

Council Report



Report of Head of Legal and Democratic Services

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To: COUNCIL

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Review of the council's constitution

Recommendations

That Council:

1. agrees the revised delegation 1.2 to the head of economy, leisure and property attached as appendix one to this report;
2. agrees the delegation in respect of the national non-domestic rates 1 form (NNDR1) set out in paragraph seven of this report;
3. agrees the amendments to the financial procedure rules set out in paragraph 12 of this report;
4. agrees the revised budget and policy framework procedure rules and budget setting protocol set out in appendix two to this report;
5. agrees the proposed amendments to officer delegation and Cabinet and Council procedure rules set out in appendix three to this report;
6. authorises the head of legal and democratic services to make the necessary changes to the council's constitution to reflect the changes set out in this report;
7. authorises the head of legal and democratic services to make any minor or consequential amendments to the constitution required for clarification, consistency and compliance with the council's style guide.

Purpose of report

1. To consider proposed amendments to the constitution.

Strategic objectives

2. The constitution underpins all of the council's areas of activities and, therefore, contributes to the achievement of all its strategic objectives.

Background

3. Officers have undertaken a review of the constitution in accordance with the Council's decision when it first approved the constitution in 2001, and in pursuance of the requirements of Section 37 of the Local Government Act 2000 to keep the constitution under review. The Constitution Review Task Group, comprising councillors Bretherton, Dodds (as substitute for Mrs Ducker), Hards, Midwinter and Wood, considered the proposals at a meeting on 26 November 2013 and the views expressed at that meeting are included in this report.

Delegation 1.2 – land and property matters

4. Delegation 1.2 currently authorises the head of economy, leisure and property to authorise a number of land and property transactions provided the best possible price is obtained and no statutory protection is likely to be obtained.
5. The task group supported a proposed amendment of these provisos because they are too restrictive and not always applicable.
6. The revised delegation 1.2 is **attached** with deleted words shown by a strikethrough and additional words shown in bold.

National non-domestic rates 1 form (NNDR1)

7. At its meeting on 13 December 2012 Council considered a report on a new requirement, under the Local Government Finance Act 1988 (as amended by the Local Government Finance Act 2012), to submit a NNDR1 to the Department for Communities and Local Government (DCLG) by 31 January. To avoid the need for a special meeting Council authorised the strategic director (section 151) officer, in consultation with the Cabinet member for finance to approve and submit the Council's national non-domestic rates 1 form (NNDR1) for 2013/2014. As the completion of this form is a technical matter and the financial detail will be included in the subsequent budget report to Council, the task group supported the following ongoing delegation:

To authorise the chief finance officer (section 151 officer), in consultation with the Cabinet member for finance to approve and submit the Council's national non-domestic rates 1 form (NNDR1) each year as required by the Local Government Finance Act 1988 (as amended by the Local Government Finance Act 2012).

Financial Procedure Rules

8. At its meeting in 24 October Council agreed revised financial procedure rules (FPRs). Since that meeting officers have encountered issues which have informed proposed amendments to the FPRs which the task group support.

9. Under the FPRs agreed by Council in October the responsibility for creating a budget is the responsibility of Council. The approval of these budgets by Council authorises officers to incur expenditure subject to compliance with the requirements of the council's constitution.
10. Under these rules any external government grant provided for a specific purpose or any additional fees and charges income cannot be spent until Council has agreed the budget.
11. The following budgetary issues require a solution:
 - New grant income received after the budget has been set for which a budget has to be created in order to give authority to spend the money.
 - Additional income from fees and charges received in the year that leads to additional costs that require a budget to give authority to spend.
 - Increased receipts of insurance income from insurance claims.
12. The task group supported the following amendments to the FPRs to address this:
 - The Leader of council in consultation with the chief executive and chief finance officer may increase the revenue or capital budget after considering a request from the relevant head of service where the council has:
 - a. received government grant outside of the usual budget setting cycle for which no budget exists.
 - b. received additional income for fees and charges that has led to additional costs that require a budget to give authority to spend.
 - c. received additional income from insurance claims.

In all instances a budget no greater than the increase in income can be created.

Budget setting process

13. The existing budget and policy framework procedure rules provide for a consultation period of not less than six weeks. At the end of the consultation period, Cabinet draws up firm budget or policy proposals for submission to Council. Last year the late receipt of the government settlement meant that initial budget proposals were not available until January. In light of the likely late receipt of the government settlement this year the task group considered amendments to the budget and policy framework and the provision of a budget setting protocol. The budget

protocol supported by the task group and the revised budget and policy framework procedure rules are **attached** at appendix two.

Scheme of delegation

14. **Attached** at appendix three are proposed changes, with reasons, to the scheme of delegation and Cabinet and Council procedure rules.

Revised constitution

15. Council is requested to approve the changes set out in this report for implementation from 2 January 2014.

Financial Implications

16. The democratic services budget for printing will meet the costs of producing copies of the amended constitution.

Legal Implications

17. Section 37 of the Local Government Act 2000 requires the Council to keep its constitution under review.

Conclusion

18. This report sets out a number of proposals to amend the constitution. Officers recommend that Council supports these proposals, and authorises the head of legal and democratic services to make these changes and any further minor or consequential amendments to the constitution.

Background paper: Paper to the Constitution Review Task Group

Appendix one

Head of economy, leisure and property

(Car parks, emergency planning, leisure including arts, sports; economic development; property including facilities management and mobile home parks)

HEAD OF ECONOMY, LEISURE AND PROPERTY		
Ref	Function	Consultation (where applicable)
1.0	LAND AND PROPERTY MATTERS	
1.1	To manage the council's land and property portfolio.	
1.2	To authorise the following types of land and property transactions provided the best possible price is obtained and no statutory protection is likely to be obtained. provided that: (i) in the case of paragraph (a), the consideration is the best that can reasonably be obtained unless a general consent of the Secretary of State applies; and (ii) all disposals shall be on the best financial terms unless otherwise agreed by the chief finance officer in consultation with the relevant Cabinet member.	
	(a) To approve the freehold or leasehold sale of land and property where the land or property transaction is below £50,000.	Head of legal and democratic services
	(b) To approve and accept surrenders or terminations of leases and licences and determine applications for the assignment, sub lettings and transfer of leases and licences and the granting of sub-leases and under leases and other applications for consent required by lessees.	Head of legal and democratic services

HEAD OF ECONOMY, LEISURE AND PROPERTY		
Ref	Function	Consultation (where applicable)
	(c) To determine the renewal of leases and tenancies.	Cabinet member/head of legal and democratic services where the annual rental value exceeds £10,000
	(d) To grant new leases and tenancies up to an annual rental value limit of £50,000.	Cabinet member/head of legal and democratic services where the annual rental value exceeds £10,000
	(e) To negotiate and approve rent reviews and licence fee reviews.	Head of legal and democratic services
	(f) To determine applications for the release or variation of covenants.	Head of legal and democratic services
	(g) To grant wayleaves, easements, licences and other rights of users in respect of council owned land or property.	Head of legal and democratic services
	(h) To dedicate land owned by the council as a highway.	Head of legal and democratic services
	(i) To enter into agreements under section 278 of the Highways Act 1980.	Head of legal and democratic services
	(j) To determine requests from developers for the council to adopt land on housing developments, subject to the payment of a commuted sum and the land being transferred at a nominal sum.	
	(k) To serve notices required in relation to the acquisition, disposal, rental, leasing and management of land and property.	

Appendix two

Budget and policy framework procedure rules

The framework for cabinet decisions

1. The council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the cabinet to implement it.

Process for developing the framework

2. The process by which the budget and policy framework will be developed is:
 - (a) The cabinet will publicise a timetable for making proposals to the council for the adoption of any plan, strategy or budget that forms part of the budget and policy framework. This will be included in the cabinet work programme. It will give details of the arrangements for consultation. All members of the scrutiny committee will also be notified.
 - (b) The budget setting process shall follow the budget preparation protocol agreed by the Constitution Review Task Group.
 - (c) Once the cabinet has approved the firm proposals, the proper officer will refer them at the earliest opportunity to the council for decision.
 - (d) In reaching a decision, the council may adopt the cabinet's proposals, amend them, refer them back to the cabinet for further consideration, or, subject to paragraphs (e) and (f) substitute its own proposals in their place.
 - (e) If it accepts the cabinet's recommendation without amendment, the council may make a decision that has immediate effect. If it objects to any of the proposals, it must inform the leader and instruct him/her to require the cabinet to reconsider the proposals in light of the objections. Such reconsideration must take place within the period specified by the council, which shall be not less than five working days.
 - (f) Following reconsideration by the cabinet, the leader may submit revised proposals to the council, together with reasons for the amendments, or inform the council of any disagreement the cabinet has with the council's objections. The proper officer will then call a

Council meeting to be held within a further ten working days. At that meeting, the council may approve the cabinet's proposals, or take a different decision, having taken into account any amendments the cabinet made to its original proposals, the reasons for the amendments, any disagreement the cabinet has with the council's objections and the reasons for that disagreement.

- (g) The council's decision at that meeting shall be final and effective immediately.
- (h) The decision shall then be made public in accordance with Article 4, and shall be implemented immediately.
- (i) In approving the budget and policy framework, the council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the cabinet, in accordance with paragraphs 9 to 11 of these rules (virement and in-year adjustments). Any other changes to the policy and budgetary framework are reserved to the council.

Decisions outside the budget or policy framework

- 3. Subject to the provisions of paragraph 9 and 10 (virement) the cabinet and any officers discharging cabinet functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the council, subject to paragraphs 5 to 8 below.
- 4. If the cabinet or any officers discharging cabinet functions want to make such a decision, they shall take advice from the monitoring officer and/or the chief finance officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the council for decision, unless the decision is a matter of urgency, in which case the provisions in the following section (urgent decisions outside the budget and policy framework) shall apply.

Urgent decisions outside the budget or policy framework

- 5. The cabinet, or officers discharging cabinet functions, may take a decision which is contrary to the council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency or in the event of a disaster or emergency. An urgent decision may only be taken:

- (a) if it is not practical to convene a quorate meeting of the full Council;
and
 - (b) if the Chairman of the scrutiny committee agrees that the decision is a matter of urgency.
6. The reasons why it is not practical to convene a quorate meeting of full Council and the Chairman of the scrutiny committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chairman of the scrutiny committee the consent of the Chair of the council, and in the absence of both, the Vice-Chair, will be sufficient.
7. In cases of disaster or emergency, strategic directors may take decisions outside of the policy framework and, with the approval of the chief finance officer, shall be authorised to approve expenditure outside of the budget in accordance with the financial procedure rules.
8. Following a decision taken as a matter of urgency, or in the case of a disaster or emergency, the decision taker will provide a full report to the next Council meeting explaining the decision, the reasons for it and why the decision was treated as such a matter.

Virement and supplementary estimates

9. The council will have the revenue cost centres and capital projects as set out in the approved revenue budget and capital programme, which will be agreed annually.
10. In implementing Council policy, the cabinet, or officers discharging cabinet functions, shall not exceed those budgets. However, the cabinet, or officers discharging cabinet functions, shall be entitled to vire between revenue budgets or between capital projects, and agree supplementary estimates in accordance with the procedures and limits set out in the financial procedure rules. Beyond these limits, approval to any virement or supplementary estimate shall require the approval of the full Council.

In-year changes to policy framework

11. The responsibility for agreeing the budget and policy framework lies with the council, and decisions by the cabinet, or officers discharging cabinet functions, must be in line with it. No changes to any policy or strategy which make up the policy framework may be made by the cabinet, or officers discharging cabinet functions, except those changes:
- (a) which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint;
 - (b) necessary to ensure compliance with the law, ministerial direction or government guidance;

- (c) in relation to the policy framework in respect of a policy which would normally be agreed annually by the council following consultation, but where the existing policy document is silent on the matter under consideration.

Call-in of decisions outside the budget or policy framework

12. Where the scrutiny committee is of the opinion that a cabinet decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the council's budget, then it shall seek advice from the monitoring officer and/or chief finance officer.
13. In respect of functions that are the responsibility of the cabinet, the monitoring officer's report and/or chief finance officer's report shall be to the cabinet with a copy to every councillor. Regardless of whether the decision is delegated or not, the cabinet must meet to decide what action to take in respect of the monitoring officer's report and to prepare a report to Council in the event that the monitoring officer or the chief finance officer conclude that the decision was a departure, and to a scrutiny committee if the monitoring officer or the chief finance officer conclude that the decision was not a departure.
14. If the decision has yet to be made, or has been made but not yet implemented, and the advice from the monitoring officer and/or the chief finance officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, a scrutiny committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the council has met and considered the matter. The council shall meet within ten working days of the request by a scrutiny committee. At the meeting it will receive a report of the decision or proposals and the advice of the monitoring officer and/or the chief finance officer. The council may:
 - (a) endorse a decision or proposal of the cabinet decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the council be minuted and circulated to all councillors in the normal way; or
 - (b) amend the council's financial regulations or policy concerned to encompass the decision or proposal of the body or individual responsible for that cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the council be minuted and circulated to all councillors in the normal way; or
 - (c) where the council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the cabinet to reconsider the matter in accordance with the advice of either the monitoring officer or chief finance officer.

Budget setting protocol agreed by the Constitution Review Task Group

- Growth bids and savings ideas to be shared with cabinet and to be scrutinised at Star Chambers.
- Private (not public) budget briefing to be given to scrutiny members in December. Other councillors will be invited. The content of the briefing is yet to be agreed but is likely to be based around the appendices usually produced for the scrutiny reports (i.e. Medium Term Financial Plan, essential growth bids, discretionary growth bids and savings ideas under consideration by cabinet).
- This would signal the start of a consultation with all councillors on the growth bids and savings ideas and will be the point at which all councillors can lobby the cabinet on what should or should not be included in the revenue and capital budgets.
- Discretionary growth bids, savings ideas and the Medium Term Financial Plan to be added to the website within 15 working days from publication of the governments' financial settlement or by the end of the first full working week in January, whichever is the later and businesses will be directed to them and invited to comment.
- No change in the process from the production of the February cabinet report onwards, although this report will incorporate all necessary information previously only reported in the December scrutiny report.

November 2013

Appendix three

Changes to the scheme of delegation, Cabinet and Council procedure rules

References in part 3 of the constitution – scheme of delegation	Proposal	Reason for proposing change
Council procedure rule 31 and the appendix to council procedure rules	Make clear that county councillors are not entitled to their own five minute address at a planning committee meeting – they must share the appropriate five minutes designated for objectors or supporters.	Provide clarity/avoid confusion and provide clear written guidance.
New	<ol style="list-style-type: none"> 1. Authorise the Head of Legal and Democratic Services to approve up to two consecutive three month periods of non-attendance at meetings by councillors with the agreement of group leaders. 2. Amend the terms of reference of the Audit and Corporate Governance Committee to agree up to two consecutive three month periods of non-attendance at meetings by councillors in the absence of agreement by group leaders. Council will 	Avoids need to call a special Council meeting.

	<p>continue to consider any requests beyond those periods.</p>	
<p>Paragraph 12 of the Cabinet procedure rules</p>	<p>Include the following amended wording (deleted words with strikethrough new words in bold):</p> <p>that if the leader is present he/she will preside and in his/her absence, then a person appointed to do so by those present shall preside the deputy leader shall preside.</p>	<p>To avoid the need for the appointment of a chairman at the meeting in the absence of the Leader of council.</p>

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