

BRECKLAND DISTRICT COUNCIL

Report of: Monitoring Officer – Maxine O’Mahony
To: Breckland Council – Thursday 13 September 2018
Author: (Jacqui Berridge - Lawyer)
Subject: Constitution
Purpose: To consider variations to the Constitution

Recommendations:

- (a) **Minor variations to the Constitution** – That paragraph 3 of Article 14 of the Constitution, which deals with minor changes to the Constitution, be amended as shown in Appendix A to this report
- (b) **Policies submitted to the Governance and Audit Committee** - That items 10 and 12 of the terms of reference of the Governance and Audit Committee be amended as shown in Appendix B to this report.
- (c) **Local Authorities (Functions and Responsibilities) (England) Regulations 2000 - Schedule 1 Functions** - That the Constitution be amended so that the functions detailed in Appendix C to this report are allocated to the decision-making bodies detailed in Appendix C to this report.
- (d) **Contract Procedure Rules**
- That the table at paragraph 13.1.3 of the Contract Procedure Rules be amended as shown at paragraph (a) of Appendix D to this report.
 - That the Financial Management Standards be amended as shown in paragraph (b) of Appendix D to remove reference to Norfolk County Council
 - That paragraph 4.2 of the Financial Management Standards be amended as shown in paragraph (c) of Appendix D to this report.
- (e) **Standing Orders**
- That Standing Order no. 35 be amended as shown at Appendix E to this report.
 - that Standing Order no.19A be added as shown at Appendix E to this report.
 - that Standing Order no.29A be added as shown at Appendix E to this report
- (f) **Virements / transfers** – That paragraphs 3.4.4, 3.4.7 and 3.7.3 of the Financial Procedure Rules be amended as shown in Appendix F to this report.

(g) Leader and Deputy Leader

- That the Constitution be amended to make it clear that one Deputy Leader may be appointed by the Leader
- That the additional definition of “Deputy Leader detailed in paragraph 2.25 of this report be approved and the Constitution be amended accordingly

(h) Development Plan Documents – that Article 4.2 be amended to refer to the Council’s Development Plan Documents.

1.0 BACKGROUND

1.1 The Council's current Constitution was approved by full Council at its meeting on 21 January 2016. Under Article 14 of the Constitution any proposed changes may be approved only by full Council unless the change is:

- a minor variation; or
- required to be made to remove any inconsistency or ambiguity; or
- required to be made so as to put into effect any decision of the Council or its committees or the Cabinet.

1.2 In such circumstances the variation may be made by the Monitoring Officer and come into force immediately, but must be reported to full Council as soon as reasonably possible. Any change then continues to have effect only if full Council agrees.

1.3 All other variations must be submitted to Council for consideration.

1.4 This report seeks full Council approval for a number of non-minor variations.

2.0 PROPOSED VARIATIONS BEING SUBMITTED TO COUNCIL FOR APPROVAL

(a) Minor typographical, referencing and numbering errors

2.1 In order to reduce administrative burden it is suggested that the Monitoring Officer be given delegated authority to make minor typographical, referencing and numbering amendments to the Constitution without having to report these back to Council. To enable this, it is suggested that paragraph 3 of Article 14 of the Constitution, which deals with minor changes to the Constitution, be amended as shown in Appendix A.

(b) Policies submitted to the Governance and Audit Committee

2.2 The Governance and Audit Committee has been established to monitor governance, risk management, and internal control arrangements at the Council, and to provide independent assurance that these are effective and efficient.

2.3 Part of the remit of the Governance and Audit Committee is:

“10. To review the strategic risks that the Council faces and ensure that these are being appropriately managed, monitored and mitigated.

“12. To review the Council’s arrangements to counter fraud and corruption, with particular regard to the policies on: Counter Fraud, Whistleblowing and Money Laundering”.

- 2.4 As the terms of reference for the Committee only refer to “monitoring” and “reviewing” arrangements, it may be argued that any policies then need to go to full Council for approval.
- 2.5 In the interests of efficiency it is suggested that the risk management policy and the anti-fraud and anti-corruption policies should not only be monitored/reviewed by, but also approved by, the Governance and Audit Committee, and that the Committee should be able to deal with any additional policies that relate to governance and audit matters. It is therefore recommended that items 10 and 12 of the terms of reference of the Governance and Audit Committee be amended as shown in Appendix B.

(c) Local Authorities (Functions and Responsibilities) (England) Regulations 2000 - Schedule 1 Functions

- 2.6 Under section 9D of the Local Government Act 2000 any function of the Council which is not specified in regulations is the responsibility of the Cabinet. Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) sets out the functions which are not to be the responsibility of the Cabinet, and which must therefore be allocated elsewhere.
- 2.7 Most of the functions referred to in Schedule 1 of the Regulations have been allocated specifically within the Constitution to an appropriate Committee etc, but the table in Appendix C shows those functions which have not been allocated specifically. The table includes the parent body to which it is suggested that each function be allocated.
- 2.8 It should be noted that some functions have already been delegated to officers, but it is important that the Constitution is clear on which parent body is responsible for each function.

(d) Contract Procedure Rules

- 2.9 **(i) Tendering procedures** - The table at paragraph 13.1.3 of the Contract Procedure Rules sets out the tendering procedures which must be followed for purchases within the values shown in the first column of the table.
- 2.10 The table currently requires low value contracts to be purchased using a purchase card, however purchase cards should only be used for low value/frequent or regular transactions such as train fares. The table also currently fails to clarify that contractual spend should always be subject to a purchase order, raised and approved, before the order is placed with the supplier. Finally, the table needs to be amended so that it is clear that tendering is carried out via the E-Tendering Portal.
- 2.11 It is therefore recommended that the table be amended as shown in paragraph (a) of Appendix E.

(ii) References to Norfolk County Council

- 2.12 The Financial Management Standards (“Management of Assets”) contain a number of references to Norfolk County Council in connection with the IT function. The IT function has now been brought back in house and references to Norfolk County Council need to be

deleted. It is therefore recommended that the amendments detailed in paragraph (b) of Appendix E be made to the Constitution

- 2.13 **(iii) Paying for Work, Goods and Services** – the first two bullet points of paragraph 4.2.2 of the Financial Management Standards are currently incorrect because they state that official orders are not required for written contracts or periodical payments such as rents and rates. In fact purchase orders are required for all contractual supplies and periodical payments. The paragraph also does not read well and it is therefore suggested that the paragraph be amended as shown in Appendix E.

(e) Postponement of full Council, and cancellation/postponement of Committee and Cabinet meetings

- 2.14 Following the poor weather earlier in the year it is considered that greater clarity is required in Standing Orders relating to the postponement and/or cancellation of full Council, Committee and Cabinet meetings.
- 2.15 It is therefore suggested that standing orders be amended as shown in Appendix F.
- 2.16 Part VI of Schedule 12 of the Local Government Act 1972 allows a local authority to make Standing Orders for the regulation of their proceedings, and allows variation or revocation of such Standing Orders. Under Standing Order no. 53 any motion to add to, vary or revoke Standing Orders must, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council. This requirement does not apply to any report designed to amend the Constitution which has been approved by the Monitoring Officer. The recommendations have the approval of the Monitoring Officer, and therefore if members approve the recommendations there is no need for the recommendations to stand adjourned to the next meeting.

(f) Virements / transfers

- 2.17 The Financial Procedure Rules set out the circumstances when virements can be made from one budget to another (paragraph 3.4.4), and when transfers can be made from reserves to budgets (paragraph 3.7). The Rules also set out who can make such virements/transfers.
- 2.18 Virements between budgets can be made by Senior Managers up to £20,000 (subject to notifying the S151 Officer); by Chief Officers and Deputy Chief Officers up to £68,000 (subject to approval by the S151 Officer); by Cabinet in excess of £68,000; and by Council where any transfer will result in an excess of 30% of a directorate gross budget.
- 2.19 Transfers from reserves to budgets can be made by the Contracts Team up to £68,000 (with approval of the S151 Officer and subject to any written direction given by the Leader); by the Cabinet from £68,000.01 to £100,000; and by Council in excess of £100,000. Reference to the Contracts Team is an error.
- 2.20 It is recommended that Rule 3.7.3 be amended so that the transfer of reserves up to £68,000 is delegated to Chief Officers and Deputy Chief Officers (rather than the Contracts Team).
- 2.21 Rule 3.4.7 prevents capital budget from being vired to a revenue budget heads. It is recommended that this paragraph be amended to make it clear that virements are permitted from revenue to capital.

- 2.22 It is also recommended that paragraph 3.4.4 be amended so as to allow the Section 151 Officer to amend the capital programme, and vire between capital budgets up to £100,000
- 2.23 Full details of the proposed amendments are shown in Appendix F.

(g) Leader and Deputy Leader

- 2.24 “Leader” is defined in the Constitution as “such person as the Council shall so elect to be Leader of the Cabinet”. This should read “Leader of the Council”. The Constitution erroneously refers to the appointment of up to two deputy leaders. It is therefore recommended that all such references be amended to make it clear that one Deputy Leader may be appointed by the Leader.
- 2.25 It is also suggested that a further definition of “Deputy Leader” be added as follows:

“Deputy Leader” - such person as the Leader may designate as Deputy Leader of the Council.”

(h) Development Plan Documents

- 2.26 It has come to light that Article 4.2 of the Council’s Constitution, which details the plans and strategies required by law to be included in the Council’s Policy Framework, does not include reference to the Council’s Development Plan Documents provided under section 15 of the Planning and Compulsory Purchase Act 2004. This is a legal requirement, and it is therefore recommended that Article 4.2 be amended accordingly.

3 OPTIONS

- 3.1 Members have the option to approve or not approve the variations, or to require alternative variations.

4 REASONS FOR RECOMMENDATION(S)

- 4.1 To remove anomalies, address minor typographical and numbering issues, and to ensure the Constitution is kept up to date with changing circumstances.

5 EXPECTED BENEFITS

- 5.1 Regular updates to the Constitution will ensure that it remains fit for purpose.

6 IMPLICATIONS

- 6.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

6.2 Constitutional & Legal

- 6.2.1 Amending the Constitution is a function that is reserved to full Council.

7 **WARDS/COMMUNITIES AFFECTED**

7.1 None

8 **ACRONYMS**

8.1 None

Background papers:-	The Council's Constitution which is available on the Council's website.
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Lead Contact Officer

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Key Decision: No (n/a)

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A – proposed amendments to paragraph 3 of Article 14 (Review of the Constitution)

Appendix B – proposed amendments to items 10 and 12 of the terms of reference of the Governance and Audit Committee

Appendix C – proposed allocation of functions detailed in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and not already allocated

Appendix D – (a) proposed amendments to table at paragraph 13.1.3 of the Contract Procedure Rules and (b) proposed amendments to remove reference to Norfolk County Council and (c) proposed amended paragraph 4.2 of the Financial Management Standards

Appendix E – proposed amended Standing Order no. 35 and proposed new Standing Orders nos. 19A and 29A relating to postponement and/or cancellation of meetings

APPENDIX F – proposed amendments to paragraphs 3.4.4, 3.4.7 and 3.7.3 of the Financial Procedure Rules

APPENDIX A – proposed amendments to paragraph 3 of Article 14 (Review and revision of the Constitution)

“3.0 Minor Changes

3.1 If, in the reasonable opinion of the Monitoring Officer, a change is:

- a) A minor variation; or*
- b) Required to be made to remove any inconsistency or ambiguity; or*
- c) Required to be made so as to put into effect any decision of the Council or its committees or the Cabinet,*

then the Monitoring Officer may make such a change. Any such change made by the Monitoring Officer shall come into force with immediate effect but shall (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible and shall continue to have effect only if full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of full Council.”

APPENDIX B – proposed amendments to items 10 and 12 of the terms of reference of the Governance and Audit Committee

“10. To review and approve policies for the strategic risks that the Council faces and ensure that these are being appropriately managed, monitored and mitigated.”

“12. To review the Council’s arrangements to counter fraud and corruption,~~with particular reference to the~~ and to review and approve all Council policies that relate to the prevention of fraud and corruption including (but not limited to) policies on counter fraud, whistleblowing and money laundering.”

APPENDIX C – proposed allocation of functions detailed in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and not already allocated

Function	Schedule 1 reference	Parent body to which it is recommended that the function be allocated
Functions relating to licensing and registration (amend item (e) in the terms of reference to state “including all functions detailed at part B of Schedule 1 of the 2000 Regulations	Para B	Licensing Committee
Functions relating to health and safety at work – functions under any of the relevant statutory provisions within the meaning of Part 1 (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the authority’s capacity as an employer	Para C	Licensing Committee
Functions relating to elections	Para D	Council
Functions relating to community governance	Para EB	Council
Functions relating to smoke-free premises etc	Para F and FA	Council
Functions relating to public rights of way (in so far as they relate to District Council functions)	Part i of Para I	Planning Committee
Power to appoint staff and determine terms and conditions	Part ii of Para I	Council
Duty to make arrangements for proper administration of financial affairs etc	Part ii of Para I	Council
Powers relating to the protection of important hedgerows	Part ii of Para I	Planning Committee
Powers relating to the preservation of trees	Part ii of Para I	Planning Committee
Powers relating to alcohol restrictions	Part ii of Para I	Council

APPENDIX D – (a) proposed amendments to table at paragraph 13.1.3 of the Contract Procedure Rules (b) proposed amendments to remove reference to Norfolk County Council and (c) proposed amendments to paragraph 4.2 of the Financial Management Standards

(a) Proposed amendments to table at paragraph 13.1.3 of the Contract Procedure Rules

Works	Supply of Goods, Materials and Services	Consultants	Tendering Procedure
Up to £4,999	Up to £4,000	Up to £4,999	One quote – this should be a local provider unless not appropriate. This should be done on a Purchase Card where possible. <u>A purchase order should be raised.</u>
£5,000 to £24,999	£5,000 to £24,999		At least three quotes shall be sought. Local providers must have been given an Opportunity to provide a quote. <u>A purchase order should be raised.</u>
£25,000 to £74,999	£25,000 to £74,999	£25,000 to £74,999	At least five written quotations shall be sought. Local providers must have been given an opportunity to provide a quote. <u>A purchase order should be raised.</u>
£75,000 up to EU Procurement Threshold	£75,000 up to EU Procurement Threshold	£75,000 up to EU Procurement Threshold	Open tender <u>via E-Tendering Portal</u> including Contracts Finder a social value clause must be built into the specification and contract. <u>A purchase order should be raised.</u>
Above £4,104,394 (EU threshold*)	Above £164,176 (EU threshold)	Above £164,176 (EU threshold)	EU Procedure – <u>via E-Tendering Portal</u> & OJEU notice. Local social value clause must be built into the specification of the contract. <u>A purchase order should be raised.</u>

(b) Proposed amendments to remove reference to Norfolk County Council

That the following reference *at paragraph 3.6.1 of the Financial Management Standards* (“*Management of Assets*”) be deleted:

“Responsibilities of Norfolk County Council

To be responsible for the security of the Council's Information Technology facilities in accordance with Data Protection Regulations.”

That the following reference at paragraph 4 of the Financial Management Standards (“*Financial Systems and Procedures*”) be deleted:

“4.1.3 It is the responsibility of Norfolk County Council to ensure adequate backup procedures are in place for computer systems.”

That the following reference at *paragraph 3.6.1 of the Financial Management Standards* (“*Management of Assets*”) be amended as shown:

Responsibilities of Chief Officer/Deputy Chief Officers

To be responsible for maintaining standards of security of computer held information as laid down by legislation, and for ensuring adequate backup procedures are in place for computer systems. and the appropriate Director and Norfolk County Council from time to time.

(c) Proposed amendments to paragraph 4.2 of the Financial Management Standards

“4.2.2 Ordering and paying for work, goods and services

- (a) *Official orders shall be issued for all work to be done or goods or services to be supplied, except for petty cash purchases, or such other expenditure as the S151 Officer may approve, in addition to Contract Procedure Rules*
- (b) *Verbal orders shall only be given in cases of emergency and these shall always be confirmed by **an official order** not later than the next working day and marked accordingly.*
- (c) *All orders shall prescribe quantities, adequate description and price, or basis of price*
- (d) *Official orders raised shall be in the form approved by the S151 Officer.*
- (e) *Each appropriate officer shall be responsible for the official orders issued from his/her section.*
- (f) *Each appropriate officer shall notify the S151 Officer of the names of those members of his/her staff authorised to initiate official orders in the computerised ordering system”*

Remaining paragraphs to be renumbered.

APPENDIX E – proposed amended Standing Order no. 35 and proposed new Standing Orders nos. 19A and 29A relating to postponement and/or cancellation of meetings

Proposed amended Standing Order no. 35 (Standing Orders relating to Committees)

“35. Postponement or Cancellation of Committee Meeting

35.1 The Chairman of a Committee may postpone or cancel a meeting of the Committee at any time after consultation with the Vice-Chairman of that Committee and the Chief Executive, provided that any such postponement or cancellation should, if possible, be at least seven days before the scheduled date of the meeting. Where exceptional circumstances apply and the Chairman of the Committee in consultation with the Vice-Chairman of the Committee and the Chief Executive considers that attendance at a convened meeting of the Committee would involve health and safety issues (eg inclement weather) the Chairman of the Committee may postpone the meeting at shorter notice. Following any postponement or cancellation, notification must immediately be given to all members of the Council and to the press, and notice of the postponement or cancellation must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as may be required by law) shall be given of the new date for the meeting.”

Proposed new Standing Order no. 19A (Standing Orders relating to procedures at full Council). It is suggested that this relate only to postponement of meetings in exceptional circumstances, and not to cancellation, as it is not considered appropriate to allow the cancellation of full Council meetings when members have Constitutional rights including submitting questions without notice:

“19A. Postponement of full Council Meeting

Where exceptional circumstances apply and the Chairman of the Council, following consultation with the Vice-Chairman of the Council, the Chief Executive and the Leaders of the political groups, considers that attendance at a convened meeting of the full Council would involve health and safety issues (eg inclement weather) the Chairman of the Council may postpone the meeting. Following postponement, notification must immediately be given to all members of the Council and to the press, and notice of the postponement must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as may be required by law) shall be given of the new date for the meeting.”

Proposed new Standing Order no. 29A (Standing Orders relating to the Council and the Executive)

“29A. Cancellation or Postponement of Cabinet Meeting

The Leader may cancel a meeting of the Cabinet before the agenda has been issued if there is a lack of business for the meeting. Where exceptional circumstances apply and the Leader considers that attendance at a convened meeting of the Cabinet would involve health and safety issues (eg inclement weather) the Leader may postpone the meeting. Following postponement, notification must immediately be given to all members of the Council and to the press, and notice of the postponement must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as may be required by law) shall be given of the new date for the meeting.”

APPENDIX F – proposed amendments to paragraphs 3.4.4, 3.4.7 and 3.7.3 of the Financial Procedure Rules

“3.4.4 The following limits have been approved for the authorisation of Budget transfers (virements):

Budget Holder (Senior Managers)

(a) Up to £20,000.00, between one budget head to another (standard groupings) for which they are responsible, during the financial year after notification to the Section 151 Officer.

Chief Officers/Deputy Chief Officers

(b) Up to £68,000.00, between any one Budget head to another (Standard groupings) for which they are responsible, during the financial year with written approval of the Section 151 Officer.

(c) Up to £68,000.00 in relation to grant funding, where the Chief Officer/Deputy Chief Officer will have the power, subject to consultation with The Section 151 Officer and any directions given by the Cabinet Member, to agree to any terms or restrictions applied by the grant funding to approve the receipt and spend of grant funding.

(d) Up to £68,000.00 in relation to expenditure which generates additional income, where the Chief Officer/Deputy Chief Officer will have the power, subject to consultation with The Section 151 Officer and any directions given by the relevant Cabinet Members, approve additional expenditure that leads to the generation of a net surplus within the financial year

(e) The Section 151 Officer shall have power to amend the capital programme and vire between capital budgets up to £100,000 (without the need to submit the matter to Cabinet under paragraph 3.7 below) following consultation with the responsible Chief Officer/Deputy Chief Officer and subject to no written directions to the contrary from the Leader

Cabinet

(f) Individual transfers between Budget heads in excess of £68,001.00 following a joint report by the Section 151 Officer and the responsible Chief Officer/Deputy Chief Officer. The joint report must explain the implications in the current and future financial year.

(g) To agree to any terms or restrictions applied by the funder and to approve the receipt and spend of any grant funding between £68,000.01 and £100,000.00.

Full Council

(h) To agree to any terms or restrictions applied by the funder and to approve the receipt and spend of grant funding above £100,000.00.

(i) Any transfer which results in an excess of 30% of a directorate gross Budget.

“3.4.7 Capital Budget cannot be transferred to a revenue Budget head.-Virements can be made from revenue budgets to capital budgets.”

3.7.3 The following limits be approved for the authorisation of transfers between reserves and Budgets:

Chief Officers/Deputy Chief Officers:

~~The Contracts Team shall, Any Chief Officer and any Deputy Chief Officer shall, subject to the prior approval by or on behalf of the Section 151 Officer and to any written directions given by the Leader, have power to approve the re-allocation of un-allocated reserve balances up to £68,000.00~~

Cabinet:

To approve the re-allocation of un-allocated reserve balances between £68,000.01 and £100,000.00

Full Council:

To approve the re-allocation of un-allocated reserve balances greater than £100,000.01”