
Meeting	Constitution, Ethics and Probity Committee
Date	28 th March 2013
Subject	Constitutional Review
Report of	Assurance Director
Summary	This paper sets out the outcome of the Constitution Review for Members consideration and for decisions on proposed changes.

Officer Contributors	Maryellen Salter, Assurance Director Andrew Nathan, Head of Governance
Status (public or exempt)	Public
Wards Affected	None
Key Decision	N/A
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	Appendix A Article 3 Appendix B Article 4 Appendix C Article 6 Appendix D Article 7 Appendix E Article 8 Appendix F Article 10 Appendix G Article 12 Appendix H Article 13 Appendix I Article 14 Appendix J Responsibility for Functions including Pension Fund Compliance Statement Council Procedure Rules including: <ul style="list-style-type: none">• Appendix K Section 1 – The Council;

- Appendix L Section 2 – Committee & Sub-Committees;
- Appendix M Section 4 – Public Participation Rules);

Appendix N Access to Information Procedure Rules

Appendix O Budget and Policy Framework Procedure Rules

Appendix P Executive Procedure Rules

Appendix Q Overview and Scrutiny Procedure Rules

Appendix R Financial Regulations

Appendix S Contract Procedure Rules

Appendix T Management of Real Estate Property and Land

Appendix U Employment Procedure Rules

Codes and Protocols:

- Appendix V Code of Conduct for Members
- Appendix W Planning Code of Good Practice
- Appendix X Licensing Code of Good Practice
- Appendix Y Officer Code of Conduct
- Appendix Z Member Officer Relations

Appendix AA Code of Corporate Governance

Appendix AB Scheme of Delegation (to follow)

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1. RECOMMENDATIONS

- 1.1 That the Committee consider the proposed changes to the Constitution as set out in the report, and discuss the recommendations proposed.**
- 1.2 That the Committee delegate authority to the Assurance Director, in consultation with the Chairman, to bring forward any further proposals/amendments if, between the timing of the Constitution, Ethics and Probity Committee and Full Council, there are other aspects of the Constitution requiring amendment.**
- 1.3 That under Article 4.02 of the Constitution, these changes are recommended to Full Council for adoption.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 17 May 2010, Review of the Constitution 2010/11 – various changes recommended by the Special Committee (Constitution Review) were approved and adopted by the Council.
- 2.2 Council, 17 May 2011, Review of the Constitution 2011/12 – various changes recommended by the Special Committee (Constitution Review) were approved and adopted by the Council.
- 2.3 Special Committee (Constitution Review), 27 June 2012, Constitution Review 2012/13 – the Committee agreed some minor Constitutional changes and agreed the approach to reviewing the Constitution during 2012/13.
- 2.4 General Functions Committee, 23 April 2012, Reorganisation of the Senior Officers and Council Structures – the Committee agreed to changes to organisational structure.
- 2.5 Constitution, Ethics and Probity Committee, 22 October 2012, Constitution Review – the Committee agreed that a full review of the constitution should be undertaken to reflect the new organisational structure and incorporate changes required as a result of the Localism Act 2011 and other legislative changes.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 To ensure that the Council has robust corporate governance arrangements, that enable the Council to deliver its objectives set out in the Corporate Plan, the Constitution should be kept under review and subject to amendments and alterations periodically to ensure that it continues to be a living document and reflects the pace of change of the organisation as a whole.

4. RISK MANAGEMENT ISSUES

- 4.1 A key improvement area noted within the 2011-12 Annual Governance Statement reported as part of the financial statements was the following: *Governance, accountabilities and decision-making – the change in organisational form to support the externalisation of elements of support*

services and regulatory services requires an updated governance model which clarifies accountabilities and responsibilities and provides assurance to decision-making bodies.

- 4.2 Without effective governance structures in place, there is a risk of delays in decision making that may adversely impact the ability of Commissioners and Delivery Units to deliver outcomes for local people.

5. EQUALITIES AND DIVERSITY ISSUES

- 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. The regular review of the Constitution will help ensure that this is the case and ensure the Council is meeting its equality obligations.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The Constitutional Review is being undertaken, in consultation with Members, with senior management involvement across the Council. There are no specific budget implications arising from this review. However, the work will impact on arrangements for decision making involving finance, procurement, human resources and property.

7. LEGAL ISSUES

- 7.1 Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 made several changes such as removing the requirement for local authorities to produce a Forward Plan of key decisions and replaced with a requirement to publish an Advanced Notice of Proposed Decisions Under Executive Functions; requirements to publish the intention to hold private meetings, to publish Background papers electronically, and additional rights to Members of Overview and Scrutiny to request documents..
- 7.2 Localism Act 2011 and accompanying Neighbourhood Planning (General) Regulations 2012 – have introduced a new level of statutory planning. Changes are required to the constitution to ensure clear governance procedures for Neighbourhood Development Plans, Neighbourhood Development Orders and Community Right to Build Orders. The Localism Act requires that every Council has a Code of Conduct for Members and a procedure for investigating complaints. These changes had previously been accounted for and adopted by Full Council and are excluded from this review.
- 7.3 This Constitutional Review does not suggest any legislative changes to the framework other than those described above. However legal services are completing their review of the changes for completeness and if any changes are suggested they will be considered as per recommendation 1.2. For completeness those sections that have been cleared by the shared legal service at the time of writing the report are:
- Articles 1, 2, and 5
 - Contract Procedure Rules and Code of Procurement Practice (Appendix S)

- Management of Real Estate, Property and Land (Appendix T)
- Officer Code of Conduct (Appendix Y)
- Member and Officer protocol (Appendix Z)

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council Constitution, Article 12, paragraph 12.03 (a) – one of the functions of the Monitoring Officer is to maintain an up-to-date version of the Constitution and ensure that it is widely available for consultation by members, staff and the public.
- 8.2 Council Constitution, Part 3, Section 2 – details the functions of the Constitution, Ethics and Probity Committee, which are 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”.

9. BACKGROUND INFORMATION

- 9.1 At the Constitution, Ethics and Probity Committee meeting on 22 October 2012 it was agreed that a major review be undertaken of the Constitution to ensure that it meets the needs of the new organisation following the senior management restructure.
- 9.2 A four stage review has been carried out:
- Stage 1 – Evaluate existing arrangements
 - Stage 2 – Consider how recent commissioning / outsourcing changes will determine relevant elements of the constitution (subject to the outcome of the pending judicial review)
 - Stage 3 – Prepare first re-draft of the constitution for Member working group
 - Stage 4 – Member consideration and approval
- 9.3 Any proposals relating to changes in governance arrangements as a result of the provisions of the Localism Act 2011 (i.e. from Executive to Committee system form of governance, as agreed at Council on 22 January 2013) have been excluded from this review and a separate project will be undertaken during 2013-14.
- 9.4 There are a number of dependencies of this review, such as the timing of the legal review, as was considered appropriate that it was sent for legal consideration after such time as Members had considered proposals. As such the review will be an on-going process until the Full Council meeting in April 2013.
- 9.5 Proposed amendments to sections of the Constitution are set out in this report and the associated appendices for Members consideration. Subject matter experts across the Council have been involved in considering the relevance and readability of the current Constitution, and its accuracy in the light of policy and legislative changes.

9.6 Officers have held discussions with the Leaders of each political group to ensure the review process was iterative and subject to detailed discussion. A Consultative Working Group was set up to discuss proposals in detail following initial review and proposed options. The Consultative Working Group consisted of Members from the Constitution, Ethics and Probity Committee. The Consultative Working Group met over February and March 2013.

9.7 The following sections of the Constitution have been reviewed. Proposed amendments are set out in the appendices and the rationale behind these changes are set out in the report below:

- ***Preface to the Constitution***
- ***Summary and Explanation***
- Articles 1 to 16 (**Appendices A – I**)
- Responsibility for Functions including Pension Fund Compliance Statement (**Appendix J**)

Council Procedure Rules including:

- Section 1 – The Council (**Appendix K**)
- Section 2 – Committee & Sub-Committees (**Appendix L**)
- Section 3 – Panels and Consultative Bodies
- Section 4 – Public Participation Rules (**Appendix M**)

- Access to Information Procedure Rules (**Appendix N**)
- Budget and Policy Framework Procedure Rules (**Appendix O**)
- Executive Procedure Rules (**Appendix P**)
- Overview and Scrutiny Procedure Rules (**Appendix Q**)
- Financial Regulations (**Appendix R**)
- Contract Procedure Rules and Code of Procurement Practice (**Appendix S**)
- Management of Real Estate Property and Land (**Appendix T**)
- Officers Employment Procedure Rules (**Appendix U**)
- Codes and Protocols
 - Code of Conduct for Members (**Appendix V**)
 - Planning Code of Good Practice (**Appendix W**)
 - Licensing Code of Good Practice (**Appendix X**)
 - Officers Code of Conduct (**Appendix Y**)
 - Protocol for Member Officer Relations (**Appendix Z**)
- Code of Corporate Governance (**Appendix AA**)

- 9.8 The Members Allowances Scheme has been excluded from the review as it is unlikely that the allowances scheme would change unless there was a change in form of governance.
- 9.9 As a result of changes to the Constitution there is also a requirement to update the Officer Scheme of Delegation, which will be considered alongside this report as a separate appendix (Appendix AB-to follow). If there are further issues that arise between the meeting and the submission of recommendations to Council on 16 April 2013, including through further consideration by the Shared Legal Service, then authority is requested for the Assurance Director to make further changes in consultation with the Chairman. These will be included in the Head of Governance's report to the meeting.

PROPOSED AMENDMENTS:

- 9.10 Explanatory Notes – A review of the Constitution has highlighted that a number of sections contain explanatory notes. These were originally intended to provide Members and officers with additional information regarding the background or statutory basis for some of the rules contained in the Constitution. Officers are proposing that these notes are removed with any relevant wording being incorporated into appropriate section (or rule) of the Constitution. Removing explanatory notes will assist in reducing ambiguity as it is currently unclear whether explanatory notes constitute rules which need to be adhered to. Where explanatory notes have been removed or incorporated into sections of the Constitution, these will be referred to individually in the sections below.

9.11 Preface to the Constitution

- 9.11.1 It is recommended that this section be re-titled as 'Part 1 – Decision Making' and be merged with the 'Summary and Explanation' section.

This section will contain information on what the Constitution is, the Council's decision-making structure including Council functions, Executive functions and Overview and Scrutiny, and the rights of citizens in their dealings with the Council.

9.12 Part 2 – Articles of the Constitution

- 9.12 There are 16 Articles in the Constitution. Currently, there is duplication of information contained in other sections of the Constitution and the information presented is not clear or user-friendly. Some information contained in the Articles can be condensed or deleted. The sections below detail the proposed changes to each Article.

9.13 Article 1 – The Constitution

- 9.13.1 No changes proposed.

9.14 Article 2 – Members of the Council

- 9.14.1 No changes proposed.

9.15 Article 3 – Citizens and the Council (Appendix A)

9.15.1 Changes have taken place as follows:

- Delete references to the 'Public Participation' section and replace 'Public Engagement' (link to proposed change in Council Procedure Rules, section 4- as outlined at para 9.34);
- Delete references to the 'Forward Plan' and replaced with reference to the 'Advanced Notice of Proposed Decisions Under Executive Functions';
- Included additional text to reflect that members of the public have a right to participate in formal committee meetings (as set out in the Engagement rules) as well as overview and scrutiny working groups; and
- Revised text relating to complaints about Members following changes in the Standards regime.

9.15.2 A revised Article 3 is appended. The Committee are recommended to approve the changes contained therein.

9.16 Article 4 – The Full Council (Appendix B)

9.16.1 The list of items for Council decision (Policy Framework) has been updated following a review of statutory requirements relating to decisions reserved to Council. The list of Policy Framework documents has also been updated in the Responsibility for Functions section of the Constitution.

9.16.2 An explanatory note relating to bye-laws has been deleted, with relevant text incorporated into the body of the section and the Responsibility for Functions section of the Constitution.

9.16.3 A revised Article 4 is appended. The Committee are recommended to approve the changes contained therein.

9.17 Article 5 – Chairing the Council

9.17.1 No changes proposed.

9.18 Article 6 – Overview & Scrutiny (Appendix C)

9.18.1 Minor amendments have been made to improve the clarity of Article 6. This Article has been retained largely unchanged as it provides an overview of the roles and remit of scrutiny committees.

9.18.2 A revised Article 6 is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

9.19 Article 7 – The Executive (Appendix D)

9.19.1 The majority of this article has been retained as it refers to rules relating to the appointment of the Leader, Deputy Leader and Cabinet Members.

9.19.2 With reference to section 7.09, amendments have taken place to update post titles and structural changes within the health service (i.e. NHS Barnet will cease to exist and the council's primary health partners will be the Clinical Commissioning Group).

9.19.3 It is proposed that section 7.09 should be deleted as the council will have an established relationship with health partners via the Health and Well Being Board which becomes a decision making body on 1 April 2013, and has been incorporated in the Constitution.

9.19.4 A revised Article 7 is set out in the attached document pack. The Committee are recommended to:

- i) approve the changes contained therein; and
- ii) give instruction as to whether section 7.09 can be deleted.

9.20 Article 8 – Regulatory and other Committees (Appendix E)

This section is proposed to be retained largely unchanged, with the only amendments being typographical.

A revised Article 8 is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

9.21 Article 9 – Standards Committee

Deleted due to changes in the standards framework. New arrangements arising from the Localism Act 2011 have been incorporated in other sections. All subsequent articles to be renumbered.

9.22 Article 10 – Area Planning Sub-Committees and LSP (Appendix F)

Changes have taken place as follows:

- Additional text to include reference to the wards covered by each Forum;
- Inclusion of an additional requirement that issues raised at Forums to be responded to within 20 working days. Currently, updates on issues discussed at forums are reported to the following forum. As forums are only held quarterly, residents could be left waiting up to three months for a follow-on from the service area. Accordingly, officers are recommending that a 20-day response time be added so that residents receive a timely response to issues raised. Members are requested to consider this proposal and either agree to the change, or retain the current arrangements.
- Additional text has been included to reflect that Barnet discharges its duties relating to the Local Strategic Partnership via the Barnet Partnership Board. References to Local Area Agreements have been removed as legislative changes mean that these are no longer a statutory requirement.
- The deadline for submission of Issue for Residents Forums have been changed from 6.00pm the day before the meeting to 10.00am on the second working day prior to the meeting to be consistent with the deadline for other meetings. Implementation of this change will also enable officers who are required to respond to issues raised additional time to prepare briefings.

A revised Article 10 is appended. The Committee are recommended to:

- i) approve the changes contained therein;
- ii) approve the amended deadline for submission of Issues for Residents Forums; and

iii) indicate whether they agree to the imposition of a 20-day response time.

9.23 Article 11 – Joint Arrangements

No changes proposed.

9.24 Article 12 – Table of Chief Officers (Appendix G)

This Article has been updated to reflect new posts in the new organisational structure and the statutory responsibilities of those post holders.

A revised Article 12 is appended. The Committee are recommended to approve the changes contained therein. Deputising arrangements have previously been approved by General Functions Committee in January 2013.

In addition, the statutory post of Director of Public Health has been considered. For background, this table sets out their mandatory responsibilities:

MANDATORY RESPONSIBILITIES	AUTHORITY
1. Write the Annual Report on the health of the local population	The DPH has a duty to write a report, whereas the authority's duty is to publish it (section 73B(5) & (6) of the 2006 Act ¹ , inserted by section 31 of the 2012 Act). The content and structure of the report is something to be decided locally. ²
2. All of their local authority's duties to take steps to improve public health	Section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act ³
3. Any of the Secretary of State's public health protection or health improvement functions	Section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act . These include services mandated by regulations made under section 6C of the 2006 Act, inserted by section 18 ⁴ of the 2012 Act. ⁵
4. Exercising their local authority's functions in planning for, and responding to, emergencies that present a risk to public health	Section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act ⁶
5. Their local authority's role in co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders	Section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act ⁷

¹ The NHS Act 2006

² DH guidance [Directors of Public Health in Local Government: i\) Roles, responsibilities and context](#) (October 2012, p.9., para. 3.2.

³ DH guidance [Directors of Public Health in Local Government: i\) Roles, responsibilities and context](#) (October 2012, p.9., para. 3.3

⁴ Section 18* gives the SoS powers to make regulations requiring local authorities to carry out public health functions and makes the local authority liable for acts or omissions of the authority when exercising such functions. ([Get in on the Act Health and Social Care Act 2012](#), LGA, June 2012, p.7

⁵ Ibid

⁶ Ibid

⁷ Ibid

MANDATORY RESPONSIBILITIES	AUTHORITY
6. Such other public health functions as the Secretary of State specifies in regulations	Section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act ⁸
7. DsPH will be responsible for their local authority's public health response as a responsible authority under the Licensing Act 2003 , such as making representations about licensing applications	Through regulations made under section 73A(1) of the 2006 Act, inserted by section 30 of the 2012 Act. ⁹ This function is given to local authorities by sections 5(3), 13(4), 69(4) and 172B(4) of the Licensing Act, as amended by Schedule 5 of the 2012 Act.
8. DsPH must have a place on their local health and wellbeing board	Section 194(2)(d) of the 2012 Act.
9. DsPH are made statutory chief officers of their local authority, and therefore holders of politically restricted posts ,	Section 2(6)(zb) of the Local Government and Housing Act 1989, inserted by Schedule 5 of the 2012 Act.
10. Undertake a Faculty of Public Health continuing professional development programme and maintain a portfolio of training that demonstrates competence with all aspects of public health accepted by the UK Public Health Register.	<u>Directors of Public Health in Local Government: i) Roles, responsibilities and context</u> (October 2012, p13., para. 5.6.
11. Where the DPH is also a medical consultant, there is a requirement for annual medical appraisal to be undertaken as an integral part of the revalidation process	<u>Directors of Public Health in Local Government: i) Roles, responsibilities and context</u> (October 2012, p13., para. 5.11.
12. LA (DsPH) "will have a duty to ensure plans are in place to protect their population including through screening and immunisation . They will provide independent scrutiny and challenge of the plans of NHS CB, PHE and providers. PHE will support DsPH to hold the NHS CB to account through the provision of data and information on performance against standards. DsPH will need to satisfy themselves that the combined plans of all these organisations will deliver effective screening and immunisation programmes to their local populations. "	National screening and immunisation programmes. <u>Letter from DH</u> , 23.08.2012, p5.

⁸ Ibid

⁹ Health and Social Care Act 2012

Numbers 1,2,4,5,7 and 12 have been included. It is suggested the others are omitted as they relate to duties undertaken either on behalf of the Secretary of State (as they have a dual reporting line), are covered elsewhere in the Constitution, or are general requirements of the role.

9.25 **Article 13 – Decision Making (Appendix H)**

This section has been updated to remove explanatory note (relating to definition of key decisions) and incorporate the text into the main body of the article.

A revised Article 13 is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

9.26 **Article 14 – Finance, Contracts, Land Disposal and Legal Matters (Appendix I)**

Removed reference to the Director of Corporate Governance and replaced with Monitoring Officer.

9.27 **Article 15 – Review and Revision of the Constitution**

No changes proposed.

9.28 **Article 16 – Suspension, Interpretation and Publication of the Constitution**

No changes proposed.

9.29 **Part 3 – Responsibility for Functions (Appendix J)**

9.29.1 Explanatory Note: A long explanatory note at the beginning of the Responsibility for Functions section has been removed with the wording incorporated into the body text with a revised heading of 'Council Functions and Executive Functions'. All subsequent sections have been renumbered.

9.29.2 Responsibilities for Council Functions – This section outlines the terms of reference of non-Executive decision-making bodies. Broadly speaking, this section remains largely unchanged. However, duplication has been noted across a number of Committees and changes have been made to rationalise the content.

9.29.3 The terms of reference of the Audit Committee have been revised to remove any unnecessary or duplicated responsibilities, for example the Constitution, Ethics and Probity Committee reviews the Constitution in terms of the Contract Procedure Rules and Financial Regulations and therefore does not require oversight by the Audit Committee.

9.29.4 Planning and Environment Committee – an explanatory note removed and incorporated into text.

9.29.5 Area Planning Sub-Committee – please note that post titles need review and updating following any decision surrounding the Development and Regulatory Services project.

- 9.29.6 General Functions Committee – details around reporting restructure are proposed to be included within the HR regulations (see section 9.43). It is too detailed to be included in terms of reference which should state the purpose of the Committee, i.e. to consider reports on redundancy. The text has been removed and replaced with “to consider reports on organisational restructure in line with the HR Regulations”.
- 9.29.7 Remuneration Committee – Terms of Reference incorporated into columns rather than an appendix within the section. They have been updated to reflect latest DCLG guidance and the decisions made by the Committee to date on how it will undertake its responsibilities.
- 9.29.8 The terms of reference are also required to include voting on Chief Officer salary packages and therefore wording has been suggested for inclusion.
- 9.29.9 Health and Well Being. The Health and Well-Being Board has been added to the list of responsible bodies as it becomes a statutory Council Committee from 1 April 2013, as provided for by the 2012 Health and Social Care Act. It is proposed that, in accordance with the Local Authority (Public Health, Health and Well-Being Board and Health Scrutiny) Regulations 2013 (SI 218), the provisions of the 1972 Local Government Act are waived as far as they apply to political proportionality and to only Members of the Council being allowed to vote on Council Committees. The Regulations also provide that the Health and Well-Being Board must be consulted on its own membership arrangements.
- 9.29.10 Responsibilities for Executive Functions: This section outlines responsibility for Executive functions including general responsibilities, the responsibilities of individual Cabinet Members, the responsibilities of Cabinet / Cabinet Committees and responsibilities of Area Environment Sub-Committees.
- 9.29.11 The Leader is considering Cabinet Members portfolios in line with the Annual General Meeting and as such at this stage only minimal changes have been proposed. A number of the portfolios referred to out of date strategies and these have been updated to reflect the changes. Portfolios have also been amended to remove reference to specific Corporate Plan priorities as these are updated and changed regularly. Partnership Boards have been referred to as a means of implementing strategy across the borough. Some portfolios did not accurately describe the responsibilities.
- 9.29.12 The explanatory note at paragraph 3.4 (Urgent Decisions) has been deleted and the text has been incorporated into the body of the Constitution.
- 9.29.13 Section 3.8 of the Constitution details plans and strategies that comprise the Policy Framework Documents which are for Council decision and other plans and strategies which are for Cabinet decision. Officers have undertaken an ‘audit’ of the number of strategies currently in existence across the Council in an attempt to codify and rationalise them and introduce a clearly understood and consistent hierarchy. The review highlighted that a number of these strategies are out of date, or are not indeed required by Statute. Officers are recommending that plans and strategies outlined in Section 3.8 of the Constitution should be replaced with six main commissioning strategies: four that reflect broad areas of activity; an overarching document covering spatial planning; and an overarching

document covering the Council's business management. The strategies would also have a limited number of sub-strategies which are of the same analytical rigour, but address more specific areas within a broad theme.

MAIN STRATEGY	SUB-STRATEGIES
Corporate Plan	People Strategy Medium Term Financial Strategy
Local Development Framework	Relevant Development Plan Documents
Children and Young People Strategy (formerly Plan)	Education Strategy Inclusion Strategy Early Intervention and Prevention Strategy
Health and Well Being Strategy	Prevention Strategy Independence Strategy
Safer Communities Strategy	Substance Misuse Strategy
Regeneration Strategy	Housing Strategy Skills Enterprise and Employment Action Plan

- 9.29.14 It is proposed that the main strategies all be the responsibility of Cabinet to approve, with the exception of the Health and Well-Being Strategy, which will be approved by the Health and Well Being Board, as this will exercise the Council's executive responsibilities in this field. In some cases they will require additional statutory approval (e.g. the Local Development Framework must be approved by Council).
- 9.29.15 Assuming they are consistent with the overall policy direction of the main strategy, sub-strategies would be signed off by the relevant Cabinet Member(s) unless they specifically requested them to be approved by the Cabinet.
- 9.29.16 Any additions to these would require approval, and this would only be given in cases of a theme that was genuinely strategic in nature and could not be addressed through existing strategies or delivery plans.
- 9.29.17 However, strategies outside this list will need to be retained where there remains a specific statutory requirement for Council or the Executive to approve them, and this has been reflected in the list at section 4.9.
- 9.29.18 Amendments have been made to the list of plans and strategies for Council and Cabinet decision as a result of the Localism Act 2011 and accompanying Neighbourhood Planning (General) Regulations 2012 which have introduced a new level of statutory planning, and other recent changes that mean that some documents such as the Children and Young People Plan and Homelessness Strategy are no longer statutory requirements. Changes are required to the constitution to ensure clear governance procedures for Neighbourhood Development Plans, Neighbourhood Development Orders and Community Right to Build Orders
- 9.29.19 A number of explanatory notes have been removed and incorporated as text as they describe rules and delegations. There were additional explanatory notes describing restructures that have been deleted and are now considered as part of the HR regulations.

9.29.20 Safeguarding and Equalities: Since 2009, Cabinet has received an Annual Report on how the Council has fulfilled its Safeguarding responsibilities. In considering the latest report, at their meeting on 17 July 2012, Cabinet agreed that an annual report on safeguarding continue to be submitted to Cabinet and Council. This has therefore been added to the list of plans and strategies requiring Cabinet/Council decision. In addition, reference to both Safeguarding and the promotion of Equalities as a responsibility of all Cabinet Members has been added.

9.29.21 Powers Delegated to Officers: This section has been updated to reflect the Council's new organisational structure and update the powers of the Head of Paid Service in respect of HR matters. 1

Pension Fund Compliance Statement

9.29.22 There are no changes proposed to this section.

9.30 Part 4 – Council Procedure Rules

9.31 Section 1 – The Council (Appendix K)

9.31.1 On the 17 May 2011, Council approved the recommendations proposed by Council Meeting Review Group. The Review Group was established to consider:

- a) The structural framework of the agenda for Council meetings; and
- b) Specific proposals from Members regarding:
 - (i) removing the distinction between Motions and Policy Items
 - (ii) removing 'comments on the work of Cabinet' from the agenda; and
 - (iii) Changing speaking rules

9.31.2 The Membership of this group was Councillors Richard Cornelius, Andrew Harper, Joan Scannell, Alison Moore and Barry Rawlings.

9.31.3 Amongst the changes agreed were;

- The merging of the Motions (Part 3) and Policy Development (Part 4), creating the Administration/Opposition Items and Non Executive Items.
- Reducing the number of Council meetings by at least 1, with consideration to be given to a further reduction.
- The removal of 'Comments on the works of Cabinet' from the agenda.
- Amending the conclusion time of the meeting to 10pm, with the proviso of the Mayor extending it to 10:30pm
- That amendments should not negate the motion with '..to delete all words after Council...'

9.31.4 The options set out below seek to strengthen the planning and governance arrangements of Council meetings to ensure that these continue to operate effectively.

Number of Council Meetings

9.31.5 There are currently six Council meetings per year (January, March (Budget), April, July, September and November). The Annual Council Meeting is held in

May to appoint the ceremonial mayor and committee memberships for the year.

9.31.6 During the previous Council review conducted by Members, the proposal to delete the December meeting had been considered. This was approved and has been removed from the calendar of meetings. The Working Group considered further options for reducing meetings and propose that the current schedule of meetings is retained.

9.31.7 Deadlines

There are different deadlines associated with each aspect of Council business:

1. Questions to Council representatives on Outside Bodies (CPR 43.1)
21 clear working days before the Council meeting
2. Questions to the Leader and Cabinet (CPR 30.3)
10 working days before the Council meeting.

It is proposed to align both deadlines, which will be 10 **clear** working days before agenda publication.

9.31.8 Questions Procedure

The Working Group considered options but recommend that the existing procedure and deadlines are followed.

9.31.9 Business Items

Business Items for Debate – CPR 31.1

The current deadline falls six working days before the Council meeting (which is the Friday before the agenda is published on the following Monday.) It is proposed to bring the deadline forward from 4.00pm to 10.30 am that day to allow any issues to be addressed and clearance obtained in good time for it to be reflected on the agenda.

9.31.10 Amendments

Amendments to Items on the agenda – CPR 31.6, 32.1.1, 41.1

This deadline currently falls on the Monday (one day) before the meeting. These are then published and couriered to Members, with any other changes which get incorporated into the Supplemental Report of the Head of Governance. Additional costs are incurred for this extra courier run.

It is proposed that the additional Monday courier run before Council be scrapped. Members will be notified by e-mail with hard copies placed in Group Rooms on the day of the meeting.

Tidying Up

9.31.11 Amendments

Currently the rules governing amendments are set out in paragraphs 17, 17A, 17B, 17C, 18, 32, 41, 44, and 44.3 to 44.5. The proposal is have this set out once making it easier to follow, providing clarity and ensuring consistency.

9.31.12 Rules of Debate – New Heading

The rules governing debate at the meeting are set out in three separate sections – paragraphs 33, 36 and 40. There is repetition and duplication as the rules that apply to Part 3 Non Executive Business Items, Administration and Opposition Business Items and Part 4 are the same. Therefore it seems logical to just have it set out just once to avoid confusion.

9.31.13 Time for Debate – New Heading

The purpose for creating this new heading is the same behind ‘Rules of Debate.’ This is a rule repeated and duplicated – paragraphs 34, 37 and 42.

As highlighted in Part 3 – Responsibility for Functions, it is proposed that the ‘Explanatory notes’ are removed, with any relevant information incorporated into the rules.

9.31.14 Speeches

Proposal is to delete the section as the rules governing this will be set out in the ‘Time for Debate.’

9.31.22 Role of Mayor

This is a new heading replacing paragraph 7 and clearly setting out the Mayor’s role at Council meetings incorporating information from Articles 4 and 5 into this section.

9.31.23 Members’ Conduct

It is proposed to delete this section as rules governing Members conduct at meeting is set out in the Code of Conduct.

9.32 Section 2 – Committee & Sub-Committees (Appendix L)

9.32.1 This section has been amended as follows:

- Amended title to ‘Meetings Procedure’ instead of ‘Committees and Sub-Committees’ to avoid confusion with Council Procedure Rules which are separate and distinct.
- Amended table 1.1 to improve clarity around membership, substitutes and quorums for all committees.
- Revised Section 2 to improve clarity regarding arrangements for substitutes. Deleted unnecessary text which is reflected in revised sections.
- Revised Section 3 to improve clarity around quorum.
- Revised wording at Section 5.2 to clarify the position relating to amending minutes (i.e. factual inaccuracies only).
- Revised Section 7 to improve clarity around councillors rights to attend Committee where they are not a member

- Revised Section 8 on disorderly conduct to improve clarity.
- Removed explanatory note after Section 11 which refers to circulation of minutes as this is both unnecessary and not current custom and practice. Members receive notification of minutes publication via e-mail as soon as they are available.
- Section 14 relating to suspension of business rationalised to improve clarity.
- Deleted section on voting on appointments as this is covered already within the section

9.33 Section 3 – Panels and Consultative Bodies

This section related to the former Corporate Health and Safety JNCC and will therefore be removed. All sections subsequent to it will need to be re-numbered.

9.34 Section 4 – Public Participation Rules (Appendix M)

It is suggested that this Section be amended to read ‘Public Participation and Engagement’.

It has been tidied up to provide greater clarity, and the following changes are recommended: .

Clause 5- Restrictions and Exemptions

It is proposed to add a sentence that ‘the Chairman of the relevant Committee or Sub-Committee, after taking advice from the Head of Governance, shall decide whether any particular comment or question will be permitted’.

Clause 5.3- This has been added to clarify that Public questions are not permitted at Overview and Scrutiny Committees when they are considering call-ins or undertaking pre-decision scrutiny of executive decisions. The above committees are in many respects primarily concerned with scrutinising the work of the Executive. As these are not decision making bodies, the chairmen are limited in their ability to answer questions. However the ability for members of the public to make comments at the Audit Committee and overview and scrutiny committees is proposed to be retained. This will enable members of the public to articulate their views to these committees so that they can take these into account in considering and debating items of executive business.

Clause 6. Petitions

There is currently no clarity for Members, officers and the public regarding how the council will deal with petitions and additional paragraphs are proposed to address this.

Paragraphs 6.6. to 6.8 have been added to set out more specific procedures for how petitions will be responded to, either through Residents Forums, or the relevant Cabinet Member/Director. or the relevant Area Environment Sub-Committee.

Paragraph 6.9 sets out how petitions of 2000 or more signatures (but under 7000) will be dealt with at Business Management overview and Scrutiny Committee. Paragraph 6.10 sets out the procedure for how petitions of over 7000 signatures will be presented and dealt with at Council.

9.35 Access to Information Procedure Rules (Appendix N)

9.35.1 This section has been updated to reflect Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which came into force on 10 September 2012. The main impact of these regulations is replace the requirement to have a Forward Plan (of key Executive decisions) a requirement to publish **28 clear day advance notice** prior to taking any **key decision** or a decision subject to exempt information, and give 28 clear days notice of the intention to hold a private meeting (or part of a meeting) of a Cabinet committee i.e. Cabinet/Cabinet Resources Committee. The specific changes are:

- Deleted from Section 3 text which relate to public disturbance as these are referred to in other sections of the Constitution.
- Wording in Section 5 has been deleted to improve clarity regarding public access to late items.
- Rationalised the wording at Section 6 to improve clarity.
- Revised Section 8.1 as items listed as Background Information are not routinely published on the website, but are available on request (either from Governance or the report author) should a member of the press or public wish to access them.
- Section 10.4 – text at 8.7C deleted due to the revocation of legislation relating to Standards Committees.
- Deleted ‘Definitions’ and ‘Explanatory Notes’ sections after 10.4 as these sections as these add confusion rather than clarity regarding the application of exemption categories to decisions. Additionally, these are rarely referred to or applied in interpreting the exemption categories to decisions.
- Deleted Section 10.5 due to the abolition of the standards regime.
- Section 13 amended to delete reference to the ‘Forward Plan’ and replace with reference to a ‘28 day advanced notice’ in accordance with regulations which came into force in September 2012.
- Section 22 of the Local Government Act 2000 previously provided that ‘...it is for a local authority executive to decide which of its meetings, and which of the meetings of any committee of the executive, are to be open to the public and which of those meetings are to be held in private.’ The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England)

Regulations 2012 now provides that '... a meeting of a decision-making body must be held in public' which supersedes the provisions about private meetings of the Executive. Sections 19, 20 and 21 have been deleted and replaced with a new Section 19 which details new provisions around private Executive meetings. All subsequent sections have been renumbered.

- Revised (new) Section 22 to provide additional detail on timescales for providing documents (as defined in the new regulations)
- Deleted explanatory note at the end of the section and incorporated text relating to inspection of finance documentation as a (new) Section 24.5.

9.35.2 A model constitution that incorporates the new requirements of this Act is still in the process of development by the Association of Council Secretaries and Solicitors (ACSeS). It is likely therefore that further revisions to the Constitution need to be brought forward in due course.

9.36 Budget and Policy Framework Procedure Rules (Appendix O)

It was agreed by Members that this should be included within the financial regulations in order to have them all in one space.

9.37 Executive Procedure Rules (Appendix P)

No changes are proposed to this section. The document has been revised to incorporate some formatting changes. The body text remains the same.

9.38 Overview and Scrutiny Procedure Rules (Appendix Q)

9.38.1 The Leader has indicated his wish to introduce two new Overview and Scrutiny Committees from the start of the 13/14 Municipal Year, namely a Contracts OSC, and an Education OSC. Suggested terms of reference are included at the end of this Appendix.

9.38.2 As it is likely, due to Full Council decision in January 2013, that the Council will go to a Committee system style of Governance from the 2014/15 Municipal Year the Overview and Scrutiny Procedure Rules are thought to be generally fit for purpose for the current year and will be reconsidered when the Constitution is further reviewed in 13/14 to prepare for a return to the Committee system.

9.38.3 At this stage a number of minor changes- principally as a result of the Health and Social Care Act 2012- are proposed which have been tracked. The reason for these is as follows:

- Reference to the new organisation, Barnet Clinical Commissioning Group which is subject to scrutiny, has been amended to be referred to in the Health OSC Terms of Reference
- Removal of "Barnet PCT" from the Health OSC Terms of Reference, as this now ceases to exist

- Capturing the replacement of “Barnet LINK” with “HealthWatch” within the Terms of Reference of both the Safeguarding and Health OSC.
- The decision of Council on 24th January 2012 to include the Barnet Group LTD within the Terms of Reference for the Budget and Performance OSC

9.39 Financial Regulations (Appendix R)

9.39.1 Change to the Structure of the Financial Regulations

The current Financial Regulations are divided into three sections:

- General Introduction
- Financial Management
- Financial Administration

It is proposed that these be combined into one section with continuous numbering through the whole document for ease of referencing.

Where sections are proposed to be deleted, these have been marked as track changes with a note to highlight the reason for the proposed change.

9.39.2 Additions/Deletions

It is proposed that the Budget and Policy Framework Procedure Rules are added to the financial regulations so that all financial aspects are held in one location.

It is proposed that a new section is created within the Constitution titled the Human Resources (HR) Regulations.

9.39.3 General Introduction

A number of paragraphs are proposed to be deleted as they are either duplicated in other parts of the Constitution, or have been moved into different sections.

9.39.4 References to Key Roles

Reference to the key roles has changed to reflect the changes to the Council structure. The proposed new Financial Regulations now refer to the following roles:

- Section 151 Officer
- Chief Officers
- Chief Monitoring Officer
- Chief Executive
- AD Operational Assurance
- Head of Audit and Anti Fraud

9.39.5 Section 2: Status of Financial Regulations

Section 2 of the proposed new Financial Regulations is broadly similar to section 2 of the current Financial Regulations. Some paragraphs have been removed where they refer to specific detail that is covered elsewhere in the Financial Regulations. Some paragraphs have been added to this section that were previously in other sections of the Financial Regulations in order to have all the relevant paragraphs on the status of the Financial Regulations in one place.

A Section 2.2 has been added to clarify the status of the Financial Regulations with schools.

9.39.6 Section 3: Responsibilities

Section 3 of the general introduction to the current Financial Regulations sets out the responsibilities of various committees of the Council. This has been removed from the proposed new Financial Regulations as it is covered in Part 3 of the Constitution: Responsibility for Functions. All terms of references will be revised and cross checked.

Section 3 of the general introduction to the current Financial Regulations also sets out the responsibilities of various officers of the Council. These are also removed as these responsibilities are covered in the specific areas of the Financial Regulations rather than grouped together here.

A matrix of responsibilities has also been drafted to summarise the responsibilities of key officers. This pulls out the specific responsibilities of officers in the proposed new Financial Regulations and sets them out by officer in a matrix. This is intended to be an appendix to the main Financial Regulations. This matrix will form the basis of the schemes of delegation that will be in place for each Delivery Unit and the Commissioning and Assurance Groups. These will be published alongside the Constitution for transparency purposes. See separate Matrix.

9.39.7 Part 1 Financial Management

9.39.8 Section 4.3: Annual Budget Setting

The reference to the deadline in Part 3, Section 1 of the Constitution has been removed from paragraph 4.3.11 as it is no longer included in that part of the Constitution. A deadline will be added into the Financial Regulations.

9.39.9 Section 4.4: Budget Management and Monitoring

The Financial Management section of the current Financial Regulations has two sections as follows:

- (4) Budget Management and Monitoring
- (5) Further Responsibilities of Corporate Directors and Heads of Service

As these two sections cover broadly the same thing, they have been combined into one section in the proposed new Financial Regulations: (4.4) Budget Management and Monitoring.

A section on control of establishment lists has been removed from this section as it will now be covered in the HR Regulations.

Scheme of virement is an appendix in the current Financial Regulations – this has been included in the main body of the proposed new Financial Regulations at section 4.4.3. The text has been slightly amended and it has been put into a table to improve clarity of the level of authorisation needed.

Paragraph 4.4.6 has been expanded to include reference to the autonomy of delivery units.

Paragraph 4.4.6.6 has been added to outline treatment of year end over or under spends of autonomous delivery units.

Paragraph 4.4.10 on approval of allocations of contingency has been amended to bring the levels of approval into line with the approval level for virements.

9.39.10 Section 5.1: Accounting

A reference to “SAP” in paragraph 5.1.4 has been removed and changed to “Council’s Accounting System” to cover the possibility of the accounting system being changed in the future.

9.39.11 Part 2 – Financial Administration

9.39.12 Section 3.2 Internal Audit

Added paragraph deleted from responsibilities section to highlight the statutory reporting line of the Chief Internal Auditor.

9.39.13 Section 4: Corporate Anti Fraud Team

Much of this section has been updated to include and reflect new and current job titles and responsibilities as well as updated references to the relevant CAFT policies and procedures. In addition, responsibilities have been added for the Regulation of Investigatory Powers Act 2000 (RIPA).

9.39.14 Section 5.4: Risk Management

The section on Risk Management has been removed as it is covered by the Risk Management Strategy. It has been replaced by the requirement for Chief Officers to ensure that they and their staff uphold the requirements of the Risk Management Strategy.

9.39.15 Section 6: Banking Arrangements

A requirement for Chief Officers to ensure their staff adhere to the London Borough of Barnet Purchasing Card (P-Card) Guide and Terms and Conditions has been added at paragraph 5.5.5.

9.39.16 Section 7: Assets

The current Financial Regulations have a section on “Security of Assets”. Some of this section has been removed as it is not relevant to the Financial Regulations and is covered by other documents such as the Risk Management Strategy, Business Continuity Plans and data Protection Policies.

The detail in the current Financial Regulations on stocks and stores have also been removed as the level of detail is more than deemed necessary for the Financial Regulations. It has been replaced with the requirement for Chief Officers to implementing a system for the maintenance of stocks and stores including regular stock checks and write offs when required.

9.39.17 Section 9: Income

Much of the income section in the current Financial Regulations has been removed in the proposed new Financial Regulations as it is covered in the Debt Management Strategy. It is replaced with a requirement for the Debt Management Strategy to be adopted across the Council.

9.39.18 Section 12: Ordering of Supplies, Works and Services

The section on Supplier Selection and quite / tender evaluation has been removed in the proposed new Financial Regulations as this is covered in the Contract Procedure Rules.

An additional line has been added to paragraph 5.11.2 to state if a supplier is awarded business in excess of 25% of their turnover, then a risk assessment needs to be carried out to ensure that the supplier is not overly dependant on the Council.

9.39.19 Section 13: Salaries, Pensions and Allowances

Much of the Salaries, Pensions and Allowances section has been removed in the proposed new Financial Regulations as this will be covered by the HR Regulations, or are already covered in the budget monitoring section of the Financial Regulations.

9.40 Contract Procedure Rules (Appendix S) and Code of Procurement Practice (Appendix S2)

Introduction & Background

9.40.1 There has been a major overhaul to the current Contract Procedure Rules, owing to the fact that they were difficult to read, did not have sufficient flexibility for 'Part B' services, and lacked clarity on what was an actual rule compared to what the process was for compliance with the rule. As such there are two documents that now support procurement activity that should lead officers to procure compliantly; these are the (i) Contract Procedure Rules (the rules) and the (ii) Procurement Code of Practice (CoP) (the processes).

Approach

9.40.2 The approach taken to this review was to consider best practice in public sector procurement and started by defining a high level process map of the Target Best Practice Operating Model.

9.40.3 From this the review identified and differentiated between primary decisions, support decisions, decision making boundaries, and processes at different levels.

9.40.4 The new CPRs are centred upon two key decision points:

- a) The decision to procure goods or services (following needs and market analysis, and procurement strategy development)
- b) The decision to appoint and enter into contract with a vendor (or group of vendors) following a compliant procurement process

9.40.5 Within the current CPRs these are combined, and, when considered with regard to the complex rules surrounding contract variations, extensions and waivers, makes determination of the correct course of action difficult to navigate.

9.40.6 Moreover, the current CPRs treat all contracts with Third Parties the same and do not allow for the fact that there are many services and payments to Third Parties which are made by the Council which are non-discretionary, at prices set outside of the control of Council Officers. This has led to the proposed creation of an 'Exemption List' within the CPRs which allows an alternative

method of payment, under strict control and determination by Central Procurement. This exemptions list will also be published to aid transparency.

9.40.7 The new CPRs are designed to recognise the fundamental principles and decisions upon which Best Procurement practices are based, and strip out many of the process related 'rules' currently contained with the existing document.

9.40.8 This has enabled a number of decision making threshold tables to be combined into a single table for simplicity. The thresholds have also been simplified, and roles and responsibilities with regard to procurement decision making more clearly defined.

9.40.9 The new CoP document defines the Target Operating Model which Corporate Procurement believes represents current Best Practice, a 'How to...' document for Council Officers who apply the CPRs everyday.

Going through the Contract Procedure Rules attached at appendix (S) the following changes are flagged:

INTRODUCTION

9.40.10 The main change in this section is para 1.3, where there is an additional statement regarding probity and transparency

APPLICATION

9.40.11 Additional statements have been made regarding compliance and associated legislation. Who maintains the CPRs has been updated. References to the Procurement Code of Practice have been simplified. An additional statement regarding conflicts of interest, which reference the Staff Code of Conduct, has been inserted.

SCOPE

9.40.12 A duplicate reference to the Code of Practice has been removed. Changes to statements to simplify and improve meaning have been made. The original statements include an exception to the CPRs – this has been treated separately and explicitly elsewhere.
There are no key changes in scope from the original CPRs.
For the first time the CPRs differentiate between Procurement and Non-Procurement activity, and introduce the idea of an Exemptions List. How this list is treated to assure proper control is defined. This is a major change to the CPRs.

REGULATION & LEGISLATION

9.40.13 This a short additional section to clarify the relationship between Members and Central Procurement with regard to changes in legislation, the CPRs and the Code of Practice.

ROLES AND RESPONSIBILITIES

9.40.14 This section has been moved forward within the CPRs, treated separately and responsibilities clarified. In a complex organisation where procurement activity is substantial and devolved, the accountabilities for devolved functions need to be defined carefully, which is the purpose of this section. This section introduces the concept of the Procurement Forward Plan and its relationship with the annual Budget. It also places a requirement upon the Delivery Unit to use the prescribed E-portal, to improve document traceability, accountability, and compliance. In addition, this section changes the Central Master Contracts Register reporting requirement from £25k to £10k.

CONTRACT VALUE CALCULATION

9.40.15 This section has been simplified and clarified to aid understanding. There are no key changes.

AUTHORISATION

9.40.16 This section has been spilt out from the original CPRs, which collected a number of key principles together. Authorisation to Procure is the first key decision which has to be taken within the Procurement Operating Model, and requires a short section to deal with it. Process related statements in the current CPRs have been moved out of this section and are covered in the Procurement Code of Conduct, which has been drawn up to reflect best practice. The key change here is that the primary route to authorisation is via the Procurement Forward Plan. Ad hoc procurements are then treated through the DPR/CRC reporting mechanism, tabulated in Appendix 1. Another major change is that all tables defining decision making levels in the current CPRs have been simplified and consolidated into a single table (Appendix 1). The idea is that this should make interpretation of the rules easier to follow, thereby improving compliance and control.

PROCUREMENT METHOD

9.40.17 This is a new section which deals with key aspects of the decision making process and underlying procurement process. Detailed descriptions of procurement processes have been removed and are covered in the Procurement Code of Practice. The use of the E-procurement portal is clarified.

SINGLE TENDER ACTION

9.40.18 This new section places a requirement upon the Delivery Unit to seek special authorisation before a single source procurement is allowed.

INFORMATION GOVERNANCE

9.40.19 This is a new and significant addition to the CPRs, which sets out the Councils requirements regarding Information Governance. The scope of these requirements extends from Procurement through to Contract management.

ACCEPTANCE

9.40.20 This is a new section and represents the second key decision point where Procurement control is effected. It represents the final stage of a procurement where, depending upon the size of the award, approval is granted for the Council to contract with a recommended vendor. It seeks to confirm that the need still exists, that the contract is within budget, that the proposed vendor is capable of delivery, and that the process has delivered best value.
The decision threshold levels have been summarised and consolidated into Appendix 1.

CONTRACT SIGNING AND SEALING

9.40.21 Minor revisions have been made to improve clarity.
In addition, the handling of contracts which result from Court or Tribunal directed placements is handled.

CONTRACT MANAGEMENT

9.40.22 This is a new section which defines the principle requirements of Contract Management, during Service delivery. Process related detail has been described within the Procurement Code of Practice.

EXTENSIONS AND VARIATIONS

9.40.23 This topic has been given a new section. Decision making levels have been consolidated into Appendix 1. The principles have not changed, with the exception of Placement Contracts for Individuals in Social care or Special Educational Need. The purpose here is to simplify the process and reduce unnecessary bureaucracy.

WAIVERS

9.40.24 This is a new section which combines the original sections for Waivers and Urgencies. There are no major changes here. The definition of an 'emergency' has been taken from the Oxford English Dictionary.

DEFINITIONS

9.40.25 This section has been revised to reflect the new terms used within the proposed CPRs.

APPENDIX 1 - TABLE A – AUTHORISATION AND ACCEPTANCE THRESHOLDS

9.40.26 This Table consolidates all decision level thresholds into one place. There are no changes to the current CPR thresholds.

9.41 Management of Real Estate Property and Land (Appendix T)

9.41.1 A General Consent paragraph removed and replaced with general compliance required with the relevant legislative and statutory guidelines.

Approach

9.42.1 The approach taken to rewriting these rules is similar to that adopted for the CPRs, with the exception that in this case the Regulatory Framework is highly structured, complex, and should only be applied by Members of the Royal Institution of Chartered Surveyors.

9.42.2 The Rules have been placed within the broader context of the Built Environment, and recognise the need for effective management and control over Council Assets throughout their life cycle, from acquisition through alterations to disposal.

9.42.3 As with the CPRs, these Rules have been developed around two key decision points and the boundary thresholds required to apply them. The first decision point is Authorisation to commence an acquisition, alteration or disposal process. The second decision point is to accept the outcome of the process so that Officers can formalise any contractual relationship on behalf of the Council.

9.42.4 The overarching document which drives the Estates Strategy and the resultant detailed Plan is the Corporate Plan, which sets out how the Council intends to develop its Asset Portfolio.

9.42.5 A distinction is made between the actual strategy in use for Real Estate, Property and Land, namely the Estates Strategy, and the asset management plan which sits underneath this.

9.42.6 Under the new organisation structure property services is bundled within the New Support/Customer Services Organisation (NSCSO) and therefore the relevant Director responsible for Real Estate, Property and Land will be the Chief Operating Officer, whose Chief Officer post is Chief Finance Officer.

9.42.7 The requirement to achieve Best Consideration rather than Best Value under section 123 of the Local Government Act 1972 has been added in a number of paragraphs to provide legislative background.

9.42.8 The section refers to the relevant body, being decision making body, but does not stipulate what that body is. For clarity the relevant body is Cabinet Resources Committee and this has been included in both Tables A and B.

- 9.42.9 Within the new text much reference is made to the 'Red Book', the Framework of Legislation, Regulations, Measures, Methods and Best Practice processes published by the Royal Institution of Chartered Surveyors.
- 9.42.10 It is proposed that clarification is added to the Real Estate, Property and Land aspects of the Constitution as described above, including clarifying the position with respect to Academy Schools. When a school takes academy status they are granted a 125 year lease of the land and buildings at a notional rent. While the council retain the freehold, the school is free to manage, maintain, and licence as it sees fit. It cannot however dispose of its interest. The Academies Act has a number of qualifications and conditions, but broadly speaking apart from disposal, or granting an interest in the land that will require our consent, they are free to use and manage as they choose.
- 9.42.11 Decision making authorisation has been summarised in Tables A and B where threshold levels have been set for different asset management processes which are based upon proposed CPR levels. However, a single asset disposal threshold is recommended because of the sensitivity that such actions precipitate.
- 9.42.12 Table B addresses threshold levels for the Acceptance decision, and simply discriminates between two states: that the original Authorisation criteria have been met, and; that the original Authorisation criteria have not been met. In the case of the latter, the threshold for the Acceptance decision moves up one level.

9.43 Officers Employment Procedure Rules (Appendix U)

It is proposed that this section is now titled Human Resources Regulations.

- 9.43.1 From the general review of the Constitution it is apparent that rules for Human Resources are scattered throughout the document. This rather unhelpfully does not provide officers with clarity on the right course of action when making decisions. It is therefore proposed to extract any rules regarding human resources in one location for reference and cross-referred to the officer scheme of delegation.

Extract from General Functions Committee:

- 9.43.2 Within the terms of reference for the General Functions Committee was an explanatory note that was considered a rule, the Working Group suggested that this be included within the HR regulations and to revise the rule to define what is considered to have major implications and therefore required to be considered by General Functions Committee.
- 9.43.3 The HR regulations have adopted the previous set of Officer Employment Procedure Rules. These have been clarified for decision makers in terms of how they should discharge this responsibility.
- 9.43.4 Pension information has been extracted from the Finance Regulations and added into the HR regulations so that they are included with relevant information pertaining to staff.

9.43.5 Aspects of the regulations have been deleted whereby systems and processes have evolved. These aspects no longer considered necessary have been included in the Appendix for completeness and review.

9.43.6 It is recommended that the changes are adopted and the new section be created within the Constitution.

9.44 Part 5 – Codes and Protocols

9.45 Code of Conduct for Members (Appendix V)

Members' Code of Conduct

9.45.1 Amendments have been made to the Code of Conduct for Members to reflect new categories of interest- disclosable pecuniary interests and non-pecuniary interests- in line with the requirements of the Localism Act 2011. Some amendments have also been to the order of the paragraphs for clarity and so that the Code flows better. A section on Gifts and Hospitality has also been included as this is not contained in the current Code. The sections below detail the proposed changes to each section.

The Title

9.45.2 The Committee are recommended to approve a change of title from The Barnet Code of Conduct to "Barnet Council - Code of Conduct for Members". This is to give clarity that it is the Code for Members.

Section 1 – Introduction and Interpretation

9.45.3 Changes have taken place as follows:

9.45.4 Additional paragraphs (5) and (6) have been added to this section. These were previously paragraphs 3(1) and (2) in the current Code under General Obligations. It has been moved to this section as it sits better in this section.

9.45.5 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

Scope

9.45.6 Changes have taken place as follows:

- a) References to various sub-paragraphs of the Code have been all deleted and this has been replaced with a single sentence stating "You must comply with this Code whenever you are acting in your capacity as a Member of the council".

9.45.7 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes.

General Obligations

9.45.8 Changes have taken place as follows:

- a) Paragraphs 3(1) and (2) have been moved to Section 1. The remaining paragraphs have been renumbered.
- b) Paragraphs 6(a and b) – delete "your authority" and replace with "the Council's".

- c) A new paragraph (7) has been created giving advice to members about considerations when taking decisions:

7. When reaching decisions you should –

(a) *not act or cause the Council to act unlawfully, in such a manner as would give rise to a finding of maladministration, in breach of any undertaking to the Court, or for the advantage of any particular person or interest rather than in the public interest; and*

(b) *take into account all material information of which you are aware and then take the decision on its merits and in the public interest.*

- 9.45.9 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

Interests

- 9.45.10 Changes have taken place as follows:

- a) The whole section has been replaced to reflect the change in disclosure of interests to disclosable pecuniary interests in line with the requirements of the Localism Act 2011.
- b) A new sub section has been created for Gifts and Hospitality as this is not contained in the current Code.

- 9.45.11 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

Registration of Members' Interests

- 9.45.12 Changes have taken place as follows:

- a) Paragraph 12(1), first line, delete "13" and replace with "14" in order to correspond with the relevant section.
- b) Paragraphs 12 (1)(b) - delete "your authority's" and replace with "the Council's".
- c) Paragraphs 12 (2)- delete "your authority's" and replace with "the Council's"; also delete "13" and replace with "14" in order to correspond with the relevant section.

- 9.45.13 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

Sensitive Information

- 9.45.14 Changes have taken place as follows:

- a) Paragraphs 13(1), first line, after personal add "or declarable pecuniary interests".

- b) Paragraphs 13(1) and (2) - delete “your authority’s” and replace with “the Council’s”.

9.45.15 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

Advisory Note

9.45.16 Remove this from the Code of Conduct. The Advisory Note was a recommendation that was made to Council following a Standards Sub-committee hearing in 2009. The Sub-committee did not direct that this has to be included in the Members’ Code of Conduct.

9.45.17 The Committee are recommended to approve the changes contained therein.

Appendix 1

9.45.18 This is a new addition to the Code which gives details of the definition of Disclosable Pecuniary Interests.

9.45.19 The revised section of the Code is set out in the attached document pack. The Committee are recommended to approve the changes contained therein.

Further Recommendation:

9.45.20 Member Development session for 2013/14 on Members Code of Conduct for impact of changes in the legislation for Pecuniary interests.

9.46 Members Planning Code of Good Practice (Appendix W)

9.46.1 This section has been reviewed by Governance for factual changes, including being further reviewed to reflect the new arrangements for declaration of interests as set out in the Localism Act 2011 and cross-refer to the updated Member Code of Conduct. The implications of the Localism Act 2011, for example with regard to relaxing ‘predetermination’ rules, are still not entirely clear and the Planning Service have been seeking legal advice. It is suggested that this be further reviewed during 2013/14 in the light of experience in Barnet and elsewhere including any case law that may emerge.

9.47 Members Licensing Code of Good Practice (Appendix X)

9.47.1 There have been no significant suggested changes to this document. Much of the legislative background has become out of date and significantly added to over the years and as such has been added to within the Introduction.

9.47.2 The Localism Act 2011, requiring disclosure of pecuniary or non pecuniary interests, has been incorporated within Section 3 and throughout the document. Specifically within section 3, reference to the Members Code of

Conduct and to sections of that code have been removed so as they do not become out of date through revisions to that Code.

9.47.3 Section 5 references specific Acts of law: however it is suggested that section 1 is referred to for the remit of the Licensing Committee.

9.47.4 Throughout the document references to the Democratic Services Manager have been replaced with the Head of Governance.

9.48 Officers' Code of Conduct (Appendix Y)

9.48.1 On 29 January 2013, the General Functions Committee considered a revised Officer Code of Conduct. The Code has been revised to:

- i) reflect the increased complexity of the workplace post One Barnet implementation;
- ii) clarify standards of behaviour when working with colleagues and stakeholders; and
- iii) revise the process for recording gifts, hospitality and sponsorship.

9.48.2 A summary of the amendments and the rationale for these are set out below:

1. Major changes to the way the council is organised and the move to a commissioning organisation will significantly increase the complexity of the working environment. The Code of Conduct has been updated to reflect expectations around tendering, conflicts of interest, financial standards and soliciting/being solicited for employment.
2. New technologies have opened up new channels of formal and informal communication (such as blogs, websites, twitter and similar electronic communication channels) between the council, residents and stakeholders. These were not previously referred to in the Code. The Code has been revised to outline expectations of staff when not dealing with
3. The Code has been revised to be explicit about close personal relationships between staff and between staff and workers in partner and stakeholder organisations.
4. Changes have been made regarding soliciting or being solicited for employment. In the revised Code, employees are explicitly prohibited from engaging in discussions about future employment with any partner organisation.
5. In relation to restraint of trade for Council employees, changes have been made. Instead of seeking to restrict employees from moving to competitor organisations for a period of six months, the council now reserves the right to take action where an individual's activities on leaving are detrimental to its interests.
6. The revised Code also addresses the issue of standards and conduct of Barnet employees who are also residents and wish to express their views about local issues. The Code has been amended to make clear that staff in this situation must make it clear through their communication and dress that views being expressed are personal and do not reflect those of the Council.

7. The revised Code also introduces a new process for declaring all offers of gifts, hospitality and sponsorship that is overseen by the Monitoring Officer and managed by the Governance Service. A central online register will be introduced for gifts accepted or offered that are over £25 (over a period of one year) and local registers will continue to be maintained for gifts that fall below this amount. No cash, cheques, money orders or gift vouchers can be accepted. The register will be published and subject to inspection.

9.48.3 The General Functions Committee endorsed the revised Officer Code of Conduct for onward referral to the Constitution, Ethics and Probity Committee.

9.48.4 The Constitution, Ethics and Probity Committee Working Group are requested to:

1. Note the revised Officer Code of Conduct;
2. Consider the changes and make any appropriate comments; and
3. Endorse the revised Code being incorporated into the updated Constitution.

9.49 Protocols for Member-Officer Relations (Appendix Z)

9.49.1 The front page has been updated for the Interim Chief Executive and departure of the previous Chief Executive.

9.49.2 Section 3 has been updated to note the existence of two political assistants. In accordance with the Local Government and Housing Act, to qualify, the membership of a Group must comprise at least one-tenth of the membership of the council. In Barnet's case this is a minimum of seven members. As such one per group does not apply as currently stated.

9.49.3 The document has been updated throughout to reflect the positions of Assistant Directors and Lead Commissioners as set out in the new organisational structure.

9.49.4 The Monitoring Officer position will stand alone as a Chief Officer role rather than the title of the role per the organisational structure.

9.49.5 Section 5 has been updated for some changes in statutory posts.

9.49.6 Section includes reference to the Appeals Committee, that no longer exists, staffing matters (including discipline and dismissal) are dealt with by the relevant managers. In addition, grievances are not dealt with in JNCC's and Members do not currently take part in these meetings. It is suggested these paragraphs are removed.

9.49.7 Section 9.9 has been removed, describing a court decision of Porter v Magill, as it does not add any value to the section.

9.49.8 Section 13 – Heading should refer to Chairmen as the term used elsewhere.

9.49.9 Section 14 has been updated to include changes to the standards regime arising from the Localism Act 2011. This reflects the changes included in the Member Code of Conduct.

- 9.49.10 Section 15 has been updated to reflect the appropriate procedures for whistleblowing which would not warrant disclosure to Directors or the Chief Executive but to the independent appointed officer “Whistleblowing officer”. Procedures were out of step with our Whistleblowing policy and suggested changes now bring this into line.
- 9.49.11 Appendix A is suggested to be removed as adds no value to the section. It is the detail of the Porter v Magill case.

9.50 Code of Corporate Governance (Appendix AA)

- 9.50.1 A Code of Corporate Governance is recommended by the guidance designated as ‘proper practice’ by the Department for Communities and Local Government. This being the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Society of Local Authority Chief Executives (SOLACE) framework entitled “Delivering Good Governance in Local Government”.
- 9.50.2 On 7 April 2009, Council approved the Barnet Code of Corporate Governance. The current Code is set out in Part 5 of the Constitution. The Audit Committee agreed to review the Code of Corporate Governance biennially. The Code was reviewed by the Audit Committee in June 2011 but was not subsequently submitted to Council for approval.
- 9.50.3 A review of the current Code of Corporate Governance has resulted in a number of changes. This includes some of the changes agreed by the Audit Committee in June 2011. A summary and explanation of the changes to the revised Code of Corporate Governance are set out below:
- 9.50.4 There are new paragraphs inserted to reflect best practice in governance, which includes the need to review the Council’s governance arrangements and publish an Annual Governance Statement (page one of revised Code). The Annual Governance Statement is the formal statement that recognises records and publishes the authority’s governance arrangements as defined in the CIPFA / SOLACE framework. It is a statement which reflects good governance across the Council.
- 9.50.5 The six core principles are set out and numbered clearly as it appears in the CIPFA/SOLACE guidance and also included at the top of each table.
- 9.50.6 Changes have been made to more accurately reflect the current terminology used within the Council, for example, the performance review replaces the word appraisal.
- 9.50.7 The changes below in italics have been made to more accurately reflect the new executive arrangements.

The Constitution defines roles and responsibilities of the <i>Leader, Deputy Leader, Cabinet</i> and individual Executive members;
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- 9.50.8 The change below in italics has been made to reflect that there is an annual review at the end of the year.

The Code of Conduct for Members provides effective arrangements for ensuring that Members are not influenced by prejudice, bias or conflicts of interests, which are implemented through training and the existence of processes to obtain details of personal interests:

the Monitoring Officer compiles the Register of Interests and conducts *an annual review*;

9.50.9 The change below in italics reflects that there are also Independent Members on the Audit Committee. It also includes the role of reviewing the Code of Conduct and power to challenge where assurance levels have not improved.

An Audit Committee, independent of Executive and Scrutiny functions, with clear terms of reference, cross-party membership *and Independent Members review the Code of Corporate Governance.*

Members of the Audit Committee receive the necessary training in this role and can exercise their power to challenge officers responsible for audit areas where assurance levels have not improved to their satisfaction.

9.50.10 The additional information below provides details of the Petition Scheme.

There is a Petition Scheme for persons who live, work or study in the authority's area to submit a Petition with their concerns about a Council service or decision.

9.50.11 The above changes have been made to the London Borough of Barnet Code of Corporate Governance in order to make it easier to read and also to identify the Council's obligations.

9.51 Members Allowances Scheme

This section of the Constitution has been excluded from the review but will need to be considered in line with any changes in form of governance.

9.52 Schemes of Officer Delegation (Appendix AB)

9.52.1 In addition, the schemes of Officer delegation that flow from the Constitution need to be considered as part of this review once the Constitution is a coherent document. A draft Scheme of Delegation which sets out both generic delegations to Chief Officers at each level of seniority and delegations specific to particular posts are attached at Appendix 'AB' to follow.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Cleared by Finance (Officer's initials)	MC and JH
Cleared by Legal (Officer's initials)	JF