Bath & North East Somerset Council		
MEETING:	**Council**	
MEETING DATE:	**25th March 2021**	
TITLE:	**Amendments to the Constitution**	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Planning Delegation scheme - extract (amended) Appendix 2 – Planning Committee Terms of Reference (amended)		

1 THE ISSUE

1.1 The Constitution is a single point of reference which contains the principal governance structures and procedures of the authority. It sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.

1.2 Group Leaders have discussed the need for a comprehensive review of the Constitution which can be scheduled later in 2021, working through the Constitution Working group. This piece of work can pick up amendments that will be needed to the delegation schemes following the completion of the changes to the senior management structure.

1.3 This report sets out various more pressing amendments which require a decision without waiting for the fuller review, to ensure that the Constitution is kept up to date and accurate.

2 RECOMMENDATION

The Council is asked to;

2.1 Agree the amendments to the Planning Delegation scheme, as described in paragraphs 3.1 & 3.2 and attached in Appendix 1, to enable members to refer applications to the Planning Committee up to 2 days after the closure of the public consultation period;

2.2 Agree the amendments to the Planning Committee Terms of Reference contained in Appendix 2 and described in paragraph 3.3 (with the proposed changes shown in tracked changes);

2.3 Agree the insertion of a clarifying paragraph to the general officer delegation scheme, as described in section 3.4

2.4 On a recommendation from Group Leaders, amend the Constitution to formalise the position that political group motions continue to be taken as the last items on the agenda, as described in paragraphs 3.6 – 3.8;

2.5 On a recommendation from Group Leaders, agree to remove the Petition scheme from the Constitution, as described in section 3.9 – 3.14.

3 THE REPORT

Planning Delegation Scheme

3.1 In September 2020, the Planning Committee considered options for changes to the Planning Scheme of Delegation. Currently members have 5 weeks after the start of the consultation on a planning application to request that an application is considered by the Planning Committee instead of being delegated to an officer to determine. The Planning Committee agreed to recommend to Council a change to the Scheme of Delegation to enable members to call applications to the Planning Committee up to two days after the closure of the public consultation This would enable members to be aware of all the comments received before coming to a view.

3.2 The Planning Committee report of 23rd September 2020 (see background paper to this report) sets out the advantages and disadvantages of the proposed change above compared with retaining the current approach.

Planning Committee Terms of Reference

3.3 A recent High Court judgement in the case of Hemms v B&NES[1](in which the Court found in favour of the Council) highlighted points within the constitution which need to be updated and so these are included within this report. The updated Terms of Reference, with the proposed amendments shown in tracked changes, are attached at Appendix 2.

The main matters addressed are

- Clarifying that decisions of the planning committee are subject to the applicable schemes of delegation in the Constitution, depending on the specific decision being taken.
- Clarifying the scope of the committee's responsibility for public rights of way and commons registration matters.
- Deleting reference to 'area based committees' as this is now out of date.
- Updating officer job titles.
- Updating terminology and addressing typographical issues.

Officer Delegation scheme

3.4 Also arising from the above legal case, it is recommended that the Constitution clarifies that the Officer Delegation scheme is of general application. This will remove any doubt about the scope of the application of the scheme. The proposed amendments do not alter the substance of the Scheme.

[1] The Queen on the application of Janice Hemms v Bath and North East Somerset Council and Kate Chubb [2020] EWHC 2721 (Admin). This was a planning case which included a challenge to aspects of the Constitution. The High Court found the challenge to be unarguable and the Court of Appeal refused permission to appeal.

3.5 The following wording to be added to Part 3, Section 4 A – E.

"This scheme of delegation is of general application and applies to all of the functions of the authority, both executive and non-executive. It gives senior officers the necessary delegated powers to carry out those functions of the authority which fall within their areas of responsibility."

Agenda order at Council meetings

3.6 The Council procedural rules in the Constitution (Part 4A, rule 13) set out the usual order of agenda items at a Council meeting;

(i) elect a person to preside if the Chair and Vice(person) are not present;

(ii) receive any declarations of interest from Members;

(iii) approve the minutes of the last meeting as a correct record and authorise the Chair to sign as such *(There is no discussion on matters arising from the minutes other than to draw attention to any inaccuracy)*;

(iv) receive any announcements from the Chair or the Chief Executive;

(v) deal with any business remaining from the previous Council meeting;

(vi) receive questions, statements, petitions or deputations from members of the public;

(vii) receive questions, statements, petitions or deputations from Councillors at the end of the published order of business;

(viii) receive reports on Policy and Budget Framework matters (normally from the Cabinet);

(ix) consider any agenda motions submitted by members of the Council;

(x) receive and consider any report from the Cabinet on its business since the previous Council meeting;

(xi) consider any other business specific in the summons to the meeting including reports from Officers on Council functions"

3.7 However, it has been custom and practice to take political group motions (item (ix) above) at the end of the agenda to ensure all the other business is completed.

3.8 At their meeting on 20th October, Group Leaders agreed to ask Council to formalise the current practice so that the above rules be amended to move political group motions to the final item.

Petition scheme

3.9 It is proposed that the separate Petition scheme is removed from the Constitution to avoid confusion caused by duplication.

3.10 Local Government legislation in 2009 introduced a requirement that all Councils adopt a Petition scheme. This Council adopted a Petition scheme based on the model scheme and that scheme is the one within the Constitution;

https://democracy.bathnes.gov.uk/documents/s57147/5%20-%20Petition%20scheme.pdf

3.11 The requirement to have a scheme was repealed by the Localism Act 2011 and since then it has been a matter for local choice.

3.12 Procedure rules within the Constitution for Cabinet, Council, Scrutiny and Committees already permit members of the public to submit petitions to these bodies.

3.13 Group Leaders have considered this (1st September 2020) and agreed to recommend to Council the removal of the separate Petition scheme from the Constitution, as rights to submit petitions (and hold a debate) already exist in the main procedural rules for all public meetings and having a separate scheme is unnecessary, and a source of potential confusion.

3.14 The Petition scheme is part of the Constitution which can only change with the approval of Council.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

4.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 a, Localism Act 2011 and any other relevant statutory acts or guidance.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 No direct implications.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

7 CLIMATE CHANGE

7.1 No direct implications,

8 EQUALITIES

8.1 The changes are not considered to have any significant equalities impacts.

9 OTHER OPTIONS CONSIDERED

9.1 If the Constitution is not amended, it will not reflect the Council’s commitment to tackling the climate emergency, and for major decisions on Council and ADL applications to be considered by the Planning Committee. Without amendment, the Constitution will also not address the points of clarification highlighted by the High Court.

10 CONSULTATION

10.1 The Chief Executive, Section 151 Officer, Monitoring Officer and Chair of the Planning Committee were consulted in preparing this report.

Contact person	*Jo Morrison, Democratic Services Manager 01225 394358* *Lisa Bartlett, Director – Development & Public Protection 01225 477550*
Background papers	*The Constitution;*

	https://democracy.bathnes.gov.uk/ieListDocuments.aspx?CId=652&MId=5469&Ver=4&info=1 *Planning Committee report 23rd September 2020;* *https://democracy.bathnes.gov.uk/documents/s62699/Proposal%20to%20Extend%20the%20Member%20Call-In%20Period.pdf*
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