

## Report of the Monitoring Officer

**CONSTITUTION REVIEW**1. Purpose of report

To report on the annual review of the Constitution.

2. **Recommendation from the Governance, Audit and Standards Committee: 19 June 2023**

**RECOMMENDED to Council that the amendments to the Constitution at appendix 2 be approved.**

3. Detail

Under its terms of reference, the Governance, Audit and Standards Committee is tasked with an overview of the Council's Constitution, consideration of proposed amendments or revisions and to recommend to Council amendments to the Constitution.

4. Considerations of the Governance, Audit and Standards Committee

At its meeting on 19 June 2023, the Committee was informed that on 11 May 2022, the Council moved from a Committee system of governance to an Executive Cabinet system, which involved making significant changes to the Council's Constitution. It was consequently agreed that an annual review of these arrangements would be undertaken following implementation and in line with Best Practice Recommendations, to ensure the Constitution was kept updated and to ensure good governance.

A review of the Constitution had been undertaken in which Officers had been engaged and comments were invited from Members through their respective Group Leaders. Although, it was acknowledged that the Borough Elections would have limited the ability for Member engagement, as a number of Members were not standing to be re-elected and new Members needed time to be inducted.

Therefore, the majority of the proposed amendments were identified through Officer consultation. The amendments included consequential restructure changes to Officer responsibilities and titles, amending the Officer scheme of delegation and the terms of reference to build in better governance arrangements for the Stapleford Towns Fund, Kimberley Levelling Up Fund and UKSPF. A separate exercise has been undertaken concerning the Council's Financial Regulations and the Code of Conduct reported separately on this agenda.

Governance workshops are also being scheduled for Officers, Members and key Stakeholder to further develop the arrangements in place for the Stapleford Town's Fund, Kimberley Levelling Up Fund and UKSPF. Once these

arrangements have been developed, a further report on proposed changes will be brought back to the Committee to consider and recommend to Council.

The Committee considered the annual review of the Constitution and commented as follows on the below amendments:

a) Public Speaking (Ch5 p3,4.1)

*Agents/professional speakers be allowed to speak at Planning Committee:*

There were reservations over allowing professional speakers to represent applicants at Planning Committee, as this may dissuade objectors from speaking.

The Head of Planning and Economic Development confirms he seeks this proposal to bring the Authority in line with processes at Planning Committees across Nottinghamshire and Leicestershire Councils. Furthermore, applicants pay for professional advice throughout the planning process and often consider that the process of not allowing agents to speak leaves them feeling penalised and abandoned at a critical point of the process. This also enables representation for applicants who have difficulty with public speaking. Finally, this enables representations to be focussed on planning grounds.

b) Questions to Members (Ch2 p1,10.1)

*Written answers be distributed with the minutes following questions to Members at Council meetings:*

The response would not be able to be part of the minutes, as the minute must be a true reflection of the meeting itself. However, a separate response could be circulated as an addition to the minutes.

c) Member referrals to Planning Committee (Ch5 p3,4)

*Members be required to give 28 days' notice and complete a form when referring items to Planning Committee for further consideration:*

The Head of Planning and Economic Development confirms he seeks this proposal to formalise the planning referral process to ensure greater clarity for both Members and Planning Officers, and to fully detail the planning reasons why an application is being referred to Committee. The aim is to eradicate the potential for any referrals to be overlooked or human error to occur, as this issue has unfortunately arisen in the past. Therefore, any Planning Committee referral would have to be submitted through a specific form.

It is proposed that 28 days' written notice by Members is required to make referrals to Planning Committee to enable all parties to the application to have sufficient time to prepare representations ahead of the Committee and to enable Planning Officers to manage their workloads.

The Head of Planning and Economic Development has been consulted further since the Governance, Audit and Standards Committee meeting and asked that the 28 days is supported as Members will have had 28 days from the production of the Planning Weekly List to consider whether to make the referral. If referrals are submitted after this time this results in a considerable amount of aborted work and the need for the Planning Department to restart preparation of the report and other associated documentation. Often leaving this longer than 28 days can result in the application having already been determined.

d) Content and Length of Speeches (13.4.5)

It was questioned whether it should be up to the Mayor to determine who speaks following the Leader's report at Council:

The Constitution states that the Leader of the Opposition has the opportunity to respond first to a debate, however, the Leader of the Opposition may reserve the right to speak.

e) Timing of Council Meetings (Ch2.p1, 1.1)

It was queried whether annual Council meetings should have fixed times in May:

The amendment to hold Annual Council meetings any time in May will allow for greater flexibility in the year of an election and bring this Council in line with other Nottinghamshire authorities.

f) Bridleways (Ch2, p8-17, 8,10,11)

The responsibility for bridleways was queried:

It can be confirmed that the County Council has the responsibility for hedges and overhanging plants and trees, but the Borough Council is responsible for the walkable surfaces.

An amendment was proposed by Councillor P J Owen and seconded by Councillor J M Owen that the Leader of the any recognised political group be allowed the right to speak but not vote at meetings of the Cabinet. On being put to the meeting the amendment was lost.

Appendix 1 contains a change table with reasons for the amendments. Appendix 2 contains the relevant sections of the Constitution with changes highlighted in red.

Furthermore, the resolutions from the full Council meeting held on 17 May 2023, have been incorporated into the Constitution, these included the removal of the Policy Advisory Committee and adding a Policy Overview Working Group, Events, Arts, Culture and Heritage Working Group and the UKSPF Panel in addition to the removal of named substitutes on non-quasi-judicial Committee meetings.

5. Financial Implications

The comments from the Head of Finance Services were as follows:

There are no direct financial implications arising from this report.

6. Legal Implications

The comments from the Head of Legal Services and Deputy Monitoring Officer were as follows:

Section 37 of the Local Government Act 2000 requires local authorities operating executive arrangements to prepare and keep up to date a document which contains:

- (a) such information as the Secretary of State may direct
- (b) the authority's standing orders (i.e. rules of procedure)
- (c) the code of conduct for members
- (d) such information as the authority considers appropriate.

Broxtowe Borough Council's Constitution is available on the Council's website

7. Human Resources Implications

There were no comments from the Human Resources Manager.

8. Union Comments

There were no Unison comments in relation to this report.

9. Data Protection Compliance Implications

There are no Data Protection issues in relation to this report.

10. Equality Impact Assessment

As there is no change to policy an equality impact assessment is not required.

11. Background Papers

Nil.

## APPENDIX 1

Constitution Chapter and Number	Current Wording/Suggested Change	Reason for Change
Chapter 1 Part 3 xx (Leader's Delegation)	Added to the Leader's delegations: 'To represent the Council at Derbyshire and Nottinghamshire Leader meetings concerning devolution.'	To ensure the appropriate representation on behalf of the Council.
Chapter 2 Part 1, 1.1	<p><del>In a year when there is an ordinary election of Councillors, the annual meeting will take place on the second Wednesday following the first Thursday in May. In any other year, the annual meeting will take place in the month of May</del></p> <p>Add 'Within 21 days of the retirement of the outgoing Councillors (Note, retirement takes place on the fourth day after the election). In any other year, the annual meeting will take place in May.'</p>	To give more flexibility and allow for training/induction of new members.
Chapter 2 Part 1, 2.19	Add updates on the scrutiny work programme to ordinary Council meetings.	To platform the work of scrutiny and allow engagement across the Council.
Chapter 2 Part 1, 2.20	Add 'Receive an Annual Review of Scrutiny report at an appropriate time at ordinary Council meetings.'	To platform the work of scrutiny and allow engagement across the Council.
Chapter 2 Part 3, 2.20 (ED&AMPH).	Replacement of 'Consider the Asset Management Strategy' from Resources and Personnel Portfolio Holder to Economic Development and Asset Management Portfolio Holder (ED&AMPH).	To better align responsibilities.
Chapter 2 Part 3, 2.21 (ED&AMPH)	Addition of 'To consider and make recommendations in relation to Towns Fund Boards.'	Inclusion of new responsibilities

<b>Constitution Chapter and Number</b>	<b>Current Wording/Suggested Change</b>	<b>Reason for Change</b>
Chapter 2 Part 3, 2.22 (ED&AMPH)	Addition of 'To consider and make recommendations in relation to Levelling Up Funding (e.g. UK Shared Prosperity Fund).'	Inclusion of new responsibilities
Chapter 2 Part 8-17, 10	To include the need for substitute Members of the Planning Committee to complete training prior to attending meetings of the Planning Committee.	To reinforce the need for substitutes to undergo training
Chapter 2 Part 8-17, 8	Membership of the Shareholder Sub-Committee should exclude Board Members of Liberty Leisure.	To avoid conflicts of interest.
Chapter 2 Part 8-17, 12	Senior Officer Employment Committee to be renamed Chief Officer Employment Committee.	To avoid confusion between the terms 'Chief' and 'Senior' Officer.
Chapter 2 Part 8-17, 19	Inclusion of 'Functions Performed by The Stapleford Towns Deal Executive Board (Information to be added.)'	To capture responsibilities of the Towns Deal Board
Chapter 3 Part 1, 11.27 & 12.1	Moving Complaints compensations from Executive Director to Monitoring Officer.	To align responsibilities for complaints.
Chapter 3 Part 1 7.4.4	<del>Corporate Communications Manager</del>  Communications, Cultural and Civic Services Manager	To reflect correct Job title
Chapter 3 Part 1 7.5	Insertion of 'The Senior Officers of the Council are those who comprise the Senior Management Team as well as those who report directly to a Member of General Management Team as listed at paragraph 7.3 and 7.4'	To clarify who forms part of SMT

Constitution Chapter and Number	Current Wording/Suggested Change	Reason for Change
Chapter 3 Part 1 9.6	<p>In consultation with the HR Manager, to deal with all matters other than those reserved to the Council relating to the recruitment, appointment, remuneration, conditions of service, discipline, dismissal, superannuation, qualifications, training, job evaluation, promotion, safety and provision of welfare facilities of all employees of the Council (including settlement of claims up to £25,000 after consultation with the Monitoring Officer and Deputy Chief Executive/Section 151 Officer). <del>if within existing budgets).</del></p> <p>In consultation with the HR Manager, as necessary, to deal with all matters other than those reserved to the Council relating to the recruitment, appointment, remuneration, conditions of service, discipline, dismissal, superannuation, qualifications, training, job evaluation, promotion, safety and provision of welfare facilities of all employees of the Council (including settlement of claims up to £25,000 after consultation with the Monitoring Officer and Deputy Chief Executive/Section 151 Officer). <del>if within existing budgets).</del></p>	To reflect the impact the pay awards may have on the approved staffing budgets.
Chapter 3 Part 1 9.12	Insertion of 'Cabinet'	To reflect the correct position
Chapter 3 Part .14	Insertion of 'To sign and seal documents on behalf of the Council, as required'.	To reflect the correct position
Chapter 3 Part 1 11.2.3	Insertion of 'Council'	To reflect the correct position
Chapter 3 Part 11.2.5	<del>To provide advice support the Council's Standards Complaints Officer undertake an initial assessment of complaints made under the Code of Conduct for Members and in consultation with an Independent Person, determine any further action to be taken</del>	To reflect the correct position
Chapter 3 Part 1 1.2.5	Change from 'o' to Capital 'O'	Grammatical Correction

Constitution Chapter and Number	Current Wording/Suggested Change	Reason for Change
Chapter 3 Part 1 13.3	Insertion of 'and withdraw'	Clarification
Chapter 3 Part 1 14.	Head of <del>Governance</del> & Deputy Monitoring Officer Head of Democratic Services & Deputy Monitoring Officer	To reflect correct job title
Chapter 3 Part 1 14.1	To perform, the Council's <del>Governance</del> functions To perform, the Council's Democratic Service functions	To reflect the correct position
Chapter 3 Part 1 14.2	Deletion of ' <del>To perform the Council's Information Governance functions</del> '	This responsibility has moved to Head of Administrative Services.
Chapter 3 Part 1 14.3	Deletion of ' <del>To perform the Council's Democratic Services functions</del> '	Already stated in clause 14.1
Chapter 3 Part 1 14.4	Deletion of ' <del>To perform the Council's Parking Services functions</del> '	This responsibility has moved to Head of Administrative Services.
Chapter 3 Part 1 14.5	Deletion of ' <del>to perform the Council's Surveillance functions</del> '	This responsibility has moved to Head of Administrative Services
Chapter 3 Part 1 14.7	Insertion of 'and in accordance with the relevant legislation'	Point of clarification
Chapter 3 Part 1 14.8	<del>To act as the Council's Senior Responsible Officer under the Surveillance Commissioner Code of Practice</del>	This responsibility has moved to Head of Administrative Services
Chapter 3 Part 1 16.5	Deletion of ' <del>To determine planning applications accordingly</del> '	Reflect the current position



Constitution Chapter and Number	Current Wording/Suggested Change	Reason for Change
Chapter 3 Part 1 16.7	To determine applications for planning permission, the need for prior approval, consent for the display of advertisements and listed building consent and the determination of or response to any other application or matter received in respect of the town and country planning function, <b>(excluding enforcement)</b> including Article 4 directions subject in each case to the proviso that any Member of the Council may bring the application before the Planning Committee for decision, and subject also to the provisos below	Reflect the current position
Chapter 3 Part 1 16.8	To determine planning enforcement action as may be necessary having due regard to the <del>after prior</del> consultation response from <del>with</del> Ward Members, <del>and</del> the Chair of Planning Committee <del>and</del> the Head of Legal Services to include the  Wording in bold highlights amendments made: 'To determine planning enforcement action as may be necessary <b>having due regard to</b> the consultation <b>response from</b> Ward Members, the Chair of Planning Committee and the Head of Legal Services to include the	Reflect the current position
Chapter 3 Part 1 16.9	Insertion of: On a finding of breach of planning control, after consultation with Ward Members, Chair and Vice Chair of Planning Committee and Head of Legal Services to carry out the necessary action.	Reflect the current position
Chapter 3 Part 1 16.10	To <del>perform</del> the Council's functions under the Building Act 1984 to include the issue of Notices under Section 36 of the Building Act 1984 (removal or alterations of work done in breach of Building Regulations) in consultation with the Head of Legal Services.  Wording in bold highlights amendments made: To <b>manage</b> the Council's functions under the Building Act 1984 <b>as amended</b> to include the issue of Notices under Section 36 of the Building Act 1984 (removal or	Administrative Change

	alterations of work done in breach of Building Regulations) in consultation with the Head of Legal Services.	
<b>Constitution Chapter and Number</b>	<b>Current Wording/Suggested Change</b>	<b>Reason for Change</b>
Chapter 3 Part 1 16.17	Insertion of: Where Section 106 contributions have been approved at the relevant Committee to arrange payments of these in consultation with the Head of Legal Services.	Reflect current position
Chapter 3 Part 1 17.2	Deletion of <del>'To deal with Housing Repairs and Compliance matters</del>	This responsibility has moved to Head of Housing
Chapter 3 Part 1 17.3	Insertion of To approve bids and adaptations to Council properties up to a maximum of £30,000.	This responsibility has moved to Head of Asset Management,
Chapter 3 Part 1 18.8	To award compensation under the Secure Tenants of Local Authorities (Compensation for Improvement) Regulations 1994 unless appropriate to exercise a discretion.  To award compensation ( <b>up to a maximum of £1000</b> ) under the Secure Tenants of Local Authorities (Compensation for Improvement) Regulations 1994 unless appropriate to exercise a discretion.	Point of clarification
Chapter 3 Part 1 18.11	To consider and conduct reviews of Council <del>homeless decisions</del> and introductory tenancies.	Point of clarification
Chapter 3 Part 1 18.11	Insertion of 'To deal with Housing Repairs and Compliance matters'	This responsibility now with the Head of Housing
Chapter 3 Part 1 18.12	Insertion of 'In common with the Head of Legal Services deal with acquisition, appropriations and disposals of Council Houses not exceeding the value currently set out in Financial Regulations.	Reflect current position
Chapter 3 Part 1 18.13	Insertion of 'To consider, negotiate and determine all acquisitions, appropriations and disposals, lettings, negotiations and settlement of leases and rents for Council Houses not exceeding the rental or capital	Reflect current position

	consideration currently set out in the Financial Regulations and in accordance with relevant Council policies.	
<b>Constitution Chapter and Number</b>	<b>Current Wording/Suggested Change</b>	<b>Reason for Change</b>
Chapter 3 Part 1 20.3	Insertion of 'including the assessment of all reliefs, discounts, levies and exemptions'.	Point of clarification
Chapter 3 Part 1 20.5	Insertion of 'To appoint Officers (either internally or externally) to act on behalf of the Council to perform functions in relation to Revenues, Benefits and Customer Services	Point of clarification
Chapter 3 Part 1 21.4	Insertion of 'To perform the Council's Parking Services functions'.	This delegation now with Head of Administrative Services.
Chapter 3 Part 1 21.5	Insertion of 'To perform the Council's Surveillance functions'	This delegation now with Head of Administrative Services.
Chapter 3 Part 1 21.6	Insertion of 'To act as the Council's Senior Responsible Officer under the Surveillance Commission Code of Practice'.	This delegation now with Head of Administrative Services.
Chapter 3 Part 1 23.7	Insertion of 'sharing and Key Individuals Network Contact Systems'	Point of clarification
Chapter 3 Part 1 23.8	<del>To perform the Council's functions in managing the Local Strategic Partnership and Community Safety Partnership sharing and Key Individuals Network Contact Systems'</del>	Point of clarification
Chapter 3 Part 1 Schedule of	Local Government Act 1972 S100B(2), S100B(7), S.100C(2) Head of Governance Democratic Services	To reflect correct job title

<p>Proper Officer table</p>	<p>The Local Authorities (EXECUTIVE ARRANGEMENTS) Access to Information (ENGLAND) Regulations 2012 N0.2089 Regulation 5, 7, 9,10,12,13,14,15,16 and 20 Head of Governance Democratic Services</p>	
<p><b>Constitution Chapter and Number</b></p>	<p><b>Current Wording/Suggested Change</b></p>	<p><b>Reason for Change</b></p>
<p>Chapter 5 Part 3 4.1</p>	<p>Only one person objecting and the applicant or a supporter may speak. <del>Professional representatives/agents will not be entitled to speak.</del> Where an application affects a large area, additional speakers will be allowed, at the discretion of the <del>Monitoring Officer</del> <b>Head of Planning and Economic Development</b>, if it is felt there is justification on the basis of a multiplicity of viewpoints and issues.</p> <p>Wording in bold highlights amendments made: Only one person objecting and the applicant or a supporter may speak. Where an application <b>is a major planning application</b> and affects a large area, additional speakers will be allowed, at the discretion of the <b>Head of Legal</b> and Head of Planning and Economic Development, if it is felt there is justification on the basis of a multiplicity of viewpoints and issues.</p>	<p>To allow professional representatives/agents to speak to enable discussion to focus on planning grounds and to align with general planning protocol across other authorities.</p>
<p>Chapter 5 Part 3.4 Notes</p>	<p><del>Any Member may refer an application to the Planning Committee for a decision.</del> Any Member may refer an application to the Planning Committee, on giving 28 days' notice from the date the application is published on the weekly list and having completed the relevant referral form. The Such a Member may speak but not vote on the application, unless they are a Member of the Committee. Additionally, Ward Councillors also have the right to attend and speak but not to vote on an application for planning consent for a matter affecting their Ward. Speeches by Members who have referred an application to Committee and by Ward Members will be limited to five minutes' duration. Any Ward</p>	<p>To streamline the process when referring applications to planning committee.</p>

	<p>Councillor having spoken to the Committee will have the right to reply before the Committee votes</p> <p><b>Any Member may refer an application to the Planning Committee, on giving 28 days' notice from the date the application is published on the weekly list and having completed the relevant referral form.</b> The Such a Member may speak but not vote on the application, unless they are a Member of the Committee. Additionally, Ward Councillors also have the right to attend and speak but not to vote on an application for planning consent for a matter affecting their Ward. Speeches by Members who have referred an application to Committee and by Ward Members will be limited to five minutes' duration. Any Ward Councillor having spoken to the Committee will have the right to reply before the Committee votes."</p>	
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