

North East Derbyshire District Council

Annual Council

15 May 2017

Review of the Council's Constitution

Report of the Assistant Director of Governance and Solicitor to the Council & Monitoring Officer

This report is public

Purpose of the Report

- To consider proposed amendments to the Council's Constitution as part of the Annual Review for adoption.

1 Report Details

- 1.1 The Constitution is the Council's 'rulebook'. It sets out how the Council operates and how it makes decisions. Council approved its latest version of the Constitution at the Annual Council meeting in May 2016.
- 1.2 The Council is required by law to prepare and keep up to date a Constitution which explains how the Council operates, how decisions are made and the procedures which are to be followed to ensure that these are efficient, transparent and accountable to local people.
- 1.3 Article 1 of the Constitution stipulates that the Monitoring Officer must monitor and review how it is working to make sure it gives full effect to its purpose.
- 1.4 One of the functions of the Standards Committee is to undertake an annual review of the Council's Constitution to ensure it is up to date and in line with legislation and current circumstances. At its meeting on 26th January 2017, the Committee agreed to set up a Working Group to consider the review.
- 1.5 The Working Group met on 22nd February and 13th March and the Standards Committee met on 12th April and considered a number of proposed amendments to the Constitution. These are set out in **Table 1**.

TABLE 1:

Meeting	Date	Area Reviewed
Standards Committee	26 th January 2017	<ul style="list-style-type: none"> • Council Procedure Rules
Constitution Working Group	22 nd February 2017	<ul style="list-style-type: none"> • Call In • Joint Appeals Committee • Joint Employment Committee • Officer Scheme of Delegation
Constitution Working Group	13 th March 2017	<ul style="list-style-type: none"> • Petition Scheme • Speaking at Planning Committee • Levels of Key Decisions • Delegated Decisions • Code of Conduct • Recorded Votes • Officer Scheme of Delegation
Standards Committee	12 th April 2017	<ul style="list-style-type: none"> • Review of the Constitution • Executive Decisions

- 1.6 In addition to the amendments included in this table, other changes have been proposed that include minor corrections and re-wording to bring the Constitution up-to-date.
- 1.7 A summary of the amendments to the Constitution is attached at **Appendix A** to this report.
- 1.9 A copy of the changed areas of the Constitution with all the proposed amendments shown in red as tracked changes is attached at **Appendix B** to the report.
- 1.10 A focused review has been carried out this year, targeting areas which required greater scrutiny and better understanding. The previous review was considered to be 'light touch' concentrating on Housekeeping, which has given the Standards Committee the confidence to be able to channel their efforts on specific areas.

Below is a list of the areas of the Constitution that the Working Group feel should be considered during the 2017/18 review. This is duplicated in the Standards Committee's Work Plan.

- Protocol on Member / Officer Relations

2 Conclusions and Reasons for Recommendation

- 2.1 The Constitution Working Group and Standards Committee have dedicated their efforts to particular areas of the constitution that required attention. These areas have been thoroughly discussed and are presented to Council.
- 2.2 It is required by law to keep an up to date constitution. Part of the role of the Standards Committee is to review the document on a regular basis to make such recommendations to Council as necessary.

3 Consultation and Equality Impact

- 3.1 The Standards Committee, Chief Executive, Chief Financial Officer, Monitoring Officer and Deputy Monitoring Officer have been consulted on the preparation of this document.
- 3.2 An Equality Impact Assessment has not been necessary as part of this review.

4 Alternative Options and Reasons for Rejection

- 4.1 None.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 None.

5.2 Legal Implications including Data Protection

- 5.2.1 The Council is required under the Localism Act 2011 to prepare and keep up-to-date a constitution that contains its standing orders, code of conduct, such other information that the Secretary of State may direct and such other information that the authority considers appropriate.

5.3 Human Resources Implications

- 5.3.1 None.

6 Recommendations

- 6.1 That the amendments to the Constitution attached at **Appendix A** be approved.
- 6.2 That the areas of focus for the forthcoming 2017/18 Review be noted.

- 6.3 That delegated power be given to the Monitoring Officer to make changes to the Constitution arising from any new legislation, administrative errors or conflicts in interpretation.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	None
Links to Corporate Plan priorities or Policy Framework	Demonstrating Good Governance

8 Document Information

Appendix No	Title
A B	Summary of Amendments to the Constitution Tracked Changes to specific Areas of the Constitution
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
None	
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Summary of Changes to NEDDC Constitution

Part	Page No	Section	Summary of changes	Rationale for Change
Part 1 – Article 10	26 REF: APP B1	Joint Appeals Committee	To fix membership for the year at the Annual Meeting.	To avoid delay in establishment of this committee.
	26	Joint Employment Committee	To fix membership for the year at the Annual Meeting.	To avoid delay in establishment of this committee.
Part 3: Officer Scheme of Delegation	67 REF: APP B2	CEO's delegation 10.15	Add to the Delegation Scheme the previously approved delegation to authorise other authorities to carry out enforcement and taxi and private hire vehicles.	Previously Agreed
	67	CEO's delegation 10.17	Add delegation to appoint members to outside bodies mid year. Remove "and revoke".	Streamlined process
	68	CEO's delegation 10.27	Add as a clarification that where the use of the CEO's staffing delegation incurs additional expenditure the additional expenditure should be referred to Cabinet for approval	Streamlined process
	69	Executive Director Operations' delegation 11.3	Add "in consultation with the CEO" to the delegation to determine a request for early release of pensions.	Best practice

Part	Page No	Section	Summary of changes	Rationale for Change
	70	Executive Director Operations' delegation	Agreed that delegation made annually to the Council's Chief Financial Officer to authorise any amendments to the list of named officers that may prove necessary during the course of the financial year in relation to the duties identified in accordance with Section 223 of the Local Government Act 1972 be added to the Delegations Scheme.	Agreed By Council
	73	Proper Officer	Add the Monitoring Officer as Proper Officer with the CEO to witness and receive Declaration of Acceptance of Office under S 83(1) to (4).	Streamlined process
Part 4 – Council Procedure Rules	- REF: APP B3	Throughout	Unifying the term either Chair or Chairman	To assist with the creation of a reflective document. Chairman is more highly used throughout the UK, often with 'Madam' inserted before in speech when used for a female Member.
	83	1.2	Removal of 1.2 and reinsertion at 2.2 under Ordinary Council Meetings	As Committees are established at the meeting of Annual Council, it shouldn't be necessary at that meeting to dissolve or review anything only just established. This should happen at any meeting of Council – Ordinary or Extraordinary.

Part	Page No	Section	Summary of changes	Rationale for Change
	83	3.1	To include the Chief Finance Officer within the list of those who may require the Chief Executive Officer to call extraordinary meetings of Council.	This is currently omitted.
	84	4.1	Removal of a commencement time for meetings	Specification of start times will be in the meeting schedule agreed.
	84	5.2	5.2 amended to include electronic mail as a destination for receiving summons to meetings.	In line with legislation, and to facilitate more paperless working.
	84	5.3	5.3 relevant reports added to the wording	To reflect best practice on complete packs being distributed to members, improving transparency to the public and more efficiency within Governance.
	85	8.1	8.1 wording changes	To provide clarity around public questions.
	86	8.9	8.9 reflective format for Members Questions and Public Questions	To provide clarity around the process.
	87	9.3(b)	Notice of Questions on urgent to be received by 9am on the day of the meeting.	In order to bring the constitution rules in line with each other.

Part	Page No	Section	Summary of changes	Rationale for Change
	92	14.5 Individual Recorded Votes	Agreed that where Council are requested immediately <u>before</u> or <u>after</u> a vote is taken the vote will be recorded in the Minutes.	For convenience.
	97	25	Inclusion of information around attendance at Committee Meetings	To provide clarity.
Part 4 – Council Procedure Rules Appendix A	98 REF: APP B4	Petition Scheme	Retain a petition scheme for the Council.	No change
	98	Petition Scheme	Retain acceptance of paper versions of petitions and changes would not be made to accommodate EPetitions.	No Change
	102	Petition Scheme	Agreed that the appeal process would still refer to the relevant Scrutiny Committee however wording would be changed.	To allow referral to a different Scrutiny Committee to the Committee that reviewed the petition and offering Scrutiny Members the ability to refer an appeal to the Complaints Procedure.
	98	Petition Scheme	Agreed for the Petition Scheme to be uploaded to the Council website	For transparency

Part	Page No	Section	Summary of changes	Rationale for Change
	98	Petition Scheme	No further changes be made to the Petition Scheme in regard to advising petitioners about what is happening with their petitions once they have been submitted.	No change
	98	Petition Scheme	The required steps when considering a petition be retained within the Scheme.	No change
	98	Petition Scheme	Thresholds remain at the current level for determining how to process petitions.	No change
	98	Petition Scheme	Noted that the Secretary of State would no longer review the Council's scheme under their powers.	No change
	99	Petition Scheme	The Scheme be amended to reflect the reasons by which it rejects a petition to include delegation to the Monitoring Offer to reject petitions on the basis that they were defamatory, vexatious or frivolous or disclose any confidential or exempt information.	For clarity

Part	Page No	Section	Summary of changes	Rationale for Change
Part 4. - Call In	114 REF: APP B5	13(c)	Contact with members	Communications to be electronic unless usual method is hard copy.
	115	13(d)	13 (d) wording changes	To provide clarity.
	115	13(e)	Inclusion of information on the Call In Request Form	To provide clarity around process
	115	13(f)	Rejection of call in by Monitoring Officer	Monitoring Officer to give reasons for refusal in writing. Clarification given on reasons.
	115	13(i)	Inclusion of words	To provide clarity
	To add REF: APP B6	Notice of Call in Request Form	To be put in the Constitution Date to be added after each signatory	To provide clarity to the process.
Part 4 – Access to Information Procedure Rules	126 REF: APP B7	Key Decision Level 8.2	Agreed for the proposals in principle for the Revenue Key Decision Level to be set at £100k and the Capital Key Decision Level to be set at £250k but agreed to defer the matter for consideration at the next meeting of Audit and Corporate Governance Scrutiny Committee.	Best practice – to ensure that the financial level for key decisions is appropriate following review.

Part	Page No	Section	Summary of changes	Rationale for Change
	126	Delegated Decisions	A form of words agreed on definition of Executive Decisions, including a financial limit of £50,000.	Best practice – following a review of the processes followed by other Councils.
	CURRENT PRACTICE	Delegated Decisions	Delegated decisions of below £50,000 would not be put on the website.	Best practice – following a review of the processes followed by other Councils.
	CURRENT PRACTICE	Delegated Decisions	Agreed that Members would no longer receive Delegated Decision notices.	Best practice – following a review of the processes followed by other Councils.
	CURRENT PRACTICE	Delegated Decisions	Agreed that where a Delegated Decision is consequent upon a decision made at Cabinet that Cabinet would demonstrate that the issue had been considered in detail.	Legislation – although there have been no changes to legislation or guidance, the system has been reviewed against the current guidance.
	CURRENT PRACTICE	Delegated Decisions	Agreed that delegated decisions on HR related matters are no longer publicised on the website or sent to Members.	Legislation – although there have been no changes to legislation or guidance, the system has been reviewed against the current guidance.

Part	Page No	Section	Summary of changes	Rationale for Change
Part 5 – Councillor Code of Conduct	196 REF: APP B8	11	The wording suggested on significant other interests arising from nominations to an outside body by the Council be added to the Code of Conduct.	Clarifications – this has caused problems in dealing with business as it excludes the one member who can answer questions and explain the projects in question to the Cabinet. This change will allow business to be transacted with full knowledge.
Part 5 - Planning Protocol	200 REF: APP B9	Planning Protocol	Agreed that the Planning Protocol was robust.	No Change
	N/A REF: APP B10	Speaking at Planning Committee Guidance	Agreed that the Speaking at Planning Guidance would be approved and referred to the Chair of Planning for consideration.	For Clarity, does not form part of the Constitution.