and  b) a clause in which the contractor agrees to certain service levels while dealing with claims arising from service failures; and

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			<p>3. Development requirements for support to local community and supply chain</p>	<p>c) a clause requiring the full range of relevant insurances and minimum levels to be provided by the contractor.</p> <p>Advice on relevant insurances must be obtained from the London Borough of Barnet Insurance Team.</p> <p>It should be noted the minimum level of required insurances of contractor is not directly related to the value of the contract. Using a risk based approach the Contract Manager and London Borough of Barnet Insurance Team will agree appropriate levels but as a guide, minimum levels, subject to amendment are as follows:-</p> <ol style="list-style-type: none"> <li>1) public liability £5,000000;</li> <li>2) employer's liability £5,000,000 (statutory minimum);</li> <li>3) officials indemnity/professional negligence (if required) £1,000,000;</li> <li>4) and any other insurance required by law or agreed in the contract.</li> </ol> <p>The Contract Manager must obtain from the contractor reasonable proof of the required insurance as set out in the contract before work commences, a broker letter will often be sufficient.</p> <p>If the required insurances expire before the contract end date, the Contract Manager must obtain from the contractor reasonable proof that the insurance has been renewed on expiring terms and conditions. If the insurance policy terms and conditions have changed, such changes must be</p>

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				<p>brought to attention of the Contract Manager and discussed with the London Borough of Barnet Insurance Team.</p> <p>14.5 For all contracts, in excess of £25,000, business continuity must be discussed and a business continuity plan confirmed as part of contract delivery.</p> <p>14.6 All contracts to be managed to ensure development and delivery of support to the local community and SME supply chain through the contract arrangement. This is to be monitored as a performance target to enable review reports.”</p>
12	Contract Procedure Rules	Section 17 – Definitions and Interpretations	To ensure compliance with the Public Contract Regulations 2015 a new section 17.26 to be inserted to refer to the Selection Questionnaire	<p>Add new section 17.26 as follows:</p> <p>“17.26 “SQ” means Selection Questionnaire in accordance with Procurement Policy Note (PPN) 8/16 regarding OJEU procurements. Accessibility to the form will be via the procurement portal with expectation that suppliers complete and submit online. In accordance with Public Contract Regulations 2015 these questions are to be in the form of declarations with successful contractor to provide support documents at point of proceeding to contract award.”</p>
13	Contract Procedure Rules	Section 17 – Definitions and Interpretations	To ensure compliance with the Public Contract Regulations 2015 section 17.27 requires additional wording to be included.	<p>Amend section 17.27 as follows:</p> <p>“Suitability Assessment Question” means a question which relates to information or evidence which the Council requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing. <b>In accordance with Public Contract Regulations</b></p>

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				<b>2015 these questions are to be in the form of declarations with successful contractor to provide at point of proceeding to contract award.</b>
14	Contract Procedure Rules	Section 17 – Definitions and Interpretations	Insertion of a new definition to support clause 14.6 to relating to supporting the local community and supply chain	Add a new section 17.28 as follows:  17.28 “Support to Local Community” refers to support through contract delivery to the communities which exist within London Borough of Barnet and delivery of benefit to these communities. Benefit to include consideration and provision of internships; apprenticeships; long term unemployed returning to work opportunities and support to local schools/community groups.”
15	Responsibility for Functions, Annex A, Terms of Reference of Committees, Sub-Committees and Partnership Boards	Terms of Reference of the Planning Committee	Members have given instruction that the Strategic Planning Pre-Application process should be discontinued which necessitates various Constitution amendments	Amend the terms of Reference of the Planning Committee to delete the following function:  “To receive and comment on any Strategic Planning Pre-Application Briefing.”
16	Members Planning Code of Practice	Section 4 – Predisposition, Pre-Determination	As set out at 15. above.	Delete section 4.6 as follows and renumber subsequent sections:  4.6 “This distinction is particularly important in the context of the Council’s practice of facilitating presentations to Planning

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		and Bias		<p>Committee by developers of schemes at the pre-application stage. After these presentations, the Committee Members question details of the development so that they have the opportunity to input into the design of these strategic developments. They will therefore express views on aspects of the development (such as its external appearance, impact on neighbours or transport network implications) which will often display predisposition around these elements. What the Members of the Committee should not do at this stage is to express a firm view on the development as a whole, as this could amount to predetermination. Such a view should only be formed at the end of the process when all the material considerations are available to the Members of the Committee to consider and weigh up before finalising their view.”</p>
17	Members Planning Code of Practice	Section 7 – Pre-Application Discussions	As set out at 15. above.	<p>Amend section 7.1 to delete the following text:</p> <p>“However, it would be easy for such discussions to become, or to be seen by objectors to become, part of a lobbying process on the part of the potential applicant. For this reason the Council have developed pre-application processes that enables engagement at the pre-application stage.”</p> <p>Delete section 7.2 as follows:</p> <p>“For major strategic applications the Council offers a service to potential applicants to present their schemes to the Council’s Planning Committee. Details of this are set out in the Planning Committee Procedure Rules. This is the way in which Planning Committee Councillors engage with these schemes and there</p>

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				<p>should therefore be no need to attend any other meeting with potential applicants or their agents/representatives.”</p> <p>Amend section 7.3 to delete the following wording: “In other cases...”</p> <p>Amend section 7.4 to delete the following wording: “..., but not subject to pre-application committee presentations,...”</p>

Items subject to a proposed use of the delegation to the Monitoring Officer to make minor amendments to the Constitution:

No.	Section	Reference	Issue Identified	Changes Made
1	Responsibility for Functions, Annex A, Terms of Reference of Committees, Sub-Committees and Partnership Boards	Terms of Reference of Performance & Contract Management Committee	Since 1 April 2016 Education and Skills services have been delivered by Cambridge Education. The terms of reference of the Performance & Contract Management Committee need to be amended to include reference to Cambridge Education as a Delivery Unit within the remit of the Committee.	<p>Amend the terms of reference of the Performance &amp; Contract Management Committee as follows:</p> <p>“Monitoring of Performance against targets by Delivery Units and Support Groups including Customer Support Group; Re: The Barnet Group (including Barnet Homes and Your Choice Barnet); HB Public Law; NSL (Parking Contractor); Adults &amp; Communities; Family Services; Education &amp; Skills (<b>including Cambridge Education</b>); Street Scene; Public Health; Commissioning Group; and Assurance.”</p>

No.	Section	Reference	Issue Identified	Changes Made
2	Meetings Procedure Rules	Rule 17.3	Residents' Forum and Area Committee Chairmen have agreed to separate meetings of the Residents' Forums and Area Committees thereby removing the requirement to prescribe start and finish times for the Forums.	Delete Rule 17.3 and renumber the subsequent section.
3	Responsibility for Functions, Annex A, Terms of Reference of Committees, Sub-Committees and Partnership Boards	Terms of Reference of the Community Leadership Committee	For clarity it is recommended that the terms of reference of the Community Leadership Committee be amended to include a reference to the legislation which supports Community Safety Scrutiny	Amend the terms of reference of the Community Leadership Committee as follows:  “(5) Provide scrutiny aspect of Community Safety <b>in accordance with the provisions of the Police and Justice Act 2006.</b> ”
4	Protocol for Member Officer Relations	Section 1.2	Code lists previous chief executive and previous leader of the Labour Group	Update to reflect current post holders as follows:  John Hooton, Chief Executive Barry Rawlings, Leader of the Labour Group

## **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. The Committee are to consider whether changes are required.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 Subject to the committee's approval, the recommendations will form part of a report to Full Council on 4 April 2017 to make final approval.

## **5. IMPLICATIONS OF DECISION**

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

- 5.1.1 Barnet 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 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".

### **5.4 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.



## **5.5 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 None.