



Constitution & General Purposes Committee

4 October 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 2 – Members of the Council (Tracked)</p> <p>Appendix B – Article 2 – Members of the Council</p> <p>Appendix C – Article 9 – Chief Officers (Tracked)</p> <p>Appendix D – Article 9 – Chief Officers</p> <p>Appendix E – Article 11 – Finance, Contracts and Legal Matters (Tracked)</p> <p>Appendix F – Article 11 – Finance, Contracts and Legal Matters</p> <p>Appendix G – Article 10 – Decision-Making (Tracked)</p> <p>Appendix H – Article 10 – Decision-Making</p> <p>Appendix I – Article 7 – Committees, Forums and Working Groups (Tracked)</p> <p>Appendix J – Article 7 – Committees, Forums and Working Groups</p> <p>Appendix K – Financial Regulations (Tracked)</p> <p>Appendix L – Financial Regulations</p>

	Appendix M – Contract Procedure Rules (Tracked) Appendix N – Contract Procedure Rules Appendix O – Members Allowances Scheme (Tracked) Appendix P – Members Allowances Scheme
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Summary

A number of housekeeping amendments to the Constitution are proposed as set out in the report and appendices.

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 P.

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.	Article 2 (Members of the Council Councillors)	Members Rights to Speak at Licensing Committees	Article 2 of the Constitution details various Members rights. However, it currently does not detail how Members can make representations and/or speak at Licensing Committees. This information is detailed in the Members Licensing Code but should also be included in Article 2 (Members of the Council Councillors) which places all of Members rights into a single Article.	Amend Article 2 to include a new section to set out Members rights to make representations on licensing applications and speak at the Licensing Committee or Sub-Committee hearings as drafted in the amended article.
2.	Article 2 (Members of the Council Councillors)	Members' Rights to Refer Matters to Parent Body	<p>Legal and Governance officers have identified that occasionally Planning Committees are seeking to make referrals to the Strategic Planning Committee when a decision has already been taken. The proposed wording seeks to clarify that referrals can only take place before any decision is made.</p> <p>Additionally, the references to Area Planning Committees and the Planning Committee need to be amended to Planning Committees and the Strategic Planning Committee to align with the changes to Article 7 approved in October 2020.</p>	<p>Amend Article 2 to say that referrals must take place before a decision is made, rather than before the vote takes place.</p> <p>Amend references to planning committees.</p>
3.	Article 2 (Members of the Council Councillors)	Members Items for the Agenda	The Monitoring Officer has identified that Members Items are the only documents published within committee papers which don't have any kind of chairman or officer oversight prior to publication. It is proposed that a similar review arrangement is introduced for Members Items as exists for questions and motions at Council.	Amend Article 2 to enable the Head of Governance to refer Members Items to the Chairman if there are concerns about propriety.
4.	Article 2 (Members of the Council Councillors)	Members Rights to Call-in Planning Applications	The Chair of the Constitution & General Purposes Committee has requested that non-Ward Members are able to call-in planning applications.	Amend Article 2 to remove the requirement that Members can only call-in applications affecting their ward.

5.	<p>Article 9 (Chief Officers)</p> <p>Article 11 (Finance, Contracts and Legal Matters)</p>	<p>9.1 (b)</p> <p>11.3 and 11.5</p>	<p>The post title of Director of Assurance has recently changed to Executive Director for Assurance and sections of the Constitution need to be updated accordingly.</p>	<p>Amend Articles 9 and 11 as proposed.</p>
6.	<p>Article 10 (Decision-Making)</p> <p>Contract Procedure Rules</p>	<p>Table B – Authorisation and Acceptance Thresholds</p> <p>4 (Authorisation) ; and Authorisation and Acceptance Thresholds</p>	<p>In May 2021 Council approved changes to Article 10 and the Contract Procedure Rules to require that decisions with a value of more than £500,000 would be subject to additional reporting requirements (either a delegated powers report or report to a theme committee). The changes had been made after discussion with Procurement to alleviate concerns of the Monitoring Officer that some significant high expenditure was being approved via the Procurement Forward Plan with very little supporting information. The intention was these changes would deal with high value procurements where it is usually to have a business case for project to provide assurance that proceeding with the activity was appropriate. However, in practice these changes have impacted on more decisions than anticipated has resulted in additional workloads for theme committees where there is no practical justification for a second level of approval (e.g. for routine social care contracts). The rationale for the May 2021 changes remains valid, but some amendments are required to the Contract Procedure Rules to ensure that only some decisions (e.g. those requiring a business case) revert back to the relevant committee for approval. Officers are proposing that section 4.3 and the Authorisation and</p>	<p>Amend Article 10 and the Contract Procedure Rules as proposed.</p>

			Acceptance Thresholds be amended to state that reporting requirements will be in accordance will be detailed in the Procurement Forward Plan. An additional column will be added to the Plan which states additional authorisation requirements for some decisions (i.e. where a business case is required, there will be a requirement for authorisation to be reported back to the relevant theme committee). The Monitoring Officer and Finance can review the Procurement Forward Plan and indicate which decision require this additional approval. These changes ensure that Members will have further information on larger projects and decisions, and ensure that more routine decisions can progress without creating additional reporting requirements.	
7.	Article 7 (Committees, Forums and Working Groups)	Terms of Reference of the Safer Communities Partnership Board	Officers have highlighted that CommUNITY Barnet are no longer the Council's Voluntary and Community Sector partner and so should no longer be listed as a partner in the membership column for the Safer Communities Partnership Board	Delete CommUNITY Barnet from the membership column of the Safer Communities Partnership Board.
8.	Article 7 (Committees, Forums and Working Groups)	Section 7.5	Where reports come within the remit of more than one committee the Constitution currently states that: <i>"If any report appears to come within the remit of more than one committee, to avoid the report being discussed at several committees, the report will be presented and determined at the most appropriate committee as agreed by the Chairmen of the relevant committees in consultation with the Leader. If there is no agreement amongst the committee chairmen, then the report will be discussed and determined by the Policy and Resources Committee."</i>	Amend section 7.5 as proposed.

			<p>In practice, this has resulted in the Policy & Resources Committee receiving a significant number of additional reports which has consequently made the agendas for some meetings too large for items to be given due consideration by Members. A change is proposed which gives the committee chairs the discretion to discuss cross-cutting items and agree which committee the item should go to where it is not clear due to the content of the report. It is expected that this will reduce the workload of the Policy & Resources Committee and re-balance it with other theme committees.</p>	
9.	Financial Regulations	2.3.1 (Annual Budget Setting)	<p>Existing wording implied that the arrangements for budget consultation are determined by the Council whereas they are determined by Policy and Resources Committee with Council approving the final budget post-consultation.</p>	<p>Amend Article 7 to include the following additional wording in bold:</p> <p>The Policy and Resources Committee will publish a draft budget for consultation. Arrangements for budget consultation will be determined by the Policy and Resources Committee.</p>
10.	Financial Regulations	2.3.6 (Fees & Charges)	<p>Clarity required on the powers that Theme Committees have on the approval of fees and charges increases and new fees and charges.</p>	<p>Amend section 2.3.6 as proposed.</p>
11.	Financial Regulations	2.3.6 (Fees & Charges)	<p>Clarification required on the procedure for changes to Housing Revenue Account (HRA) and Housing General Fund (GF) fees and charges.</p> <p>The annual changes to the Housing GF and HRA Tenant and Leaseholder rent and service charges need to be notified to tenants and leaseholders before they can be issued with bills for the new financial year.</p>	<p>Amend section 2.3.6 as proposed.</p>

			Housing & Growth Committee refer the changes to P&R but the Barnet Group need formal approval before they can start to issue notices and commence billing.	
12.	Financial Regulations	2.3.8 (Alternative Budget Motions)	Clarification required on requirements and timing of alternative budget motions.	Amend section 2.3.8 as proposed.
13.	Financial Regulations	2.4.3 (Making changes to the budget)	Clarity required on the definition of “service” and approval rules for virements that are within the same directorate, but between services, and virements between one or more Directorates.	Update table in section 2.4.3 as proposed.
14.	Financial Regulations	2.4.4 (Making changes to the budget)	Clarity required on the definition of “Chief Officer” and “Service Director” (i.e. for Brent Cross, we have a Programme Director who reports to the Director of Growth who then reports to the Deputy Chief Executive.)	Update section 2.4.4 as proposed to include a link to Article 9 which defines a Chief Officer.
15.	Financial Regulations	2.4.6 (Making changes to the budget)	Clarification required that additions to the capital programme are reviewed at Capital Strategy Board prior to being recommended to Policy & Resources Committee for approval.	Amend Article 7, section 2.4.6 as proposed.
16.	Financial Regulations	2.4.11 (Budget Monitoring – Capital)	The current financial regulations require Chief Finance Officer approval for Capital Commitment over £1m but all capital projects (including the funding over those projects) are reviewed by Capital Strategy Board (CSB) before being recommended to Policy & Resources Committee for approval.	Remove the text below from Article 7 as Capital Receipts forecasts and impact of any shortfall on borrowing are reviewed on a monthly basis: “Due to the uncertainty around the generation and timing of capital receipts, and the impact that delays could have on the level of prudential borrowing, capital project managers must obtain the prior approval of the Chief Finance Officer before entering into any individual capital commitment on

				an approved capital project over £1m.”
17.	Financial Regulations	2.6.3 (Treasury Management Framework)	The Chief Finance Officer approves all borrowing not only long-term borrowing.	Amend section 2.6.3 as proposed.
18.	Financial Regulations	3.2.3 Cheques	The Council no longer issues cheques.	Remove the following text from 3.2.3: “Cheques above certain financial limits set by the Chief Finance Officer shall be manually countersigned by those designated officers authorised to do so by the Chief Finance Officer.”
19.	Financial Regulations	3.3.3 (Assets)	The wording in this section indicates that only disposals in excess of £6,000 should be reported to the Chief Finance Officer. All disposals are reported to the Chief Finance Officer on a quarterly basis.	Amend Article 7 to include the following additional wording in bold: “Chief Officers are responsible for the sale or disposal of assets employed in their service, and for accounting for these transactions. All disposals are to be reported to the Chief Finance Officer on a quarterly basis via Capital Strategy Board.”
20.	Contract Procedure Rules	5 (Procurement Method)	The Finance team have requested that any decision to waive the requirement to seek two written quotes should be taken in conjunction with the Assistant Director Investments and Innovation.	Amend section 5.6 to add that the decision to waive the requirement to seek 2 written quotes is the Director of Commercial & Customer Services in conjunction with the Assistant Director Investments and Innovation.
21.	Contract Procedure Rules	6 (Single Tender Action)	The Finance team have requested that the Assistant Director Investments and Innovation approve the single tender actions rather than the Director of Resources (Section 151 Officer).	Amend sections 6.1 and 6.2 to replace Director of Resources (Section 151 Officer) with Assistant Director Investments and Innovation.

22.	Contract Procedure Rules	8 (Acceptance)	<p>At the meeting of the Committee held on 12 April 2021 it was requested that the rationale for the change to Section 8.4 of the Contract Procedure Rules be revised as Members were unclear on the justification. An updated rationale is detailed below.</p> <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 do not have financial qualifications to sign off financial assessment for all sub threshold procurements. Financial assessment for all tenders (sub threshold) is not a requirement of the Public Contracts Regulations 2015 the intent being to reduce burden on suppliers for lower value/lower risk opportunities. Section 8.4 has been amended to clarify the process for the financial evaluation of tenders.”</p>	Amend section 8.4 as proposed.
23.	Contract Procedure Rules	11.4; and Authorisation and Acceptance Thresholds	From 1 st January 2021 the UK ceased to use the Official Journal of the European Union (OJEU) which was replaced with the Find a Tender service. References in the Contract Procedure Rules need to be updated accordingly.	Amend section 11.4 and the Authorisation and Acceptance Thresholds as proposed.
24.	Article 7 (Committees, Forums and Working Groups)	Section 7.5 – Terms of Reference of the Pension Fund Committee	The Council is required by the Local Government Pension Scheme Regulations 2013 to operate a Local Pension Board whose function is to ensure compliance with LGPS Regulations and the effective and efficient governance and administration of the pension fund. The Board is not a decision-making body, rather it makes recommendations to the	<p>Amend the terms of reference of the Pension Fund Committee to include “To review and determine the meeting allowance for members of the Local Pension Board.”</p> <p>Amend section 6.1 to increase the allowance for members of the Local Pension Board to £350 per</p>

	<p>Members Allowances Scheme</p>	<p>Section 6 – Independent Member and Co-optees’ Allowance</p>	<p>Pension Fund Committee and if necessary, reports to the Pensions Regulator. Membership of this body must represent all the participating employers, staff and ex-staff who are scheme members. Currently the Barnet Local Pension Board comprises seven representatives: three scheme members, three employers (including one Barnet Councillor) and one independent.</p> <p>The Local Pension Board meets four or five times a year to consider issues affecting the administration, governance and funding of the Pension Fund. Members have strict knowledge and Understanding requirements as set out in the Pension Act 2004 that encompasses LGPS rules, the law relating to pensions, pension fund policy documents etc. To enforce this, members of the Board must complete the Pension Regulator’s online training programme. There are no similar legal requirements for Councillors on the Pension Fund Committee.</p> <p>Board members currently receive an allowance of £127 per meeting as set out on paragraph 6.1 of the Members’ Allowance Scheme. This rate has been unchanged since 2014. This rate is viewed by officers as inadequate to attract and retain skilled representatives particularly in view of the onerous knowledge and understanding requirements. The Pension Board currently has one vacancy and has previously experienced difficulty in recruiting representatives.</p> <p>It is proposed that the meeting allowance for members of the Local Pension Board be increased to £350. No benchmarking is available for other Local Pension Boards, but these fees are modest</p>	<p>meeting.</p>
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		<p>compared with private sector schemes who typically remunerate trustees at rates measured in thousands or tens of thousands per annum. The costs of the Local Pension Board are currently recharged to the Pension Fund and none of the additional costs will fall on the Council's budget.</p> <p>Depending on the level of training undertaken, annual attendance fees will in aggregate be in the range £10,000 to £15,000 for the six members who are eligible.</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 Council on 27 July 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 Regulation 106 of the Local Government Pension Regulations 2013 sets out that each administering authority shall establish a Local Pension Board. An administering authority may determine the procures applicable to a Local Pension Board including as to the establishment of sub-committees, formation of joint committees and the payment of expenses. The expenses of the Local Pension Board are to be regarded as part of the costs of the administration of the fund held by the administering authority.

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>