

1. **REVIEW OF THE CONSTITUTION**

Submitted by: Head of Business Improvement, Central Services and Partnerships
Head of Internal Audit & Monitoring Officer

Portfolios: Communications, Policy & Partnerships
Finance & Resources

Ward(s) affected: All

Purpose of the Report

To improve the effectiveness and usability of the Newcastle under Lyme Borough Council (NULBC) Constitution and to ensure that it is both up to date and legally compliant.

RECOMMENDATION:

That the Finance, Resources & Partnerships Scrutiny Committee reviews the updated version of Appendix 12 (Contract Procedural Rules) of the Constitution prior to consideration of Appendix 12 by Full Council.

Reasons

The updated Appendix 12 will improve the effectiveness and usability of the NULBC Constitution and to ensure that it is both up to date and legally compliant. It should also be noted that further changes are likely to be required to the Constitution after central government adopts the new 2014/24/EU Public Sector Directives scheduled for the autumn of 2014.

1. **Background**

- 1.1 The current Borough Council Constitution is based on the 'modular' Constitution issued in 2000 by the former Office of the Deputy Prime Minister. The modular constitution concept was introduced by central government in 2000 to provide draft model constitutions to local authorities around the new leadership models introduced by the Local Government Act 2000. The model was adapted in Newcastle to suit the particular arrangements of this Council at the time of the 2000 Act.
- 1.2 At the Transformation and Resources Committee meeting on 7th June 2010 it was resolved to set up a Member Working Group to review the existing Constitution. The initial purpose of the review was to improve the Constitution in order to enhance understanding of the Constitution and accessibility to its provisions amongst elected Members, Council officials and the general public through recommending amendments and the removal of unnecessary provisions.
- 1.3 On 16th May 2012, the Full Council resolved to adopt amendments to the Constitution as recommended by the Constitutional Review Working Group and also resolved that the Working Group should continue to review the Constitution on a rolling basis and that the Transformation and Resources Overview and Scrutiny Committee (now known as Finance, Resources and Partnerships Scrutiny Committee) should oversee this review process

- 1.4 As part of this ongoing review of the Constitution, the Council's Standing Orders in Relation to Contracts (Appendix 12 of the Constitution) have been examined. The Standing Orders document is currently split into three parts:

Part I – Extract from Statutes;

Part II – Standing Orders for the Regulation of the Proceedings of the Council and Committees; and

Part III – Standing Orders in Relation to Contracts.

Following initial discussions between the Borough Council's Business Improvement Manager, the Monitoring Officer and the Legal Practice Administrator, Standing Orders relating to Contracts have been reviewed.

- 1.5 As a result of this review, it was found that there was duplication in Parts I and II of information already in Constitution.
- 1.6 Following on from this review of Parts I and II, consideration was also given to Part III – Standing Orders in relation to Contracts – and it was agreed that these should be updated and renamed Contract Procedure Rules (Appendix 12) so as to align with the format of the current Constitution. Parts I and II would therefore be discarded.
- 1.7 In accordance with current best practice, Appendix 12 has now been updated and amended and a copy is attached as an appendix.

2. **Issues**

- 2.1 The Council's Constitution can be described as the set of rules that govern how the Council operates, how its decisions are made and the procedures it needs to follow in conducting its business.
- 2.2 Since its inception, the approach taken by the Constitutional Review Working Group has been to:
- (i) Remove obvious duplications;
 - (ii) Identify contradictions and remove those parts of the Constitution that do not accord with good practice or with the law;
 - (iii) Remove obsolete, inaccurate or unnecessary references to law and/or processes;
 - (iv) Change and update dates and time specific items;
 - (v) Use the up to date officer and committee structures and be clear and accurate about, for example, job titles;
 - (vi) Simplify wording and improve the indexing of the document;
 - (vii) Use flowcharts rather than narrative where appropriate and where necessary; and
 - (viii) Take best practice from a number of other constitutions of both local authorities and also other comparable organisations
- 2.3 Based on these review principles, it is therefore recommended that the updated version of Appendix 12 – Contract Procedure Rules, as outlined in this report – is adopted by the Borough Council and that the Constitution of the Borough Council is amended accordingly.

3. **Options Considered**

- 3.1 It is a legal requirement that the Council has a constitution that accords with the law.

3.2 Therefore, based on the points outlined in this report, it is recommended that the changes proposed to the Council's Standing Orders relating to Contract Procedure Rules are adopted by Full Council and that the Council's Constitution is amended accordingly.

3.3 No other options are recommended as part of this report, as to do so would potentially undermine the effectiveness of the Council's Constitution and the processes; procedures and frameworks contained within it.

4. **Proposal**

4.1 That the Borough Council adopts the amendments to Appendix 12 of the Constitution as outlined in this report.

5. **Reasons for Preferred Solution**

5.1 To improve the effectiveness and usability of the Borough Council's Constitution and to ensure that it is both up to date and legally compliant.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 The Constitution is a codified document which governs the way in which the Council works.

6.2 These changes outlined in this report are intended to enable the general public, elected Members and Council officials to engage more effectively with the decision making processes of the Council and also to ensure that all processes undertaken by the Borough Council are lawful.

6.3 Improvements to these processes are a key part of the Council's corporate priority of becoming a Co-operative Council.

6.4 An effective constitution also contributes to the overall ethical wellbeing of the Council as a public organisation, and helps to engender a culture of high ethical standards, which the general public and the Council's key partners can have confidence in. This also contributes to the Council's corporate priority of becoming a Co-operative Council.

7. **Legal and Statutory Implications**

7.1 The Council is required by common law and statute (principally the Local Government Acts 1972 and 2000, and the Local Government and Housing Act 1989) to regulate its proceedings and to have an up to date constitution which is fit for purpose.

8. **Equality Impact Assessment**

8.1 Where either potential or actual impact on issues of equality and diversity have been identified it they have been addressed.

9. **Major Risks**

9.1 The major risk around this area of work is that failure to regularly review and update the Council's Constitution may mean that the document will become inaccessible; procedures will become inefficient; decisions will be vitiated for reason of unlawful procedure; and that a combination of these factors may lead to consequential damage to the reputation, finances and corporate/service objectives of the Council.

10. **Financial Implications**

10.1 No significant additional resources will be required in relation to the recommendations outlined in this report. The Constitution provides the framework and rules for ensuring value for money and links with the Council's financial regulations.

11. **Key Decision Information**

11.1 The Council's Constitution covers all decisions made by the Council and its elected Members. As a consequence, therefore, the provisions of the Constitution cover all the Borough's wards.

11.2 The majority of the provisions set out in the Constitution deal with non-Executive matters.