

REPORT TO	DATE OF MEETING
CABINET	21 MARCH 2012

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
REVIEW OF THE COUNCIL'S CONSTITUTION	LEADER	Maureen Wood	4

1. SUMMARY AND LINK TO CORPORATE PRIORITIES

The Constitution Task Group was established in 2010 to undertake a review of the Constitution by Governance Committee. Since 2010 the Constitution Task Group has conducted annual reviews of different sections of the Constitution and submitted reports to the Governance Committee and Cabinet prior to adoption of the proposed changes by Council at the start of each new municipal year. It is intended that this review will culminate in the adoption of the revised Constitution at the start of the 2012/13 municipal year.

This current review has focused on two sections of the Constitution: Part 4G - the Financial Regulations and Part 5C Protocol 5 Member Involvement in Planning Procedures. The proposed revision of the Financial Regulations is appended to this report as Appendix 1. The proposed revision of Protocol 5 Member Involvement in Planning Procedures is appended to this report as Appendix 2(a) and the proposed revision of the associated 3D Committee Functions and 3E. Scheme of Delegation to Officers is appended as Appendix 2(b).

The Constitution Task Group met on the evening of 12 March 2012 to review the work which officers had undertaken on the Financial Regulations and the Protocol for Member Involvement in Planning Procedures since its meetings on 12 January and 23 February. The task group was pleased to see that officers had taken into account the comments and requests made at previous meetings and, subject to a small number of further minor amendments which have now been incorporated into the appendices, finalised its recommendations to the Governance Committee. At the close of the task group meeting the Governance Committee met to agree its recommendations to Cabinet.

Ensuring that the Constitution is up to date and applied effectively is a key element of the corporate governance of the Council and links to the corporate priority of being an efficient, effective and exceptional Council.

2. RECOMMENDATIONS

2.1 Financial Regulations

(a) That Cabinet recommend the Council approve the increase in the capital expenditure threshold from £50,000 to £75,000 in line with the existing Key Decision and Standing Order Tender Thresholds.

(b) That Cabinet recommend the Council adopt the proposed changes to the Constitution identified in section 3(i) of this report with effect from the first Council meeting of the new municipal year in 2012.

(c) The Monitoring Officer, in consultation with the chairman of the Governance Committee, be authorised to update the Constitution to reflect the outcomes from Recommendation (b) above.

2.2 Guidance on Member Involvement in Planning Procedures

(d) That Cabinet recommend the Council adopt the proposed changes to the Constitution identified in section 3(ii) of this report with effect from the first Council meeting of the new municipal year in 2012.

(e) The Monitoring Officer, in consultation with the chairman of the Governance Committee, be authorised to update the Constitution to reflect the outcomes from Recommendation (d) above.

3. MAIN CHANGES AND REASONING

(i) Part 4 G - Financial Regulations

A review of the Council's current Financial Regulations has been undertaken to ensure that the document is up to date and fit for purpose. The detailed review has involved the following:-

- A review of the financial regulations of other local authorities.
- Input from and discussions with Internal Audit, the Senior Officer Corporate Governance Group, members of the Senior Management Team and the Constitution Task Group
- Taking account of new developments in the council's systems and processes, for example, the new payment and order procedures introduced as part of the implementation of the new financial management information system.

As a result of the review the following changes are being proposed:-

Financial Regulation 2 – Revenue Expenditure

- Clarification of Chief Officer powers relating to incurring expenditure
- Update of the virement policy allowing appropriate levels of authority from Chief Officer up to Council
- Introduction of appropriate levels of authority for revenue budget increases financed by external funding
- Inclusion of budget carry forward/slippage at the discretion of the Chief Financial Officer

Financial Regulation 3 – Capital Expenditure

- Clarification of some general points
- Establishment of responsibility for preparing the 5 year capital programme
- Setting out the details required in financial appraisal reports for schemes up to and above £75,000, bringing this into line with the Key Decision threshold
- Establishment of the basis and process for capital monitoring and reporting
- Establishment of the basis for the rephrasing of the capital programme
- Establishment of the procedure for identifying and dealing with scheme overspends
- Setting out the procedure for bringing in new capital schemes

Financial Regulation 4 - Grants to External Organisations

- New regulation setting out the process to be followed with regard to the approval, payment and monitoring of grant payments to external organizations.

Financial Regulation 5 – External Funding

- New regulation setting out the process to be followed with regard to external funding grants payable to the Council.

Financial Regulation 6 – Treasury Management – Investments, borrowings and trust funds

- Reflecting the latest Treasury Strategy

Financial Regulation 15 - Security

- Introduction of arrangements for dealing with termination of employment.
- Strengthening of arrangements for the holding of cash.

Financial Regulation 17 - Internal Audit

- Replacement of the current definition of internal audit with the CIPFA definition
- Removal of the reference to the Auditing Practices Board Auditing Guidelines

Financial Regulation 19 - Orders for Work, Goods and Services

- Reflecting the change in procedures following implementation of new financial system

Financial Regulation 20 – Payment of Accounts

- Reflecting the change in procedures following implementation of new financial system

(ii) Part 5C Protocol 5 - Member involvement in Planning Procedures

The current Guidance on Member Involvement in Planning was originally drafted some years ago and it was appropriate to undertake a review for a number of reasons:

- The planning system and its direction is always changing. Changes in legislation such as the introduction of the Localism Act and amendments to the Town and Country Planning Act require new guidance for members
- Following the removal of Area Committees the role of individual ward members in the planning process needed review
- There is an increased emphasis on pre application discussions and community involvement in planning through the localism agenda. Members, particularly those on the Planning Committee, require further guidance on their role and on pre determination issues
- The Guidance needs extending to address recent issues that have come to light in the operation of the Planning Committee as well as good practice

Pre Determination

The Localism Act in Chapter 6 considers pre determination. In the Plain English Guide to the Act it is explained that the rules on pre determination were developed to ensure that councillors came to Council discussions with an open mind. In practice however, these rules have been interpreted in such a way to reduce the quality of local debate and stifle valid discussion. The Localism Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result. This will help them better represent their constituents and enable local debate.

The Guidance, attached at Appendix 2(a), has been reviewed to reflect this new approach.

Community Consultation

The Localism act also includes in Part 6 Chapter 4 a requirement for developers of major planning applications to carry out public consultation before an application is submitted to the Local Planning Authority. This clearly means that ward members and their communities will have a greater involvement in the planning process and an opportunity to shape future developments. Guidance on this matter has been included.

Pre Application Discussions

It is now common practice for applicants proposing a major development to carry out pre application discussions with officers. These discussions can be of benefit to all parties, particularly for large proposals such as a significant residential proposal, a large supermarket or business park. It is easy for such discussion to be misinterpreted or seen by objectors to be part of the lobbying process of the applicant. It is therefore essential that such discussions are held in line with established guidelines which are now included.

General Role and Conduct of the Planning Committee

Fuller guidance has been included.

Obtaining information

General guidance advising members on how to access planning application files, make appointments or get technical responses to detailed questions are now included.

Enforcement

New guidance has been included on planning enforcement and the interaction with the ward councillor.

Training

It is good practice for all members to participate in planning training, however, more advanced training for members of the Planning Committee is essential for them to carry out their role and is now mandatory.

Member Request for an Application to go to Committee.

Part 3D of the Constitution sets out the functions of the Planning Committee and provides for members to request an application to be considered by the committee instead of the application being dealt with under delegation. This request must be made to the Director of Planning and Housing within 28 days of the application being received. The revised protocol has been amended to include this situation ensuring further clarity for members.

Decisions contrary to officer recommendation.

Clarification has been included to address the circumstance where the committee wishes to approve an application contrary to a refusal recommendation. Officers would require time to draft appropriate planning conditions. If the case is straightforward it may be possible for officers to do this during the meeting but, more likely, if the application is more complex, officers would need more time. The most appropriate course of action would be for the Planning Committee to delegate the decision to the Director of Planning and Housing in consultation with the Chair and Vice Chair of Committee.

Appeals

The current Guidance explains that should an appeal be made, officers will prepare the Council's case having regard to all matters and considerations whether or not the decision was in accordance with officer recommendation. In cases where an appeal has resulted following a decision contrary to officer recommendation, the protocol has been revised to encourage ward members or members of the Planning Committee to attend the appeal and give evidence in support of the Council's case.

Scheme of Delegation to Officers

A number of changes to planning legislation and processes have taken place since the current Scheme of Delegation was drafted. It was therefore appropriate to review the scheme and update it accordingly.

Section 7 of the scheme states the categories of planning applications which may be determined by officers under delegated powers. The types of planning applications now considered by officers have been extended and some have been revised.

These cover: Non material amendments to approved applications; Telecommunication applications located in employment or industrial areas where no amenity issues are raised; Requests for Screening or Scoping opinions under the Town and Country Planning (Environmental Impact Regulations) and the initial drafting and consultation in relation to a Local Development Order prepared in line with the Town and Country Planning (Development Management Procedure) (England) Order 2010.

A further new area includes applications for Development Consent Orders for nationally significant Infrastructure Projects. These form large projects which support the economy and vital public services e.g. a new road such as the Heysham M6 Link, a new power station, an extensive wind farm such as the Scout Moor extension in Hyndburn, a new runway or reservoir, or a major new powerline. Such applications are at the moment determined by the Infrastructure Planning Commission (IPC) however under the Localism Act, the IPC is to be abolished and this decision making role is to be transferred to the Secretary of State.

The approach presented is that development proposals located outside the borough which would have very little impact on South Ribble would be the subject of a delegated decision of the Cabinet Member for Strategic Planning & Housing. Conversely any development proposals located in the borough and therefore likely to have a significant impact would require more careful consideration by members and should be presented to the Planning Committee.

As members are aware Enterprise Zone status has been confirmed for the BAE sites at Samlesbury and Warton. Enterprise Zones benefit from a simplified planning regime which is secured through a Local Development Order (LDO). The preparation of an LDO is not referenced in the current Scheme of Delegation or Committee Functions. The initial drafting of the LDO and the carrying out of the appropriate consultation would be appropriate to be delegated to officers. The final LDO would be presented to the Planning Committee for consideration before formal submission to the Secretary of State for approval.

The above suggested amendments to Part 3E of the Constitution are attached at Appendix 2(b) for consideration.

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these. The risk assessment which has been carried out forms part of the background papers to the report.

FINANCIAL	There are no financial implications at his stage.		
LEGAL	<p>All relevant legislation has been assessed.</p> <p>The revised Financial Regulations reference the standard model prepared by the Chartered Institute of Public Finance and Accountancy (CIPFA) and adopt the standard terms in the CIPFA model.</p> <p>The revised Protocol 5 <i>Member involvement in Planning Procedures</i> has been amended to reflect the provisions of the Localism Act: firstly in relation to pre-determination, making it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, and secondly in relation to community consultation, by covering the implications of the requirement for developers of major planning applications to carry out public consultation before an application is submitted to the Local Planning Authority.</p>		
RISK	Ensuring that the Constitution is up to date and applied effectively is a key element of the corporate governance of the Council. Accordingly, any failure to keep the Constitution fit for purpose could present a risk.		
OTHER (see below)			
<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Crime and Disorder</i>	<i>Efficiency Savings/Value for Money</i>
<i>Equality, Diversity and Community Cohesion</i>	<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Health Inequalities</i>
<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>	<i>Staffing, Training and Development</i>	<i>Sustainability</i>

BACKGROUND DOCUMENTS

Constitution