



Council 23 January 2017

Annual Review of the Constitution

Purpose of report

This report proposes a number of amendments to the Constitution, which mainly reflect changes in legislation, officer structure or current council practice. There are more significant changes proposed to the rule on public speaking in the case of urgent items, the membership of the Deenethorpe Airfield Village Board and the application of the Code of Conduct for Councillors.

Attachment

Appendix A - Proposed changes to the Constitution

1.0 Background

- 1.1 The Monitoring Officer has a responsibility to regularly review the Constitution in the light of the changing context in which the council operates, including changes in legislation. This report proposes a small number of changes, the detail of which is set out in Appendix A (which presents a track change version of the parts of the Constitution which it is proposed are amended together with a brief explanation for the reason for the change). The background to three more significant proposed changes is outlined below in section 2.
- 1.2 A further report will be presented to Council in spring 2017 to consider changes to Parts 5.4 & 5.5 of the Constitution (Planning Protocols) following consideration by the Scrutiny Committee Planning Enforcement Review Panel and recommendation to the Governance and Audit Committee. A review of the Part 5.7 (Code of Practice for Licensing Procedures) is proposed for later in 2017.

2.0 Proposed Changes

- 2.1 Deenethorpe Airfield Village Board (Part 8). Following representation by Deene and Deenethorpe Parish Council it is proposed to increase the number of representatives on the Board from Benefield Parish Council to two (i.e. the same number as Deene and Deenethorpe Parish Council) as it is considered that the potential level of impact of the new village proposal would be similar.
- 2.2 Councillor Code of Conduct (Part 5.5). An increasing number of complaints against Councillors that are received by the Monitoring Officer are in relation to occasions where the public perception is that the person concerned is acting as a councillor, although they may not have a formal role or power from the council concerned to do so; for example when making comments on social media using their title of Cllr. Such situations would have been covered by the old Code and are still covered by the NALC (National Association of Local Councils) Code, which some of our Parish Councils have adopted. However, they are not covered by the wording of the current ENC Code, a point which members of the public find hard to understand when their complaints cannot be pursued.
- 2.3 It is therefore proposed to add wording in italics as follows to the Code:

“This Code applies to all Councillors when they act in their role as Councillors of the

Council or when they claim to act or give the impression of acting as a representative of the Council. This Code is a requirement of the Localism Act 2011 and forms part of the Constitution of ENC, which all Councillors will follow. This code is based on the seven Nolan principles of public life.”

2.4 This change has been discussed with the Chairs and Vice Chairs of the Joint Standards Complaints Committee and Governance and Audit Committee, who have agreed that this change should be brought directly to Council for consideration to ensure the earliest possible adoption. If approved, Town and Parish Councils will also be encouraged to also adopt the revised Code and the change will be highlighted to councillors.

2.5 Notice Period for Public Speaking in relation to Urgent Items on the agenda. It has recently been noted that items taken under the Urgency Procure may be tabled after the deadline for public speaking has passed. Following a question by Cllr Maxwell to the Governance and Audit Committee in November, the Committee agreed that it should be proposed that provision could be included in the next review of the Constitution to enable Committee Chairmen to have the discretion to extend the deadline for registering to speak where consent had been given to add urgent items of business to an Agenda. Any extension would only apply to these urgent items of business. The appropriate changes have proposed in Appendix A.

3.0 Equality and Diversity Implications

3.1 There are no equality or diversity implications arising from this report.

4.0 Legal Implications

4.1 There are no known legal implications arising from the changes proposed in this report. Some of the changes are proposed as a result of changes in legislation as noted in the Appendix.

5.0 Risk Management

5.1 There are no known new risks arising from this proposal. The proposed change to the Code of Conduct for Councillors will help mitigate potential impacts on the council's reputation which could arise from actions by councillors not being covered by the current Code.

6.0 Resource and Financial Implications

6.1 There are no financial implications directly arising from this report.

7.0 Constitutional Implications

7.1 The proposed change to the Constitution will take effect immediately after the Council approves the amendment, in accordance with the detail set out in Appendix A

8.0 Customer Service Implications

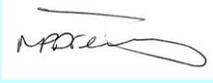
8.1 There are no direct customer services implications arising from this report

9.0 Corporate Outcomes

9.1 The proposed amendments to the Constitution will contribute to the corporate outcome of Effective Management by ensuring transparency in decision making.

10.0 Recommendation

10.1 That the Constitution be amended, as set out in Appendix A ,
[Reason: to ensure that the Constitution continues to provide appropriate guidance on council decision making]

Legal	Power: Various as noted in the report				
	Other considerations:				
Background Papers: Governance and Audit Report on 30 November 2016					
Person Originating Report: Sharn Matthews, Monitoring Officer ☎ 01832 742108 ✉ smatthews@east-northamptonshire.gov.uk					
Date: 4/1/17					
CFO		MO		CX	

Proposed Changes to Constitution – Red is proposed new text, strike-through indicates text to be removed

Constitution Reference	Track Change Version of Changes – red text is proposed <i>insertion</i> whilst deleted-text is <i>proposed for removal</i>	Comments
Part 2 - Articles	<p>11 Officers</p> <p>Management Structure</p> <p>Areas of responsibility for Chief Executive:</p> <p>With the Executive Director to share between them the line management of the Heads of Service for:</p> <ul style="list-style-type: none"> • Resources and Organisational Development including financial services <u>ICT</u>; • ICT; • Customer and Community Services including Communications and Revenues and Benefits • Planning Services • Environmental Services <p>Areas of responsibility for Monitoring Officer</p> <p>With the Chief Executive to share between them the line management of the Heads of Service for:</p> <ul style="list-style-type: none"> • Resources and Organisational Development including financial services <u>ICT</u> • ICT • Customer and Community Services including Communications and Revenues and Benefits • Planning Services • Environmental Services 	Minor change to reflect revised structural arrangements.

Part 2 - Articles	<p>13 – Finance, Contracts and Legal Matters</p> <p>13.05 Common Seal of the Council The Common Seal of the Council will be kept in a safe place in the custody of the Chief Executive or other person designated by him/her. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Chief Executive or the Council’s Legal Adviser (LGSS Legal Services) should be sealed. (See Part 4.6 paragraph 4.3.6 for guidance) or if the total value is over £500,000 The affixing of the Common Seal will be attested by the Chief Executive or some other person authorised by him/her.</p>		<p>Minor Change to reflect previously agreed revision of Constitution.</p> <p>We use a variety of legal advisors for contracts e.g. specialists for the leisure and waste contracts so have made this more generic</p>
Part 3.2 Part A	7. Service of Planning Contravention Notices, Breach of Condition Notices and Requisition for Information notices under Section 330	Executive Director; or HoPS, PDM; <u>Senior</u> Enforcement Officers and Senior Conservation Office (in conjunction with LGSS Legal Service as required) ; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION Notice of intention to take action to be given to Ward Members.	Minor change to reflect new post
	8. Issue of Enforcement Notices, Completion Notices and Stop Notices (see under Planning (Listed Building and Conservation Areas Act 1990 for listed buildings enforcement)	Executive Director; or HoPS, PDM; Senior Enforcement Officers and <u>Senior</u> Conservation Officers (; in conjunction with LGSS Legal Service <u>as required</u>) ; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	Minor change to reflect new post

	9. Rescind Enforcement Notices (or authority to take action) where matters have been satisfactorily resolved	Executive Director; or HoPS, PDM; Senior Senior Enforcement Officers and Senior Conservation Officer; with the ability to specify other officers (in addition to those shown) within Planning Services to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION. Notice of intention to take action to be given to Ward Members	Minor change to reflect new post
	10. Service of Notices under Section 215 – Land adversely affecting amenity	Executive Director; or HoPS, PDM; Senior Enforcement Officers and Senior Conservation Office (; in conjunction with LGSS Legal Service as required) ; with the ability to specify other officers (in addition to those shown) to act under the scheme SUBJECT TO KEEPING A RECORD OF THE OFFICERS SO AUTHORISED AND THE DATE OF AUTHORISATION Notice of intention to take action to be given to Ward Members	Minor Change to reflect new post
3.2 Part B	92 & 93 Powers to serve Hygiene Improvement Notices, Hygiene Emergency Prohibition Notices, Remedial Action Notices and Detention Notices: Powers of inspection and seizure of suspected food: 92 Food Safety and Hygiene (England) Regulations 2013 – powers to serve hygiene improvement and hygiene prohibition notices 93 Food Information Regulations 2014	Delegation in both additions <u>to: Health Protection Manager, Senior Environmental Health Practitioner, Environmental Health Practitioners</u>	Minor change to reflect previous decision

<p>Part 4.1 – Procedure Rules</p>	<p>9. PUBLIC TIME AT MEETINGS</p> <p>9.1 (a) General Citizens who have given notice of their intention to speak may address the Council at all meetings of the Council and committees in accordance with the Council’s published procedures. A period of not more than 15 minutes will be allowed before the formal business of the meeting during which citizens may speak for up to 3 minutes on a matter due for consideration at the meeting. A “citizen” includes a local resident, an objector or a Parish or Town Council representative, an East Northamptonshire Councillor with a Disclosable Pecuniary Interest <u>(with a Dispensation)</u> or other interest as a result of which they have withdrawn from the debate or decision on a related matter, and an applicant (in the case of the Development Control Committee, this can be an agent). This right reflects Articles 6 and 10 of the European Convention of Human Rights (Right to be heard and Freedom of Expression).</p> <p><u>Insert new section (b) and renumber:</u> <u>(b) Notice</u></p> <p><u>To speak at a council meeting, citizens must contact the Democratic Services Team to register their wish to speak before 5pm on the day before the meeting so they can draw up a list of speakers. This may be done by telephone or online form. This requirement may be waived at the discretion of the Committee Chair only in respect of items to be dealt with under the urgency procedure – see Part 4.3 paragraph 3.66)</u></p>	<p>Minor change to highlight that a councillor with a DPI may not speak even as a member of the public without a dispensation. The Monitoring Officer would usually advise in favour of such a dispensation to restore parity of rights with other members of the public on matters such as personal planning applications</p> <p>See paragraph 2.5 of the report for detailed explanation</p>
	<p>13. RULES OF DEBATE</p> <p>13.15 Under the Localism Act, councillors with a Disclosable Pecuniary Interest (DPI) <u>without a Dispensation</u> in a matter may not participate in the debate or decision about the matter. The councillor may remain in the room (unless the matter to be decided related to a regulatory function) but should physically withdraw from the Councillors making the decision. If the matter relates to a regulatory function then the councillor should leave the room (including the public gallery after any speech as a citizen). Councillors should also be mindful of any other interests they wish to declare under paragraph 2.5.3 of the Councillors Code of Conduct. If they have relevant interests they should consider whether participating in the debate or discussion might be perceived as biased as a result. If this is the case then they should consider following the same rules as for a DPI.</p>	<p>Minor change to highlight that a councillor with a DPI may not speak even as a member of the public without a dispensation.</p>

<p>4.1 Procedure Rules</p>	<p>25. WORKING PARTIES, DISCUSSION GROUPS AND BOARDS</p> <p>25.1 <u>A Working Party can be defined as a group set up by the Council or a Committee whose minutes record attendees, apologies and declarations of interest, and are submitted to the Council or that Committee for approval; that can make recommendations to the Council or relevant Committee for approval; and whose Members can request additions to its agenda.</u></p> <p><u>25.2</u> These Procedural Rules do not generally apply to Working Parties, apart from permitting their establishment under Rule 23 above. The nature and mode of operation of Working Parties is designed to encourage full discussion and exchanges of views from both councillors and officers. However, it is the practice of the Council to appoint a <u>councillor as</u> Chairman to preside at meetings of Working Parties; to record, in the minutes or notes of meetings of Working Parties the names of those attending (which reflects Rule 18); and to normally reach conclusions by affirmation or, if necessary, by a clear majority on a vote.</p> <p><u>25.3</u> <u>Boards are similar to Working Parties in function but their membership is not restricted to councillors of East Northamptonshire Council.</u></p> <p>25.42 The Council has also adopted the practice whereby councillors are required to declare any necessary personal and prejudicial <u>Disclosable Pecuniary and Other</u> interests at Working Parties <u>and Boards</u> in the same way as required under paragraph 1 of the Code of Conduct for Council, Committee, Sub-Committee, Board and Panel meetings.</p> <p>25.3 A Working Party can be defined as a group set up by the Council or a Committee whose minutes record attendees, apologies and declarations of interest, and are submitted to that Committee for approval; that can make recommendations to its parent Committee for approval; and Members' can request additions to its agenda.</p> <p><u>25.5</u> <u>Boards or Working Parties established by other bodies are not subject to these Procedure Rules. The (full) Council will decide if it wishes to send any representatives or delegates and who they shall be, but can not determine the Terms of Reference of each Board.</u></p>	<p>Changes to make clear difference between use of titles for such groups and their decision making powers.</p>
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Part 4.2	<p>10 EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS</p> <p>10.4 Meaning of “public” (a) The definition does not include councillors who do not serve on a particular committee or sub-committee. Rule 2627 in Part 4.1 allows such councillors to remain in meetings after the exclusion of the public provided that they -</p> <ul style="list-style-type: none"> • Do not have a disclosable pecuniary interest in the matter to be discussed, and the councillor has considered the implications of the Code of Conduct in relation to interests • Fully observe Parts 5.3 - Paragraph 5 (Member & Officer Relations – Confidentiality) and 5.6 of the constitution (Protocol for Members on Confidentiality). 	Minor change to reflect changes elsewhere in the Constitution.
Part 5.1	<p>Members <u>Councillors</u> Code of Conduct</p> <p>This Code applies to all Councillors when they act in their role as Councillors of the Council <u>or when they claim to act or give the impression of acting as a representative of the Council.</u> This Code is a requirement of the Localism Act 2011 and forms part of the Constitution of ENC which all Councillors will follow. This code is based on the seven Nolan principles of public life:</p>	See para 2.2 of the report for explanation of rationale for change

<p>Part 5.3 – Member Officer Protocol</p>	<p>Councillors' access to Officers</p> <p>4.2 Whilst any councillor may ask a relevant Head of Service, Chief Officer or the Chief Executive for written factual information about a Directorate of <u>council</u> service, such requests must be reasonable and not seek information relating to specific case work or <u>items</u> of a similar nature, such as employment matters.</p> <p>Requests will be met subject to any overriding legal considerations (which will be determined as appropriate by the Chief Executive, LGSS Legal Services or the Monitoring Officer). Requests may be refused if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a councillor requesting such information is dissatisfied by the refusal, he or she should raise the matter in the first place with the relevant Chief Officer <u>Head of Service</u>, and if still dissatisfied, should raise the matter with the Chief Executive <u>Monitoring Officer</u> who will discuss the issue with the relevant group leader.</p> <p>4.3 Councillors are <u>normally</u> free to approach any section of the Council to provide them with such information, explanation and advice about that section's functions as they may reasonably need in order to assist them in discharging their role as councillors of the Council or any particular role to which they have been appointed by the Council. This can range from a request for general information or research about some aspect of a section's activities to a request for specific information on behalf of a constituent. <u>However Cllrs should be aware that, whatever the intention of councillors, junior officers may be overawed by the approach of a councillor and feel obliged to share information or an opinion, or carry out actions as a result, which a senior officer would consider incorrect or inappropriate. Junior Officers may therefore wish to seek advice from a senior officer before responding and councillors should respect this.</u></p> <p>4.4 <u>If a pattern of behaviour by a councillor causes significant issues for junior officers, the Chief Executive or Monitoring Officer may require a councillor to restrict contact and requests for information to the relevant Head of Service. In such cases Such approaches should be made to the Chief Officer or Head of Service of the section concerned. Whatever the intention of councillors, junior officers may be intimidated by the approach of a councillor and feel obliged to share information or an opinion, or carry out actions as a result, which a senior officer would consider incorrect or inappropriate.</u> Councillors, therefore, <u>should not</u> approach or discuss an issue with a junior officer without the prior knowledge and consent of their service manager or <u>Chief Officer/Head of Service</u>. In cases of doubt, the appropriate Chief Executive, or the Monitoring Officer should be asked for assistance.</p>	<p>Change to better reflect current practice at the council.</p>
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Part 8 – Terms of Reference	Policy and Resources Committee xvi) agreement of use of underspend from the previous financial year, and carry-forwards.	Minor change to confirm current practice
	Finance Sub Committee 9. To be responsible for the strategic management of all Council land and property assets and co-ordinate the disposal and acquisition of any capital assets. , making appropriate recommendations to the Policy and Resources Committee in relation to the principle of disposal 10. To agree the final sale details, including price, where a site has been identified by Council for disposal,	Change to streamline decision making process and confirm delegation
	Audit 1. To consider the available mechanisms for the appointment of the External Auditor, the audit fee, the provision of any non-audit services by the external auditor and any questions of resignation or dismissal of the External Auditor.	Change to reflect revised legislation for the appointment of External Auditor
	Deenethorpe Airfield Village Board 2.1 The Board will comprise:- - East Northamptonshire Council - 5 nominees as agreed at Annual Council (or in the case of unavoidable changes in membership at the next (full) Council). - Deene and Deenethorpe Parish Council (2 Nominees) - Benefield Parish Council (4-2 Nominees) - Northamptonshire County Council (1 Nominee)	See para 2.1of report for explanation.