



Constitution and General Purposes Committee

12 April 2021

Title	Constitution Review
Report of	Monitoring Officer Head of Governance
Wards	Not Applicable
Status	Public
Urgent	No
Key	No
Enclosures	<p>Appendix A – Article 7 – Committees, Forums, Working Groups and Partnerships (Tracked)</p> <p>Appendix B – Article 7 – Committees, Forums, Working Groups and Partnerships (Clean)</p> <p>Appendix C – Contract Procedure Rules (Tracked)</p> <p>Appendix D – Contract Procedure Rules (Clean)</p> <p>Appendix E – Article 10 – Decision-Making (Tracked)</p> <p>Appendix F – Article 10 – Decision-Making (Clean)</p> <p>Appendix G – HR Regulations (Tracked)</p> <p>Appendix H – HR Regulations (Clean)</p> <p>Appendix I – Members Code of Conduct (Tracked)</p> <p>Appendix J – Members Code of Conduct (Clean)</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 appendices.

Officers Recommendation

- 1. 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 and B.**
- 2. That the Monitoring Officer be delegated authority to delete 'Covid-19 Enforcement' from the terms of reference of the Community Leadership and Libraries Committee at the appropriate time following consultation with the Chairman.**

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(s)	Issue Identified	Changes Proposed
1.	N/A	N/A	<p><u>Late Proposed Amendments to Committee Reports and Recommendations</u></p> <p>At the meeting of the Committee held on 12 January 2021, the Committee considered the following issue:</p> <p>“Governance Officers have highlighted that there has been an increased frequency of late amendments moved by Members for committees. Late amendments can be problematic as they need to be circulated to committee members and published online so there is clarity on what is being voted upon. The Council Procedure Rules require amendments to be submitted by 10.30am the day before the meeting. The Committee are requested to consider if it is appropriate to introduce a deadline for all other committees.”</p> <p>No specific changes were proposed and it was noted that if the Committee agreed that introducing a deadline is acceptable, amendments would be drafted for the next meeting.</p> <p>It was suggested that the cut-off could be 10.00am on the day of the meeting.</p> <p>At the meeting, the Committee debated the issue. The Monitoring Officer advised the Committee that substantial late amendments could result in new information being introduced at meetings. In some cases, officers would not have had sufficient time to consider the implications of the amendments and provide advice to a committee. It was highlighted that committee reports followed a clearance process</p>	<p>No Constitution amendments are proposed, but the Committee are requested to consider and agree the following protocol regarding amendments to committee reports:</p> <p>“Where they are aware of the amendments in advance, a Member may propose amendments to committee reports or recommendations by submitting the amendment in writing to the Head of Governance or his/her representative by 10.30am on the day of the meeting. The amendment must be relevant to the report or decision being taken by the committee.</p> <p>Where reports are published as ‘to follow’ items, amendments will be accepted after the deadline including during the meeting.</p> <p>Amendments will also be allowed at the meeting.”</p> <p>Subject to the Committee agreeing the proposal, a note will be sent to all Members and Governance Officers.</p> <p>The Committee can review this protocol at any point should there be any issues with its application in practice.</p>

		<p>which allowed all issues to be considered.</p> <p>A Member highlighted that reports were occasionally published as ‘to follow’ and suggested that where this was the case, there needed to be a degree of flexibility. It was proposed that the following wording could be added "Where reports are published after the deadline, amendments will be accepted after the deadline including during the meeting." It was also suggested that the deadline be 10.30am the same working day to be consistent with other deadlines in Constitution.</p> <p>Officers advised Members that this issue could be dealt with by way of a protocol agreed by the Committee rather than a Constitution amendment as this would enable the principle to be agreed and applied for a period before considering how effective it was.</p> <p>Following debate, it was agreed that a protocol be drafted for the next meeting of the Committee for consideration and agreement.</p> <p>The Committee agreed that a protocol regarding late amendments would be drafted for consideration and debate at the next meeting.</p>	
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2.	Article 7 (Committees, Forums and Working Groups)	7.5 Responsibility for Functions – Theme Committees and FP&C Committee	<p><u>Performance Reporting</u></p> <p>There is currently some ambiguity regarding which committees' performance information should be reported to.</p> <p><u>Strategic Contracts</u></p> <p>The Financial Performance & Contracts (FP&C) Committee has within its terms of reference responsibility for oversight and scrutiny of the council's major strategic contracts. However, strategic contracts are not defined and as such there been some ambiguity about what is within or outside the terms of reference of the committee.</p> <p>It is recommended that strategic contracts should be defined as the Customer Support Group (provided by Capita CSG), Development and Regulatory Services (provided by Capita Re) and The Barnet Group Ltd and that the committee's terms of reference should be amended accordingly.</p> <p><u>Barnet Group Performance</u></p> <p>Barnet Homes performance currently sits in the terms of reference of the Housing & Growth (H&G) Committee which is responsible for "housing matters including...housing strategy, homelessness, social housing and housing grants." Your Choice Barnet performance sits in the terms of reference of the Adults & Safeguarding (A&S) Committee. The chairs of the H&G Committee and FP&C Committee have informally agreed that The Barnet Group Ltd</p>	<p>Amend the terms of reference of the Financial Performance & Contracts Committee to including the following as the council's major strategic contracts: Customer Support Group; Development and Regulatory Services; The Barnet Group Ltd (Barnet Homes); and HB Public Law.</p> <p>Amend the terms of reference of the Children, Education and Safeguarding Committee to include Barnet Education & Learning Service.</p> <p>Amend the terms of reference of the Adults and Safeguarding Committee to include Your Choice Barnet.</p> <p>Amend the terms of reference of the Housing and Growth Committee to exclude Barnet Homes.</p>
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			<p>(Barnet Homes) performance should go to the FP&C Committee as the H&G Committee already has a significant workload and lack the capacity to effectively monitor the performance of Barnet Homes. The terms of reference of both committees need to be amended to reflect this agreement to avoid duplicate reporting. The Your Choice Barnet element of The Barnet Group Ltd services will be reported to the A&S Committee</p> <p><u>Barnet Education & Learning Service</u></p> <p>Cambridge Education performance used to be reported to the FP&C Committee, but following the cessation of that contractual arrangement and the creation of Barnet Education & Learning Service (BELS), the chairs of FPC and Children, Education & Safeguarding (CE&S) Committee have agreed that BELS should be reported to CE&S Committee. The terms of reference of the CE&S Committee need to be amended to make this clear.</p>	
3.	Article 7 (Committees, Forums and Working Groups)	7.5 Responsibility for Functions – Pension Fund Committee	<p>Officers in the Pensions team have undertaken a review of the committee's terms of reference to update them and replace various out of date terminology (e.g. replace Statement of Investment Principles with Investment Statement Strategy).</p> <p>The proposed revisions also include "To monitor the administration of the Pension Fund." to make it clear that monitoring the performance of the Pension Fund Administrator (currently West Yorkshire Pension Fund) is a function of the Pension Fund Committee.</p>	Amend the terms of reference of the Pension Fund Committee as per the tracked changes in Article 7.

4.	Article 7 (Committees, Forums and Working Groups)	7.5 Responsibility for Functions - Area Committee	<p>The terms of reference of Area Committees are currently unclear regarding how matters referred from Forums to Area Committees will be dealt with. It is recommended that the terms of reference of the Area Committees be amended to improve clarity in this area.</p> <p>In addition, the Policy & Resources Committee on 8 February 2021 agreed that the funding limit for each Community Infrastructure Levy (CIL) scheme or project should be increased from £25,000 to £30,000.</p>	<p>Amend the terms of reference of the Area Committees as follows:</p> <p>4) Consider matters referred from Residents Forums and determine how they are to be taken forward in consultation with the relevant Area Committee Lead Officer and subject to any Community Infrastructure Levy (CIL) funding requirement being agreed by the Committee.</p> <p>In section 5) increase the funding limit from £25,000 to £30,000.</p>
5.	Article 7 (Committees, Forums and Working Groups)	7.5 Responsibility for Functions - Children's Partnership Board	<p>The current Membership of the Children's Partnership Board requires updating to reflect changes to organisations and posts.</p>	<p>Delete reference to Barnet Clinical Commissioning Group (Barnet CCG) and replace with North Central London Clinical Commissioning Group (NCL CCG)</p> <p>Delete post of Barnet CCG Director of Commissioning and replace with the following posts: Director for Adults Joint Commissioning and CYP Health Commissioning; and Children's Clinical Lead NHS</p> <p>Amend the quorum to: Delete reference to Barnet Police and replace with schools Delete reference to Barnet CCG and replace with NCL CCG</p>

6.	Article 7 (Committees, Forums and Working Groups)	7.5 Responsibility for Functions – Community Leadership & Libraries Committee, Environment Committee and Safer Communities Partnership Board	<p>Officers have been undertaking a review of community safety governance and are recommending some changes to the terms of reference of the various bodies engaged in this area to improve clarity:-</p> <p>The terms of reference of the Community Leadership & Libraries (CLL) Committee include responsibility for Community Safety issues. There is currently some ambiguity about where environmental crime sits (i.e. which elements of sit in the terms of reference of the CLL Committee and which are in the terms of reference of the Environment Committee).</p> <p>It is a requirement for a committee system authority to still nominate a committee to undertake the crime and disorder scrutiny function in accordance with the Police and Justice Act 2006 (Crime and Disorder (Overview and Scrutiny Regulations) 2009. A reference to the legislation was previously in the terms of reference of CLL Committee, but was removed in 2017. It is recommended that it is included again.</p> <p>The terms of reference of the Safer Communities Partnership Board state that it is a subgroup of the Barnet Partnership Board. The Barnet Partnership Board has not met since 2017 and so the reference to it should be removed from the terms of reference of the Safer Communities Partnership Board.</p>	<p>Amend the terms of reference of the Community Leadership & Libraries Committee to include:</p> <ul style="list-style-type: none"> - Environmental Crime (excluding littering, fly-tipping, fly-posting and graffiti) - To act as the Crime and Disorder Scrutiny Committee in accordance with the Police and Justice Act 2006 (Crime and Disorder (Overview and Scrutiny Regulations) 2009 <p>Amend the terms of reference of the Environment Committee to include:</p> <ul style="list-style-type: none"> - littering, fly-tipping, fly-posting and graffiti <p>Delete the following wording from the terms of reference of the Safer Communities Partnership Board:</p> <p>It is a thematic subgroup of the Barnet Partnership Board which has overall strategic responsibility and has delegated to the SCPB the responsibility for delivering the Strong Safe Communities for Everyone theme of the Sustainable Community Strategy.</p>
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7.	Article 7 (Committees, Forums and Working Groups)	7.5 Responsibility for Functions – Community Leadership & Libraries Committee	<p>The terms of reference of the Community Leadership & Libraries Committee don't currently include voluntary, community and faith sector strategy and engagement. In practice reports on these areas are reported to the committee. Additionally, the committee has community leadership in its title which covers these areas. To improve clarity, it is recommended that the terms of reference of the committee be amended to include voluntary, community and faith sector strategy and engagement.</p> <p>In addition, it is proposed to include food security and Covid-19 enforcement in the terms of reference of the Committee so there is clarity for Members and officers where these matters should be reported. It is recommended that the Monitoring Officer be given delegated authority to remove Covid-19 enforcement from the terms of reference as it expected that activity in this area is expected to be time limited.</p>	<p>Amend the terms of reference of the Community Leadership & Libraries Committee to include:</p> <ul style="list-style-type: none"> - voluntary, community and faith sector strategy and engagement - food security - Covid-19 enforcement
8.	Contract Procedure Rules	<p>1.5</p> <p>2.1 – Scope</p>	<p>Update post title to Director of Commercial & Customer Services instead of Director of Commercial & ICT to reflect recent post title revision.</p> <p>Area Committees have delegated responsibility to approve schemes using Community Infrastructure Levy (CIL) funding. Implementation of some of the schemes approved by Area Committees (e.g. parks improvements) may be led by the Council in which case the Contract Procedure Rules would apply to ensure value for money is achieved.</p>	

		2.2 – Scope	<p>The current Contract Procedure Rules are silent on the Council releasing grant funding to applicants via the Corporate Grants Scheme. It is recommended that the wording of section 2.2, which relates to non-procurement activities, be expanded to include grant allocations awarded via the Corporate Grants Scheme. In circumstances where the Council receives a grant award from an external source, the provisions of the Contract Procedure Rules would apply as is currently the case.</p>	
		4.2	<p>The authorisation and acceptance thresholds are set out in the Contract Procedure Rules and are duplicated in Article 10. It is proposed to make a minor change to the wording in section 4.2 to reflect that the table is in both documents.</p>	
		4.3	<p>Authorisation for procurements can be via the Annual Procurement Forward Plan which is agreed by the Policy & Resources Committee. The Monitoring Officer is concerned that some significant high expenditure is reported in the Procurement Forward Plan with very little supporting information. To improve oversight and scrutiny of high value decisions, it is recommended that the authorisation section of the Contract Procedure Rules be amended to put in place some additional controls for items listed in the Annual Procurement Forward Plan as follows:</p> <ul style="list-style-type: none"> ➤ Decisions below £500,000 as per the Authorisation and Acceptance Thresholds and Article 10, Table B. ➤ Decisions with a value between £500,000 and up to £1 million require a Chief Officer in 	

			<p>consultation with Committee Chairman Delegated Powers Report</p> <p>➤ Decisions more than £1 million subject to authorisation by appropriate theme committee.</p>	
		5	<p>Amended various sections (5.2, 5.7 and 5.8) to reflect changes which have come into effect following the UK's exit from the EU.</p>	
		6	<p>Amended sections 6.1 and 6.2 to include the Director of Resources (Section 151 Officer) as an additional approver of the use of a Single Tender Action</p>	
		8	<p>CSG Procurement have advised that they are not able to undertake financial evaluation of tenders valued at less than £189,330 for goods or services or less than £4,733,252 for works as they cannot raise financial qualifications for all sub threshold procurements this goes against the Public Contracts Regulations 2015 to reduce burden on suppliers for lower value/lower risk opportunities. The second bullet point has been retained and merged with the text in section 8.4.</p>	
		9	<p>Amended various sections (9.2 and 9.3) to reflect changes which have come into effect following the UK's exit from the EU.</p>	
		Authorisation and Acceptance Thresholds	<p>The Authorisation and Acceptance Thresholds has been completely reviewed to improve clarity authorisation thresholds and documentation at each stage. Notable revisions are as follows:</p> <p>Amend B value to £10,000 to £24,999 to align with the Procurement Operating Model where there are</p>	

			<p>two options: (a) service area undertake competitive quotation to minimum two suppliers, using procurement templates via email: or (b) service support competitive quotation to minimum two suppliers using procurement templates via procurement portal. Variation/extension £25,000 replaces £50,000</p> <p>Amend C value to £25,000 to £189,329 to aligns with Procurement Operating Model, advertising on Contracts Finder if not subject to framework closed list, requirements for signed contract more than £25K value. Issue of Contract Award notice upon signature of contract.</p> <p>Amend E to reflect new requirements at section 4.3</p>	
9.	Article 10 – Decision Making	Section 10.7 – Urgency	<p>The current wording in Article 10 relating to urgent decisions only refers to the Urgency Committee. Other urgency provisions exist which are not referenced in this section and it is recommended that Article 10 is expanded to include them.</p> <p>Some committee reports or delegated decision may be marked as 'urgent' which has the effect of exempting them from referral to Council or the parent body. It is proposed to add a section which requires officer to provide reasons why a report is urgent which must be reviewed and approved by a Chairman in the case of a committee report, or a Chief Officer in the case of a delegated powers report.</p>	<p>Amend Article 10, Section 10.7 to include the following wording:</p> <p>“Reports to committees marked as urgent are exempt from referral to Council or parent committee (see Article 2, Section 2.3 (e)). Where a report is marked as urgent, the reason for urgency must be clearly stated in the body of the report and consultation must occur with the Chairman in the case of a committee report, or the relevant Chief Officer in the case of a delegated powers report.”</p>

		<p>New Section 10.8 – Key Decisions</p> <p>Table B</p>	<p>The current wording of Article 10 doesn't include a definition of a Key Decision. For clarity, it is recommended that the key decision definition contained in Article 2 (Members of the Council) is also included in Article 10.</p> <p>Table B (Authorisation and Acceptance) needs to be updated to reflect the revised table in the Contract Procedure Rules.</p>	<p>Add a new section 10.8 (Key Decisions) with the following wording and renumber all subsequent sections:</p> <p>“A key decision is one which will result in the council incurring expenditure or savings of £500,000 or more, or is significant in terms of its effects on communities living or working in an area comprising two or more Wards.”</p> <p>Update Table B as identified.</p>
10.	Article 3 – Residents and Public Participation	Section 3.3 – Written Comments to Committees	<p>Section 3.3 currently states that a maximum of two written comments from residents may be submitted per agenda item which will be accepted in order of receipt. Any other comments received will not be accepted. Governance Officers have been applying this provision and publishing only the first two comments received on any agenda item. However, the Committee are requested to consider whether the limitation of two comments per item should be removed. In practice, this will just mean that all written comments received are included in a questions and comments document published alongside the committee papers. If this is agreed, the following wording would be deleted from section 3.3.</p> <p>“A maximum of two written comments from residents may be submitted per agenda item. These will be accepted in order of receipt. Any additional written comments received will not be accepted.”</p>	<p>If the Committee agree with the proposal, the wording identified will be deleted from Section 3.3.</p>

11.	HR Regulations	<p>Officer Title References</p> <p>Section 2.2 – Varying Terms and Conditions of Employment</p> <p>Section 6 – Pensions Administration</p>	<p>The post of Human Resources Director no longer exists and had been replaced by an Assistant Director – Human Resources & Organisational Development. Reference in the HR Regulations need to be updated accordingly.</p> <p>The Assistant Director – Human Resources & Organisational Development has identified that the approval of individual recruitment and/or retention premia should require Member approval and this is therefore recommended to be deleted.</p> <p>In recent changes to senior management responsibilities, pensions administration has transferred from Human Resources to the Section 151 Officer. It is therefore proposed to delete the section on Pensions Administration from the HR Regulations. All functions and responsibilities in relation to pensions administration are covered in the Director of Resources (Section 151 Officer) Scheme of Delegation: https://barnet.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD1065&ID=1065&RPID=23798557 </p>	<p>Delete references to the Human Resources Director and replace with Assistant Director – Human Resources & Organisational Development</p> <p>Delete the following wording from Section 2.2: “Where an Individual Recruitment and/or Retention Premia is to be included for a position on grades LBB1 to LBB7, the Head of Paid Service, Directors or Assistant Directors must consult with the Chairman of the Constitution & General Purposes Committee and record the results of that consultation through a Delegated Powers Report.”</p> <p>Delete section 6 – Pensions Administration</p>
12.	Members Code of Conduct	<p>Section 3 (General Obligations)</p> <p>New Section 9.</p>	<p>The Monitoring Officer has recommended that some additional wording be added to section 2 to support Members to refer residents to officers in the event that they become vexatious or otherwise difficult to deal with.</p> <p>The Monitoring Officer has recommended that an additional section be added to the Code which grants time limited general dispensations to all</p>	<p>Add a new section 2 (h) with the following wording: “When dealing with enquiries from residents do refer these to officers if the requests become vexatious or are otherwise difficult to deal with.”</p> <p>Add a new section 9 with the additional wording as tracked into Appendices I and J</p>

		Appendix A, Section 9. – Personal Wellbeing	<p>Members in the following areas: housing; schools (relating to their children’s education or as a governor); housing benefit; council tax benefit; and membership of the local government pension scheme.</p> <p>The Monitoring Officer has identified that sections 8. and 9. of the Code contain repetitious wording. It is proposed to delete section 8. and retain section 9.</p>	Delete section 8 and re-number the subsequent section
13.	Full Council Procedure Rules	<p>Section 16 (Question Time)</p> <p>Section 16 (Question Time)</p> <p>Section 9.3 and section 17 (General Rules that Apply to Parts 3 and 4) – Members</p>	<p>It is proposed to amend deadlines for receipt of Council questions from 10 clear working days to 14 clear working days to allow additional time for drafting and clearing of answers to ensure that issues or queries raised in questions are fully responded to.</p> <p>The Leader and Committee Chairman have reported that, in some instances, there have been delays in receiving written briefings on Council questions from directors and/or senior officers. It is proposed that a deadline be added to the Constitution to make it clear when directors and/or senior officers need to provide responses to the Leader or Committee Chairmen to ensure that all Members receive the Council Questions and Responses document in good time for the Council meeting.</p> <p>It is proposed to amend the deadlines relating to Motions as follows:</p> <ol style="list-style-type: none"> 1. for receipt of Members Motions from six to eight days; and 2. for receipt of amendments to motions from 	<p>Amend the deadline in section 16.3 from 10 clear working days to 14 clear working days/</p> <p>Add a new section 16.5 with the following wording and renumber subsequent sections:</p> <p>“Where the Leader or a Committee Chairman delegate responsibility to a director or senior officer to provide a draft response to a council question these must be provided no later than 7 clear working days before the meeting.”</p> <p>A Member may amend a Motion or report by submitting the amendment in writing to the Head of Governance by 10.30am two clear working days before the meeting</p>

		Motions	<p>10.30am the working day before the meeting to 10.30am the second clear working day before the meeting.</p> <p>This is proposed to allow the Mayor additional time to review the validity of motions and/or amendments following receipt.</p>	
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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 Annual Council on 25 May 2021 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".
- 5.4.2 Sections 19 – 22 of the Police and Justice Act 2006 require every local authority to ensure that it has a crime and disorder committee with power to review or scrutinise crime and disorder issues and to make reports or recommendations to the local authority. discharge of those functions.
- 5.4.3 Localism Act 2011, Section 33 provides that a proper officer may grant dispensations to Members in relation to pecuniary interests. These are time limited and the period may not exceed four years.

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>