



Constitution and General Purposes Committee

9 April 2019

Title	Constitution Review
Report of	Monitoring Officer Head of Governance
Wards	Not Applicable
Status	Public
Urgent	No
Key	No
Enclosures	<p>Appendix A – Article 2 (Tracked)</p> <p>Appendix B – Article 3 (Tracked)</p> <p>Appendix C – Article 7 (Tracked)</p> <p>Appendix D – Article 9 (Tracked)</p> <p>Appendix E – Article 11 (Tracked)</p> <p>Appendix F – Contract Procedure Rules (Tracked)</p> <p>Appendix G – Full Council Procedure Rules (Tracked)</p>
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Summary

Following the comprehensive review of the Constitution which was completed in May 2018 a number of housekeeping amendments are proposed as set out in the report and appendix.

Officers Recommendation

That the Committee recommend to Council that the Constitution be amended to incorporate the changes set out in this report and the amended versions attached at Appendices A to G.

1. WHY THIS REPORT IS NEEDED

- 1.1 The terms of reference Committee include 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”.
- 1.2 Detailed changes and the reason for them are as set out in the table below:

No.	Section	Reference	Issue Identified	Changes Proposed
1.	<p>Article 3 (Residents and Public Participation); and</p> <p>Article 7 (Committees, Forums, Working Groups and Partnerships)</p>	<p>Section 3.5; and</p> <p>Terms of Reference of Constitution & General Purposes Committee</p>	<p>Section 3.5 of Article 3 states:</p> <p>“Public questions and comments are not permitted:”</p> <p>If submitted from Council employees or trade unions on employment matters; there are avenues available for these to be addressed via the Terms of Reference of the General Functions Committee.”</p> <p>The terms of reference of the Constitution & General Purposes Committee (the successor body to the General Functions Committee) have removed references to trade unions having the right to address the committee on staffing matters. It is recommended that a mechanism to enable trade union representation at the committee is reinstated.</p> <p>The following wording was included in a previous iteration of the Constitution:</p> <p>“(d) When considering the report, a representative of the trade unions may be requested to speak with the consent of the Chairman or be questioned by the Committee before a decision is made.”</p>	<p>Amend Article 3 to change ‘General Functions Committee’ to ‘Constitution & General Purposes Committee’</p> <p>Amend Article 7 to add to the Terms of Reference of Constitution & General Purposes Committee:</p> <p>“When considering a report on staffing matters, a representative of the trade unions may submit a request to speak which requires the consent of the Chairman, or be questioned by the Committee before a decision is made. Each representative will have up to 3 minutes to address the committee.”</p>

2.	Article 7 (Committees, Forums, Working Groups and Partnerships)	Section 3.5	<p>Section 3.5 of Article 3 includes the following restrictions:</p> <p>“Public questions and comments are not permitted:</p> <ul style="list-style-type: none"> • If they don’t relate to a substantive item on the agenda • If they are defamatory, abusive or offensive. • If submitted from Council employees or trade unions on employment matters; there are avenues available for these to be addressed via the Terms of Reference of the General Functions Committee. • If they would result in the release of confidential information, or which may prejudice enforcement. • If they relate to a matter where there is a right of appeal against any decision of the Council. <p>The Chairman of the relevant Committee or Sub-Committee, in consultation with the Head of Governance, shall decide whether any particular question, comment or issue will be permitted.”</p> <p>Some restrictions from previous iterations of</p>	<p>Amend section 3.2 to delete “At the meeting a time period of up to 30 minutes is available for public questions and comments in total” as this is repeated in section 3.4.</p> <p>Add to section 3.2 “Questions must be addressed to the committee.”</p> <p>Amend section 3.3 to add: “Residents should state their address when submitting a request to make a comment.”</p> <p>Amend section 3.5 to add: “Residents should state their address when submitting a forum issue.”</p> <p>Add to the following restrictions to the section titled Public questions and comments are not permitted:...</p> <ul style="list-style-type: none"> • If they have been submitted by someone who has been deemed to be subject to the Unreasonably Persistent Complainants Policy; • If they are received from people who are not Barnet residents; • At the Planning Committee and Area Planning Committees on Town and Country Planning applications (a separate procedure is detailed in section 3.7). Public questions and comments are permitted at the Planning Committee on planning policy matters;
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			<p>the Constitution have been removed. It is recommended that they be reinstated as the Governance Service have received several challenges from residents regarding the validity of questions at various committees since the restrictions were deleted as follows:</p> <ul style="list-style-type: none"> • Questions received from someone deemed to be an unreasonably persistent complainant regarding the same issue that had been fully investigated and the complaint closed; • Questions received from people who live out of borough. Whilst sections 3.1 – 3.3 refer to residents, officers consider that an explicit restriction would provide clarity. 	<ul style="list-style-type: none"> • If they relate to 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 Town and Country Planning (Tree Preservation) (England) Regulations 2012.
3.	Article 3 (Residents and Public Participation)	Section 3.7	<p>Under current speaking arrangements for planning committees, requests to speak at committee are made to the Planning team and not the Governance Service. It is recommended that the wording be amended in section 3.7 to reflect that so that there is clarity for residents in respect of speaking arrangements.</p>	<p>Amend Article 3 as follows:</p> <p>“Requests to speak about an application on the planning committee agenda should be submitted to the relevant Governance Planning Case Officer by 10am on the third working day prior to the meeting.”</p>

4.	Full Council Procedure Rules	Sections 18.7 – 18.8	<p>A provision for public questions to the Leader at Full Council has been in-situ for several years. There have been no public questions to the Leader at an ordinary council meeting since this provision was added. It is therefore recommended that this provision be deleted.</p>	<p>Delete the following provision:</p> <p>“Public Questions to the Leader of the Council</p> <p>18.7 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"> • Any question must be delivered in writing, including 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 • The question should not relate to a matter previously considered by a committee and subject to the six-month rule • 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. • The question must not be in substance a question that has already been considered by the Leader in the preceding 6 months. <p>18.8 Every question will be answered in writing. The Leader may decline to answer a question in exceptional circumstances and should include the reason for not answering the question. Any questions not answered will be directed to the next relevant meeting of the themed committee.</p>
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5.	Article 9 (Chief Officers)	Section 9.01	Council on 29 January 2019 approved the addition of a section to detail certain statutory non-chief officers in Article 9. A further post of Virtual Head Teacher needs to be added as this is a statutory post.	Amend section (d) to add: “Virtual Head Teacher”
6.	Article 10 (Decision Making) and Contract Procedure Rules	Table B – Authorisation and Acceptance Thresholds	<p>Article 10 and the Contract Procedure Rules require variations and acceptance of contracts with the following values to be approved by the relevant thematic committee:</p> <ul style="list-style-type: none"> • £181,302 – £500,000; and • £500,000 and above <p>Requiring contract variations or acceptance to be agreed by a theme committee is unnecessary as the principal decision is the authorisation to procure. It is recommended that the acceptance criteria for the following thresholds be changed to:</p> <p>£181,302 – £500,000:</p> <ul style="list-style-type: none"> ➤ If within Budget – Full DPR ➤ If not within Budget – Relevant Thematic Committee; and <p>£500,000 and above</p> <ul style="list-style-type: none"> ➤ If within Budget- Full DPR (Chief Officer in consultation with Theme Committee Chairman) ➤ If not within Budget – Relevant Thematic Committee 	Refer to Table 1 below

7.	Contract Procedure Rules	Various	<p>The Contract Procedure Rules in various places refer to the Director of Commercial Services. A new senior management structure will be live from 1st April 2019 and the title of the relevant post will change to Director of Commercial & ICT Services. References in the Rules need to be amended accordingly.</p>	Delete references to the Director of Commercial Services and replace with Director of Commercial & ICT Services.
8.	Article 2	Section 2.3 (h)	<p>The Members Planning Code of Practice states:</p> <p>3.2 Where a Member has a pecuniary interest relating to an item under discussion, the Councillor may not participate in any discussion of the matter at the meeting or participate in any vote on the matter. There is no obligation for that Councillor to withdraw from the Chamber although this is advisable so that it is transparently clear that the Member concerned has not taken part in the determination of this particular item. This also means that a Councillor with a pecuniary interest is precluded from making representations orally to the committee, either as a Councillor or in a private capacity, and precluded from making representations on behalf of a party to the hearing.</p> <p>3.3 A Councillor with a pecuniary interest can still present their views to the committee through other means:</p>	Amend section 2.3 (h) to add the highlighted wording: "Members may only address a planning committee on applications which affect their ward, <i>unless they have a pecuniary interest in which case they are precluded.</i> "

			<ul style="list-style-type: none"> • make written Representations to officers; the existence and nature of the interest should be disclosed in such representations and the Councillor should not seek preferential consideration for their representations; • arrange for another Member to represent the views of the Councillor's constituents. <p>Article 2 (Members of the Council) currently states:</p> <p>“Members may only address a planning committee on applications which affect their ward.”</p> <p>It is recommended that the wording highlighted is added to ensure that there is a clear link between the Article and the Code of Practice.</p>	
9.	Article 7 (Committees, Forums, Working Groups and Partnerships)	Terms of Reference of the Safer Communities Partnership Board	Officers have requested that CommUNITY Barnet remain a partner on the Safer Communities Partnership Board and are listed in the membership column as a partner.	Amend the partner membership list for the Safer Communities Partnership Board to include CommUNITY Barnet.

10.	Council Procedure Rules	Section 17 – Rules of Debate	Section 17.7 currently states that the “Each of the first speakers from each Group under Rule 20.2 may speak for a maximum of 5 minutes. All subsequent speakers will be limited to a maximum of 4 minutes.” This rule refers to Part 3 (Statutory Council Business) and Part 4 (Business for Debate) of the Council meeting. In practice, time for debate on Statutory Council Business is allocated depending on the relative significance of the item to be considered. In relation to Business for Debate, time has recently been allocated as 3 minutes for the first speaker and 2 minutes for each subsequent speaker.	No changes are recommended or proposed, but the Committee are requested to consider whether to amend section 17.7 or whether to reinstate the timings for speakers back to 5 minutes and 4 minutes. It should be noted that any increase in the time allocated to each speaker is likely to reduce the number of potential speakers on each report or motion.
11.	Article 2 (Members of the Council (Councillors)) and Article 7 (Committees, Forums, Working Groups and Partnerships)	Section 2.3 (g); and Terms of Reference of Area Planning Committees	Section 2.3 (g) currently states that ‘...where an application is recommended for approval...’ that Members are able to call-in an application for determination by a planning committee. It has been identified that Members have in practice been calling-in applications that are recommended for both approval and refusal (rather than just approval). It is recommended that the Constitution is amended to reflect this.	<p>Amend the wording in Article 2, Section 2.3 (g) to delete the struck-through wording and add the wording in bold italics:</p> <p>Amend Article 2, Section 2.3 (g) as follows:</p> <p>“<u>Members Rights to Call-in Planning Applications</u> Where an application is recommended for approval or refusal, Members have the right to ‘call-in’ an application which affects their ward for determination by a planning committee. A relevant planning consideration must be identified when calling-in the application.”</p> <p>Amend the wording in Article 7 within the terms of reference of the Area Planning Committees:</p> <p>Where the recommendation is for approval and:</p>

				<p>a. approval and there is significant local public objection (defined as 5 or more objectors who have objected in writing in response to a planning application)</p> <p>b. approval or refusal and there is a Councillor referral of an application which affects their Ward which that Member has 'called-in' to committee identifying a planning consideration.</p>
12.	Article 7 (Committees, Forums, Working Groups and Partnerships)	Terms of Reference of Area Planning Committees	Barnet has a relatively low threshold for the number of objections which trigger an application being referred to committee for determination. Consequently, two out of the three area planning committees usually have a high volume of planning applications to be determined. For example, the Finchley & Golders Green Area Planning Committee regularly receives between 10 and 20 applications per meeting. It is proposed that the threshold be increased from 5 to 10 objections.	<p>Amend the wording in Article 7 as follows:</p> <p>"a. there is significant local public objection (defined as 5 10 or more objectors who have objected in writing in response to a planning application)</p> <p>b. there is a Councillor referral of an application which affects their Ward which that Member has 'called-in' to committee identifying a planning consideration.</p>
13.	Article 11 – Finance, Contracts, and Legal Matters	Sections 11.3, 11.4 and 11.5	The Article refers to the Assistant Chief Executive and this post will be deleted as part of the Senior Management Review which will be implemented on 1 April 2019. The responsibilities have been subsumed into the remit of the Director of Assurance and the Constitution should be amended accordingly.	In sections 11.3, 11.4 and 11.5 delete references to 'Assistant Chief Executive' and replace with 'Director of Assurance'

14.	<p>Article 2 (Residents and Public Participation)</p> <p>Article 7 (Committees, Forums and Working Groups)</p>	Article 2, Section 3.5 (Issues for Residents Forums)	<p>Previous iterations of the Constitution have included a 'six-month rule' which prevents Members submitting Members Items to committees or asking Questions to the Leader at Full Council. Members have requested that the six-month rule be reinstated. It is suggested that a new section be added to Article 7 which states: "The Six-Month Rule shall apply whereby matters dealt with cannot be raised again within this period."</p> <p>The Committee are requested to note that the six-month rule is already in place in relation to residents forum issues as below: "The Six-Month Rule shall apply whereby matters dealt with cannot be raised again within this period. The Six-Month Rule means that Residents Forum will not reconsider any issues discussed at a resident's forum or any decision taken by a committee in the six months preceding the date of the forum."</p>	<p>Add to Article 7 a section titled:</p> <p>"The Six-Month Rule"</p> <p>The Six-Month Rule shall apply whereby matters dealt with cannot be raised again within this period."</p>
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Table 1

	Procurement value	Authorisation to commence a procurement process & Documentation	Procurement method	Acceptance process & Documentation	Variation or extension Acceptance & Documentation	Supplier Notification method and contract
A	Under £10,000 (Purchase Order)	Council Officer as designated by approved Scheme of Delegation Authorisation documentation: Audit trail	Reasonable means of selection* and evidence of having sourced and considered the local Barnet supplier market	Council Officer as designated by approved Scheme of Delegation Authorisation documentation: Audit trail	Must move to next threshold if £10,000 or above Authorisation documentation: Audit trail	Purchase Order
B	£10,000 – £50,000	Council Officer as designated by approved Scheme of Delegation Authorisation documentation: Audit trail; or Procurement Forward Plan	Minimum 2 written Competitive Quotations sought**	Council Officer as designated by approved Scheme of Delegation Authorisation documentation: Chief Officer List of Decisions	Must move to next threshold if above £50,000 Authorisation documentation: Chief Officer List of Decisions	Purchase Order Signed contract over £25k value

	Procurement value	Authorisation to commence a procurement process & documentation	Procurement method	Acceptance process & Documentation	Variation or extension Acceptance & Documentation	Supplier Notification method and contract
C	£50,001 – £181,301	Approved Officer Authorisation documentation: Chief Officer List of Decisions	Minimum 2 written quotations No SQ - Suitability Assessment Questions only	Approved Officer Authorisation documentation: Chief Officer List of Decisions	Chief Officer List of Decisions	Signed contract
D	£181,302 – £500,000	Chief Officer in consultation with Theme Committee Chairman Authorisation documentation: Full DPR (Chief Officer in consultation with Theme Committee Chairman) or Procurement Forward Plan	Services/Goods – OJEU Tender Works – Competitive Quotation	Chief Officer in consultation with Theme Committee Chairman Authorisation documentation: Full DPR	If within Budget – Relevant Thematic Committee If within Budget-Full (Chief Officer) DPR If not within Budget – Relevant Thematic Committee	Standstill Notification letter released following statutory officer report review Publication of report post standstill period Signed and sealed contract

	Procurement value	Authorisation to commence a procurement process & documentation	Procurement method	Acceptance process & Documentation	Variation or extension Acceptance & Documentation	Supplier Notification method and contract
E	<i>£500,000 and above</i>	<i>Authorisation documentation: Relevant Theme Committee Decision; or Procurement Forward Plan</i>	<i>Competitive quotation for works contracts for values £500,000 to £4,551,412 Works and Concession Contracts: Full OJEU Tender above £4,551,413 Goods: Full OJEU Tender Services: Full OJEU Tender Health, educational, cultural and social care related services: Light Touch Regime Tender above. £615,278)</i>	<i>Authorisation documentation: If within Budget- Full DPR (Chief Officer in consultation with Theme Committee Chairman) If not within Budget: Relevant Thematic Committee Report; or Policy and Resources Committee Report</i>	<i>If within Budget- Relevant Thematic Committee If within Budget- Full DPR (Chief Officer in consultation with Theme Committee Chairman) If not within Budget – Relevant Thematic Committee</i>	<i>Standstill Notification letter released following statutory officer report review Publication of report post standstill period Signed and sealed contract</i>

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Constitution and General Purposes 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 The Committee could retain the current Constitution un-amended. This is not recommended as the Constitution needs to be kept under review to ensure that it complies with legislation and best practice.

4. POST DECISION IMPLEMENTATION

- 4.1 Subject to the committee's approval, the recommendations will form part of a report to Full Council on 21 May 2019 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 Social Value

- 5.3.1 None in the context of this decision

5.4 Legal and Constitutional References

- 5.4.1 Council's Constitution, Article 7 - the Constitution and General Purposes Committee terms of reference includes responsibility "To 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".

5.5 Risk Management

- 5.5.1 The process of managing changes to the Constitution through the Constitution and General Purposes Committee ensures that the proposals are developed through Member participation and consideration.

5.6 **Equalities and Diversity**

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

5.7 **Corporate Parenting**

5.7.1 None in the context of this decision

5.8 **Consultation and Engagement**

5.8.1 None in context of this decision

5.8 **Insight**

5.8.1 None in the context of this decision.

6. **BACKGROUND PAPERS**

6.1 The currently adopted Constitution can be accessed here:
<http://barnet.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=13581&path=0>