

Report of	Meeting	Date
Corporate Director of Governance (Introduced by the Leader of the Council)	Council	15 December 2009

REVIEW OF THE COUNCIL'S CONSTITUTION

PURPOSE OF REPORT

1. To agree a number of changes to the Council's Constitution to ensure it remains an up to date and robust document for the effective governance of the Council.

RECOMMENDATION(S)

2. That the following constitutional changes be approved:
 - 2.1 The current petitions procedure be revised to ensure a more customer focussed approach. When a petition is received it will immediately be referred for consideration by the Executive Member or Executive Cabinet and a report with proposed actions will be sent to the lead petitioner. The receipt of the petition and action taken to be reported to full Council at a later date. Any petition received regarding staffing issues to be dealt with directly by the Chief Executive as the Head of the Paid Service.
 - 2.2 The protocol appended to this report be approved as the Council's arrangements for public speaking in place of existing arrangements for public and Ward Councillor participation at Development Control Committee.
 - 2.3 The requirement for full Council to determine planning applications for Council developments or on Council land no longer apply, and be removed from the Constitution. Any related decision which involves the disposal or lease of land will continue to be made by the Executive.
 - 2.4 The terms of reference of the Overview and Scrutiny Committee be revised to include the following two new powers under scrutiny regulations issued in 2009 under the Local Government and Involvement in Health Act 2007:

"At least one meeting a year of the Council's Overview and Scrutiny Committee be dedicated to the review and scrutiny of decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions through the Safer Chorley and South Ribble Partnership – Responsible Authorities Group.

The Overview and Scrutiny Committee may scrutinise the local improvement targets included in the Local Area Agreement and make and publish reports and recommendations to the County Council on LAA matters where the Council has a role in delivering a target. The Committee may also send a copy to any other partner to which the target relates. This includes local authorities, the Regional Development Agency, probation, the Environment Agency, but excludes health bodies, housing associations, colleges and the voluntary sector, although these

organisations may choose to work with scrutiny on a voluntary basis”.

- 2.5 In recognition of the legal basis of Councillor Call for Action, the local provision whereby any Councillor or member of the public can raise an issue for consideration by the Overview and Scrutiny Committee, be included in the Constitution under the Overview and Scrutiny procedure rules and the Overview and Scrutiny Information and Guidance booklet be similarly revised.
- 2.6 A new section be included in the Responsibility for Functions section of the Constitution on Joint Committees, to include the terms of reference for both the Lancashire Locals and the Shared Services Joint Committee with South Ribble, and any other Joint Committee which the Council may enter into.
- 2.7 Upon the new senior management structure being implemented the current scheme of delegations be amended so that existing delegated powers to Corporate Directors are transferred to the Director who will be responsible for the function in question and the Chief Executive be given authority to make consequent amendments to the Constitution.
- 2.8 The Director of Transformation be designated as the section 151 Officer and the Head of Governance be designated as the Council’s Monitoring Officer.

EXECUTIVE SUMMARY OF REPORT

3. The report seeks to revise or introduce a number of elements of the Constitution in line with changes to legislation or measures to improve the way the Council conducts its business.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

4. The rationale for each recommendation is set out in paragraphs 9 to 15.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. There is the option to agree or reject each of the recommendations and retain current arrangements, with the exception of the scrutiny recommendations where the Council is required to comply with new legislation, and the need for the scheme of delegation to reflect the new senior management structure.

CORPORATE PRIORITIES

6. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	✓

BACKGROUND

7. It is important that the Constitution is reviewed on a regular basis to ensure it meets legislation and organisational requirements. It is also a specific requirement under the Use of Resources element of the Comprehensive Area Assessment in ensuring that the Council maintains good governance arrangements.

8. This report was deferred at the Council meeting on 22 September to allow for further discussions with political group leaders. Since then an additional power for Overview and Scrutiny Committee relating to the scrutiny of Local Area Agreements has been included and authority is also now being sought to make amendments to the Constitution to take effect once the new senior management structure is implemented.

CONSTITUTIONAL CHANGES

9. **Petitions Policy**

The current policy requires that all petitions received are reported to Council. Council cannot debate the issue but just reject the request or refer it on to an Executive Member or Executive Cabinet for consideration. This delays any decision on the issue. The lead petitioner is invited to attend the Council meeting but obviously does not hear any debate.

A more efficient way of dealing with petitions would be to immediately refer them for consideration by the Executive Member or Executive Cabinet and that a report with recommendations be sent to the lead petitioner. This is a more customer focussed approach to dealing with what can be very emotive issues. A report detailing the petition received and any action taken will be submitted to a future meeting of full Council.

In addition it is recommended that if a petition is received regarding staffing issues that this be dealt with directly by the Chief Executive as the Head of the Paid Service.

10. **Public and Ward Member speaking procedure at Development Control Committee**

The current procedure for the above is to allow one objector, one supporter and the applicant to each speak for 3 minutes on a planning application. Ward Councillors may also speak for or against planning applications and as they currently have no time limit, it is at the discretion of the Chair to decide how long they should be permitted to speak.

Some applicants for planning permission have expressed concern that the current arrangements lead to a lack of equality amongst supporters and objectors. In addition the Local Government Association has recently published guidance entitled "Probity in Planning" which suggests that in the interests of equity, the time allowed for presentations for and against the development should be identical.

It is recommended that, for the sake of flexibility, the speaking procedure be revised to allow speaking in accordance with a published protocol rather than in accordance with strictly defined constitutional arrangements. A proposed protocol is appended to this report. It is suggested that the Development Control Committee should have authority to review this protocol in the light of their experience.

Members attention is drawn to the fact that the protocol seeks to limit Ward Councillors (who are not speaking as Members of the Committee) to speaking for no longer than 5 minutes but to continue to allow the Chair to use his/her discretion to ensure that applicants feel there is equity in the process. In addition, Ward Councillors wishing to speak on planning applications should seek approval to do so from the Chair prior to the meeting of the Development Control Committee.

11. **Council planning applications**

The Constitution currently requires that planning applications for developments being undertaken by the Council or on Council land be considered by the Development Control Committee first and then require the approval of full Council. This can cause considerable delays in the development process. Development Control Committee Members are also better placed to consider relevant planning policy and planning considerations in making their decision this reducing the risk of legal challenge to decisions.

It is recommended that this requirement no longer apply, and that it is therefore removed from the Constitution. Any related decision which involves the disposal or lease of land will continue to be made by the Executive.

12. **Scrutiny powers for crime and disorder issues**

The last Council meeting approved a recommendation from the Overview and Scrutiny Committee to agree a change to its terms of reference to allow the Committee to take on the scrutiny of crime and disorder matters through the local Crime and Disorder Reduction Partnership. This is under the Local Government and Public Involvement in Health Act 2007, scrutiny regulations which came into force on 30 April 2009.

At least one Overview and Scrutiny Committee per year will be dedicated to the scrutiny of crime and disorder issues and the following addition to the Overview and Scrutiny Committee terms of reference is proposed:

“At least one meeting a year of the Council’s Overview and Scrutiny Committee be dedicated to the review and scrutiny of decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions through the Safer Chorley and South Ribble Partnership – Responsible Authorities Group.”

A further new power under the 2009 regulations under the Local Government and Public Involvement in Health Act 2007 allows Overview and Scrutiny Committees to scrutinise Local Area Agreement matters where the Council has a role in delivering those targets. The Council can request a response from the County Council and a range of other partners listed in the legislation. The following addition to the Overview and Scrutiny Committee terms of reference is suggested:

“The Overview and Scrutiny Committee may scrutinise the local improvement targets included in the Local Area Agreement and make and publish reports and recommendations to the County Council on LAA matters where the Council has a role in delivering a target. The Committee may also send a copy to any other partner to which the target relates. This includes local authorities, the Regional Development Agency, probation, the Environment Agency, but excludes health bodies, housing associations, colleges and the voluntary sector, although these organisations may choose to work with scrutiny on a voluntary basis.”

13. **Councillor Call for Action**

Councillor Call for Action was also introduced under the Local Government and Health Act 2007 and implemented in April this year. It was reported to Overview and Scrutiny Committee in May. Councillor Call for Action (CCfA) is a tool that Councillors can use to raise community concerns which focus on the quality of public service provision at local level – it can also include issues relating to crime and anti social behaviour. These may be ward issues or raised with Councillors by members of the public. In pursuing an interest under the CCfA heading, the ultimate action is to persuade the Overview and Scrutiny Committee to undertake a scrutiny review of the issue.

In practice, it is hoped that most issues are addressed well before they get to this stage and those authorities who piloted the CCfA have found that very few issues get to the scrutiny stage. The Overview and Scrutiny Committee, having considered this issue in May 2009, felt that the current local provision whereby any Councillor or member of the public can request a matter be considered by Overview and Scrutiny Committee with a view to undertaking a full scrutiny review, more than met the provisions of the CCfA initiative. In recognition of the legal basis of CCfA it is proposed that this provision be

included in the Constitution under the Overview and Scrutiny procedure rules and the Overview and Scrutiny Information and Guidance booklet be similarly revised.

14. **Joint Committees**

There is currently no provision in the Constitution for Joint Committees. These include Committees like the Lancashire Locals and the Shared Services Joint Committee with South Ribble where the Council has jointly signed up to decision making in conjunction with another Council. The Council must agree terms of reference and appointments to these Committees. It is therefore proposed that a new section be included in the Responsibility for Functions section of the Constitution on Joint Committees and will include the terms of reference for both these two and any further Joint Committees which the Council may enter into.

15. **Senior Management restructuring**

The restructuring of the Council's senior management structure means that various functions which are currently delegated to Corporate Directors will need to be reallocated. It is recommended that the delegated power should follow the function and that therefore the current delegated powers should, once the structure is implemented, transfer to the Director who will be responsible for the relevant function going forward. It is further recommended that the Chief Executive be authorised to make the consequent detailed amendments to the Constitution.

The Council is required to designate one of its Officers as the Chief Finance (section 151) Officer and one as the Monitoring Officer. It is recommended that the Director of Transformation be designated as the section 151 Officer and the Head of Governance be designated as Monitoring Officer. In each case those designations to take effect only once the new structure is implemented.

IMPLICATIONS OF REPORT

16. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	✓	No significant implications in this area	

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CORPORATE DIRECTOR OF GOVERNANCE

Report Author	Ext	Date	Doc ID
Carol Russell	5196	27 November 2009	CR/JA./REPORTS/0809

Background Papers			
Document	Date	File	Place of Inspection
Council's Constitution	Last updated 2008		Website

PROTOCOL FOR PUBLIC SPEAKING AT DEVELOPMENT CONTROL COMMITTEE

The right to speak

As part of its commitment to openness and improving the level of public participation in local government, Chorley Borough Council offers those affected by development proposals the opportunity to put their case personally and directly to the Development Control Committee when it is considering making decisions on planning and other similar applications.

The opportunity to speak is available to objectors to development proposals which are to be considered by the Development Control Committee. The opportunity to speak is also available to the applicant for development proposals or to their supporters, but not to both. There is no obligation to speak and written representations will always be reported to Committee and given due consideration.

The right to speak does not replace other arrangements for commenting on planning applications. Objectors and supporters should still write to the Council in the usual way. The right to speak only applies to applications which are being determined by Committee. There is no right to speak when Officers make planning decisions under delegated powers.

Procedures prior to the meeting

About one week before the Development Control Committee is to meet, all those with the right to make a request to speak will be informed of their opportunity to do so by the Council.

Anyone who wants to speak at the meeting will need to inform the Council's Democratic Services Section by midday, one working day before the Committee meeting.

This deadline will usually be 5pm on a Monday prior to the Committee meeting to be held on the following Tuesday evening at 6.30pm at the Town Hall, Chorley.

Only one objector or supporter will be allowed to speak on each application. If other people wish to speak on the same application, the objectors/supporters should try to agree before the meeting who will put the case. The Council's Officers will try to help facilitate those agreements. If agreement cannot be reached the first person to register an intention to speak will normally be invited to do so. In the case of any uncertainty, the Chair of the Development Control Committee will adjudicate.

Planning Officers and Democratic Services Officers will be on hand half an hour before the meeting to help the arrangements to run smoothly.

Order of speaking at the meeting

1. The Chair of the Committee or the relevant Planning Officer will describe the proposed development and recommend a decision to the Committee. A presentation on the proposal may also be made.
2. An objector/supporter will be asked to speak, normally for a maximum of three minutes. There will be no second chance to address Committee.
3. A local Councillor who is not a member of the Committee but represents a ward directly affected by the proposal may speak on the proposed development, normally for a maximum of five minutes.
4. The applicant or her/his representative will be invited to respond, again for a maximum of three minutes. As with the objector/supporter, there will be no second chance to address Committee.

5. The Development Control Committee, sometimes with further advice from Officers, will then discuss and come to a decision on the application.

There will be no questioning of speakers by Councillors or Officers, and no questioning of Councillors or Offices by speakers.

These arrangements are necessary to ensure that each application is deal with properly and fairly and that the Committee meeting runs smoothly and in a businesslike way.

Ward Councillor participation

Ward Councillors have a critical role in representing the Communities they serve. For that reason ward Councillors who are not members of the Development Control Committee may speak in respect of planning applications where the development is in their ward or would have a substantial impact on their ward.

Ward Councillors who wish to exercise this right must:

- Advise the Chair in advance of the meeting that they wish to speak.
- Should declare any personal interest they have in the matter.
- Must not exercise this right if their interest is both personal and prejudicial. If the Councillor is present at a meeting of Development Control Committee when an item is under discussion in which they have a personal and prejudicial interest then the Councillor must declare that interest and leave the room while the matter is under discussion. A Councillor in this position may participate as a member of the public either as the applicant or as the one objector allowed to speak but must still formally declare their interest and must withdraw from the meeting having made their representations.
- Restrict their speech to five minutes in length.

Chairs Discretion

The Chair has the discretion to vary the procedures in this protocol but may only do so in very exceptional circumstances where he considers that the interests of fairness or proper local government require it. Any change to the procedures should be the minimum change that the Chair considers is required in the circumstances.