NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COUNCIL – 18 JUNE 2013

Title of report	UPDATE TO THE COUNCIL'S CONSTITUTION
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Purpose of report	To seek Council's approval of the proposed amendments to the Constitution.
Council Priorities	Value for Money
Implications:	
Financial/Staff	None.
Link to relevant CAT	None.
Risk Management	A clear and up to date Constitution will minimise the risk of the Authority failing to comply with statutory requirements and assist in delivering its priorities and objectives.
Equalities Impact Assessment	Not applicable.
Human Rights	Not applicable.
Transformational Government	Clear and robust governance arrangements and procedures assist with the effective and efficient delivery of services and proper decision making.
Comments of Head of Paid Service	The report is satisfactory
Comments of Section 151 Officer	The report is satisfactory

Comments of Monitoring Officer	As author of the report, the report is satisfactory.	
Consultees	Chief Executive Head of Legal and Support Services Policy Development Group	
Background papers	Report to Policy Development Group – 23 May 2013 Minutes of Policy Development Group – 23 May 2013	
	1. THAT COUNCIL CONSIDERS THE COMMENTS OF POLICY DEVELOPMENT GROUP ON THE PROPOSALS	
Recommendations	2. THAT COUNCIL AGREES THE PROPOSED CHANGES TO THE CONSTITUTION FOR IMPLEMENTATION WITH IMMEDIATE EFFECT.	
	3. THAT COUNCIL AUTHORISES THE HEAD OF LEGAL AND SUPPORT SERVICES TO MAKE THE AGREED AMENDMENTS TO THE CONSTITUTION AND RE-ISSUE THE DOCUMENT.	

1.0 INTRODUCTION

- 1.1 The Local Government Act 2000 requires each Local Authority to prepare, keep up to date and publicise the document known as the Constitution.
- 1.2 The Constitution should be logical, integrated and accessible to members, officers, local people and anyone else interested in the way a local authority makes its decisions. There is also a statutory requirement on the Council's Monitoring Officer to keep the Constitution up to date, and accordingly the update of the Constitution is an on-going process.

2.0 BACKGROUND

- 2.1 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Authority to reflect best practice. Members may recall that, in response to comments and suggestions made by members at Council, it was agreed that:
 - (i) the Constitution underwent one main annual review around the time of Annual Council;
 - (ii) any remaining changes or matters arising after this date would be dealt with by way of one mid year review;
 - (iii) further reviews or changes would only be suggested outside this process if legislation or national guidance required it;

- (iv) there was some "scrutiny" of the main annual review report whilst in draft and prior to its publication;
- (v) there would be informal consultation / engagement with members on the mid year and other reviews.

3.0 CHANGES TO THE CONSTITUTION

3.1 The proposed changes to the Constitution are detailed below.

(i) Meetings of Cabinet

The constitution currently provides that Cabinet will meet up to 10 times per year on dates and times to be agreed by the Leader.

The Leader has indicated that he wishes to increase the number of Cabinet meetings to 11 per year. In order to avoid the necessity of a constitutional amendment in the event that the number of Cabinet meetings is amended at some point in the future it is recommended that a general form of wording is used to allow flexibility for the Leader to determine the number of meetings of Cabinet.

The proposed amended wording is attached at Appendix 1 of the report.

(ii) Write off Procedures

The Constitution currently provides delegated authority for the Chief Executive to authorise the writing off of debts up to a value of £1,000 where all attempts to recover the monies outstanding have failed. This figure has not changed for a number of years.

At its meeting on 12 December 2012 Cabinet received and approved a report on the 'Revenues and Benefits Write off Policy', the first of a series of reports intended to streamline policies within the framework of the Shared Revenues and Benefits Partnership. The report recommended that the authorised value for delegated write offs be increased to £10,000 and resolved that the Monitoring Officer should at the request of the Section 151 Officer prepare a report to Council requesting that the necessary constitutional amendment be approved.

The proposed amendments are contained at Appendix 2 of the report.

(iii) Highways Act 1980

The current constitution makes no specific delegation to Officers in respect of applications to divert footpaths under the Highways Act 1980 and all such applications, irrespective of whether or not there are any objections require the approval of Full Council.

Applications under this legislation are infrequent however in the absence of delegated powers delays are inevitable particularly for those applications where there are no objections. This compares with applications to divert footpaths under

the Town and Country Planning Act which are delegated to Planning Committee and the Director of Services.

For the reasons of business efficiency it is recommended that similar delegations be approved by Council in respect of applications to divert footpaths under the Highways Act 1980.

The proposed amendments are contained at Appendix 3 of the report.

(iv) Access to Information – Exempt Information – Schedule 12A Local Government Act 1972

Following changes to the Standards regime arising from the enactment of the Localism Act 2011 the opportunity has been taken to remove parts of the wording that have been historically included in this section of the Constitution which overlap with the statutory requirements. In the opinion of the Head of Legal and Support Services removal of the wording does not have any practical effect on the classes of information that are exempt from disclosure.

The proposed amendments are contained at Appendix 4 of the report.

4.0 COMMENTS FROM POLICY DEVELOPMENT GROUP

4.1 The draft Council Report was considered by Policy Development Group on 23 May 2013. The minutes of that meeting are attached at Appendix 5.

(b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

If the exercise of an executive function has been delegated to a Committee of the Cabinet, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made or otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

1.6 Meetings of the Cabinet

(a) The Cabinet will meet up to 10 times per year on dates and at times to be agreed by the Leader. In accordance with the programme of meetings agreed at Annual Council under Part 3 Section 5 Paragragh 1.18 of the Council's Constitution, and at such other times as are agreed by the Leader or Deputy Leader and duly publicised.

The Cabinet will normally meet at the Council's main offices or at another-location to be agreed by the Leader.

(b) Meetings of the Cabinet will be subject to the Access to Information Procedure Rules and any other relevant procedure rules in this Constitution.

1.7 Quorum

The quorum for a meeting of the Cabinet, or a Committee of it, shall be one quarter of the total number of members of the Cabinet or three members, whichever is the larger.

1.8 How are Decisions to be taken by the Cabinet?

- (a) Executive decisions which are the responsibility of the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.
- (b) Where executive decisions are delegated to a Cabinet member or a Committee of the Cabinet, the rules applying to executive decisions taken by them shall be in accordance with the Access to Information Rules in Part 4 of the Constitution.

2. HOW ARE CABINET MEETINGS CONDUCTED?

2.1 Who Presides?

If the Leader is present he/she will preside. In his/her absence, then the Deputy Leader shall preside. In the absence of both the Leader and the Deputy Leader, then a person appointed by those present shall preside.

Revised: 1 October

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- 15. To ensure that the promotion of the rights, welfare and interests among all groups in society is given equal and primary consideration in all aspects of the Council's work and services.
- 16. To carry out the Authority's responsibilities for improving the economic, social and environmental well-being of the District and increasing the availability and equality of access to employment.
- 17. To review and monitor the Authority's strategy and overall implementation on e-Government, telecommunications, information systems and information technology, making recommendations to the Council as required.
- 18. To oversee the provision of all the Council's services other than those functions reserved to the Council.
- 19. To manage and maintain the Authority's housing stock.
- 20. To manage and maintain the Authority's other property portfolio.
- 21. To collect the Council Tax, National Non-Domestic Rates, periodic income and sundry debts.
- 22. To provide, manage and keep under review the concessionary bus fares scheme.
- 23. To exercise the Authority's powers for planning and responding to civil emergencies.
- 24. To exercise the Authority's functions as Local Planning Authority (except to the extent that those functions are by law the responsibility of the Council), including supplementary planning guidance, and designating conservation areas
- 25. To oversee the Authority's overall policy on the voluntary and community sector.
- 26. To approve the purchase, sale or appropriation of land and buildings where the market value of the transaction exceeds £30,000 and to approve leasing (or otherwise) property where throughout the term the annual rental will exceed £ $\underline{4}$ 0,000.
- 27. To authorise the making of compulsory purchase and control orders.
- 28. To write off debts of more than £1,000 £10,000.
- 29. To write off stocks, stores and other assets and to write off any losses of money or stores or to settle claims.

- 30. To write off as non-refundable credits on accounts of more than £1,000.10,000
- To accept tenders and award contracts, including those which exceed budgetary provision and are within the Council's agreed budget (see paragraph 4, Budget and Policy Framework Procedure Rules for Urgent Decisions outside the Council's Budget and Policy Framework).
- 32. To receive reports on contract overspends in accordance with limits set out in the Financial Procedure Rules and agree the action to be taken.
- 33. To give grants or loans to charitable, voluntary bodies or other bodies where permitted by law.
- 34. To promote and develop international exchanges and links with towns and cities in other countries.
- 35. To exercise the powers and duties of the Authority under Sections 13 and 14 of the Public Order Act 1986.
- 36. To be the focus for forming partnerships with other local, public, private, voluntary and community sector organisations to address local needs.
- 37. To confer with other local authorities, government departments, statutory bodies, voluntary bodies, the police or other external agencies in order to discharge the responsibilities vested in the Cabinet.
- 38. To resolve any matters in dispute between Cabinet members.
- 39. To determine and deal with all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by the Cabinet.
- 40. To make decisions where no other tier of government has responsibility or where a policy or strategy does not exist.
- 41. To approve any waiver of Contract Procedure Rules, in accordance with a written report which has been approved by the Monitoring Officer and a report for information to the next convenient meeting of the Policy Development Group.
- 42. Dealing with any petitions referred to Cabinet in accordance with the Council's adopted petition scheme.

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To oversee the Authority's Food Law and Enforcement Service Plan

To designate "Proper Officers" for the purpose of particular statutory functions and to make any changes needed to the table at Section 7 in Part 3 of the Constitution.

7. SPECIFIC DELEGATION TO OFFICERS IN CONSULTATION WITH OTHERS

(a) Chief Executive

Consideration of pastoral measures and to respond after consultation with ward members.

In consultation with the Director of Services, to negotiate and conclude agreements under Section 106 of the Town and Country Planning Act 1990 along lines previously approved by Planning Committee.

Subject to consultation with the Highway Authority and the police and ward members, to make orders under Section 21 of the Town Police Clauses Act 1847 relating to the temporary closures of streets and temporary direction of traffic.

Subject to consultation with ward members, the Director of Services to make public path orders under the Town and County Planning Act 1990 and to confirm unopposed orders.

Subject to consultation with ward members, the Director of Services to make public path orders under the Highways Act 1980 and to confirm unopposed orders

In consultation with the Chairman of the Cabinet, ward members, the Director of Services, Ashby Town Council and the Highways Authority, to agree the grant of a licence, its terms and conditions for the operation of the annual Statutes Fair at Ashby de la Zouch.

Subject to consultation with ward members, the Director of Services to respond to consultations made by Leicestershire County Council with regard to proposed public footpath orders where the orders are unopposed.

To determine applications for bonfires on Council land subject to consultation with ward members, the Director of Services as appropriate and Fire Officer.

Subject to consultation with the Director and relevant Heads of Service and ward members, to approve and issue licences for the temporary use of Council owned land.

Following consultation with the Director, to reject applications to purchase Council owned land.

The approval of lease cars to employees.

Functions	Matters Reserved for a Decision
Footpath Diversion Orders under the	To determine matters referred to it
Highways Act 1980	following the receipt of objections or
	other representations.

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5. LICENSING COMMITTEE

Membership: Seventeen councillors

Quorum: Five councillors

Functions	Matters Reserved for a Decision
To consider all outstanding licensing matters.	To determine all licensing matters referred to with the exception of:
To recommend to Council to resolve not to issue a casino licence.	(i) The Statements of Licensing Policy under both the Licensing Act 2003 and the Gambling Act 2005;
	(ii) the power to resolve not to issue a casino licence which shall be reserved to Council.

5.1 LICENSING SUB-COMMITTEE

Membership: Three councillors

Quorum: Three councillors

Functions	Matters Reserved for a Decision
To consider matters concerning the discharge by the Council of its licensing functions under the Licensing Act 2003.	Application for a personal licence where there are relevant unspent convictions;
	The review of a premises licence or club premises certificate;
	Decision to object when the local authority is the consultee and not the relevant authority considering the

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Info	scription of Exempt ormation (defined ms underlined)	Interpretation	Qualification
6.	Information which reveals that the authority proposes - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	The authority is a reference to the principal council or, as the case may be, the board, committee or subcommittee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined [etc]	Exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	- x	Exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
8.	Information relating to the personal circumstances of any person		
9.	Information which is subject to any obligation of confidentiality		
10.	Information which relates in any-way to matters concerning national security		

MINUTES of a meeting of the POLICY DEVELOPMENT GROUP held in the Council Chamber, Council Offices, Coalville on THURSDAY, 23RD MAY, 2013

Present: Councillor J G Coxon (Chairman)

Councillors N Clarke, J Cotterill (left at 7.18pm), D Everitt, V Richichi, A C Saffell, S Sheahan, N Smith, M Specht and R Adams (Substitute for Councillor Geary)

Officers: Ray Bowmer, Head of Finance, Christine Fisher, Chief Executive, Dave Gill, Legal Services Team Manager and Deputy Monitoring Officer, Simon Harvey, Property Asset Manager and Melanie Phillips, Democratic and Support Services Team Manager.

1 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor J Geary.

2 DECLARATION OF INTERESTS

The following disclosable non pecuniary interests were declared:-

Councillor Coxon - Agenda Item 5 (Access Licences) for reasons of his interest in Brook Street Car Park.

Councillor S Sheahan - Agenda Item 5 (Access Licences) for reasons of him and his group having already taken a view.

3 PUBLIC QUESTION AND ANSWER SESSION

No questions were received.

4 MINUTES

RESOLVED THAT:

The minutes of the meeting held on 19 March 2013 be approved as a correct record and signed by the Chairman.

5 EFFECTIVE ASSET MANAGEMENT - ACCESS LICENCES

The Head of Finance introduced his report which follows the last meeting of the Group held on 19 March when it was agreed that a site specific review of the access licences be undertaken. A replacement page to the report was circulated at the meeting which showed the updated figures on the outcomes of the reviews of the 253 properties which had been detailed in Appendix 2 of the report.

The Head of Finance explained that the objectives of the review were to confirm ownership of the land, confirm whether the Council's permission was required to gain access over it, provide fair and equitable solutions to both residents' and businesses' access needs and to propose fair and equitable charges where licences are required. He went on to explain that officers undertook a review and engaged with Ward Members who were able to provide views on local issues and comments made by local people. He added that there also needed to be a degree of objectivity and therefore criteria had

been set in this regard. Each of the criteria was weighted and scored so that the higher the overall score, the higher the priority that a form of formal access arrangement was required. The lower the score, the lesser the necessity for formal arrangements.

The Head of Finance explained the details around the outcomes of the reviews. It was noted that the Legal department had confirmed that all the land in question was within the ownership of the Council and that permission was required to access it. It was further noted that land lease arrangements were excluded from the reviews, a requested by the Policy Development Group at its last meeting.

The Group was advised that the outcome of the reviews showed that for 77 Council dwellings, access rights could be clarified by amending the tenancy agreements and a review of tenancy agreements was already planned for 2014. The access rights to 51 former Council dwellings purchased under the Right to Buy scheme were not formalised at the time of transfer and this would now be confirmed in a letter from the Council. Members were also advised that the Council would confirm in writing to 55 private residents that they may continue to gain access across its land and will offer discussion on formalising this arrangement, if required by residents. For eight privately owned residential properties, the Council believes that an access licence is required. For three commercial properties, the Council believes that an access licence is required and in the case of two properties, it was agreed that enforcement action was appropriate to restrict the access. Meetings with Members had helped to identify a further 57 properties where there was a need for further consultation before completing the review. There were two properties for which it was considered that enforcement action was necessary. In summary, it was noted that there were 183 properties where it was deemed relatively straightforward for them to be dealt with. Consideration therefore had to be given to what, if any, charge to apply in relation to those properties which had been identified as requiring a licence.

The Chairman sought clarification that those residents who had received letters would not be asked to pay.

The Head of Finance confirmed that where it had been identified that no licence was necessary, there would be no charge.

The Chairman then invited Members to ask questions.

Councillor Sheahan referred to the figures in the report not matching those which had been reported at the meeting. It became apparent that the updated figures had been included on the back of the additional paper which had been circulated at the meeting and it was these figures which Members should now be referring to.

Councillor Sheahan asked whether the occupiers who were being written to, would be under any obligation to commit to any agreement.

The Legal Services Team Manager replied that it was his understanding that there would be no requirement for them to make any commitment and that the tenancies would be amended with no obligation but if the residents wished to enter into an agreement they could do so and would be encouraged to seek their own legal advice.

Councillor Sheahan asked if there would be a charge for this agreement, and the Legal Services Team Manager responded by stating that he was not aware that there would be a charge.

Councillor Sheahan asked whether officers would object to there being no charge in view

of the fact that any enforcement action as a result of non payment could outweigh the charge.

The Head of Finance advised that the original recommendation of Cabinet was to charge the market rate as there is a value attached to the property as a result of having a licence. The suggested charge of £35.00 was merely to recover any administration costs.

Councillor Sheahan moved that officers take the necessary actions to formalise access arrangements with regard to the 183 properties identified as being relatively straightforward to deal with.

The Chairman sought clarification that the recommendations identified as (1), (2) and (3) were being moved and this was confirmed.

This was seconded by Councillor Saffell and on being put to vote it was unanimously CARRIED.

Councillor Clarke then moved that there should be no charge for residential properties and a £35.00 charge for commercial properties. This was seconded by Councillor Adams.

Councillor Everitt reported that it would be unjust to put any further financial pressures on local residents.

Councillor Smith reported that in the interests of fairness, a charge should be imposed if not only to prevent others from having to pick up the tab for what essentially gives the houseowner a huge financial advantage.

The Chairman reported that it could be argued that £35.00 seems a reasonable charge and offers value for money given that there is financial advantage to be gained by having an access licence.

Councillor Clarke reported that having no charge sends out a positive message and would improve the reputation of the Council.

Councillor Saffell advised that administering the licences would incur a cost to the Council and at the very least this should be recovered so as not to pass this financial burden on to others.

Councillor Smith stated that by not charging for the licences it would go against the view of the district valuer.

Councillor Sheahan referred to the risk assessment set out on page 33 of the agenda which clearly stated that the costs being incurred outweighing the income generated would be a medium risk. However, negative publicity for the Authority would be a high risk. He also stated that enforcement would be an issue should a resident refuse to pay and he therefore supported the motion put forward by Councillor Clarke. He added that he understood Councillor Saffell's argument but he could not see how this would work.

Councillor Richichi asked whether residents could claim land ownership should they decide to adopt it.

The Legal Services Team Manager advised that any claim to prescriptive rights would be halted once the letter had been sent.

The motion was put to the vote and the vote being 4 for and 5 against with one abstention, the motion was LOST.

Councillor Saffell moved that where a licence was required, a charge of £35.00 should be made across the board. This was seconded by Councillor Cotterill.

On being put to the vote, the vote being 4 for and 4 against with 2 abstentions, the Chairman used his casting vote and subsequently the motion was CARRIED.

RESOLVED THAT:

Cabinet be recommended to:-

- (1) Confirm all land being accessed is owned by the Council.
- (2) Confirm that the Council's permission is required to gain access over this land
- (3) Agree that officers take the necessary actions set out in paragraph 3 of the report to formalise access arrangements with regard to the 183 properties identified as being relatively straightforward to deal with;
- (4) Agree that where licences are required, a £35.00 charged be applied for both domestic and non domestic properties.

6 UPDATE OF THE COUNCIL'S CONSTITUTION

The Deputy Monitoring Officer introduced the report on recent legislative and organisational changes which require the Constitution to be updated. The report will need the approval of Council and Members of the Policy Development Group were asked to let the Monitoring Officer know of any comments they may have.

Councillor Sheahan asked for the reasons for the request to increase the number of Cabinet meetings to 11 and asked whether this was because there had been difficulties in arranging meetings in the past.

The Chief Executive advised that the reason for the request was following concerns by officers that the period between meetings was sometimes too long and it was far better to have all the meetings scheduled in as opposed to trying to arrange them ad hoc.

Councillor Saffell referred to an error in the appendix to the report where it referred to the Highways Act 1990 as this should read Highways Act 1980.

Councillor Clarke asked when the threshold for write-offs had been set at £1,000 as it appeared that a jump to £10,000 was quite significant.

The Legal Services Manager advised that the threshold of £1,000 was in place when he started work at the Council back in the early 1990s and he understood then that it had been in place for some time.

Councillor Clarke advised that this put some perspective to it and £10,000 therefore did not seem too bad.

RESOLVED THAT:

The draft Council report on the update to the Council's Constitution be agreed subject to

the amendment to the appendix, as referred to above.

7 ITEMS FOR INCLUSION IN THE FUTURE WORK PROGRAMME

Consideration was given to the future work programme for the Policy Development Group.

On considering the inclusion of 'Delivering Growth and Prosperity in Coalville' it was noted that a report would be going to Cabinet in June. However it was felt that a discussion report to the next meeting would be welcomed and it mattered not if this was before or after it had been to Cabinet.

RESOLVED THAT:

The following items be included in the work plan:

- (1) Delivering Growth and Prosperity in Coalville (both revised policy on S106 agreements and Council loan opportunities).
- (2) Prevention of Homelessness Strategy 2013-2018

The meeting commenced at 6.30pm and closed at 7.22pm.