

COUNCIL

11 July 2016

AMENDMENTS TO THE CONSTITUTION

Report of the Monitoring Officer

Strategic Aim:	All	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr T C King, Leader and Portfolio Holder for Finance and Development	
Contact Officer(s):	Debbie Mogg, Director for Resources	01572 758358 dmogg@rutland.gov.uk
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Ward Councillors	N/a	

DECISION RECOMMENDATIONS

1. That Council approves amendments to Finance Procedure Rules set out in section 2 of the report and that these changes are effective immediately
2. That the advertising thresholds within the Contract Procedure Rules are amended as set out in section 3 of this report
3. That Council approve the amendment to Procedure Rule 49 as per section 4 of this report
4. That Council remove the delegation in place in respect of expenditure of Section 106 agreements as described at section 5 of this report.

1 PURPOSE OF THE REPORT

- 1.1 To invite the Council to consider a number of amendments to the Constitution recommended by the Constitution Review Working Group (CRWG) and the Monitoring Officer in respect of the Financial Procedure Rules (FPRs), Contract Procedure Rules, Council Procedures and the scheme of delegation.

2 FINANCIAL PROCEDURE RULES

- 2.1 Section 151 of Local Government Act 1972 requires the Council to make arrangements for the proper administration of its financial affairs. Adopting a set of Rules to govern its financial affairs goes a long way to meeting this requirement and is an integral part of the Council's constitution.

2.2 In March 2015, the Council reviewed and updated FPRs to ensure that:

- The FPRs are comprehensive, clearly defined and they are not subject to misinterpretation by officers and Members of the Council;
- Officers and Members of the Council are clear as to what is expected from them in terms of financial governance; and
- The Council complies with English law that governs financial administration

2.3 At that time, it was recommended and agreed that “That the CRWG review the operation of FPRs after 12 months to ensure they are working as intended”.

2.4 The Monitoring Officer and Assistant Director – Finance have undertaken a review and are proposing various changes arising from issues and questions that have been raised during the year. The changes and additions give clarity and transparency to some of the rules and ensure consistency with other policies. The detail of changes is shown below.

Area/Issue	Change	Rationale
Capital scheme appraisal	5.2 Each scheme within the capital programme shall be appraised in line with procedures set out by the Chief Finance Officer and <u>approval sought from Cabinet, Council or individual Directors in accordance with agreed delegated limits.</u>	Wording extended to acknowledge that some projects will require Council approval. Also Cabinet can cede some of its delegated authority to Directors or other individuals/groups.
Capital scheme appraisal	5.3 Details of each scheme within the approved capital programme shall be appraised by Directors or any other group set up for this purpose prior to being submitted <u>to Cabinet, Council or Directors</u> for approval before any expenditure is incurred.	As above
Capital scheme appraisal	5.3 The appraisal and report to Cabinet shall include:	Wording not required as all appraisals need formal approval
Capital programme	5.4 The capital programme may consist of: a) appraised schemes for which specific sums of money are provided based on cost estimates received; b) provisional funding for	To improve clarity over what the capital programme consists of and to require details of all schemes to be included even where formal appraisal has not yet been completed. The text deleted will be replaced with clearer detail in para 5.5. (see below)

Area/Issue	Change	Rationale
	<p>schemes yet to be developed in detail but for which <u>outline proposals will be given or approved by the Cabinet at some later date e.g. Highways capital programme; or c) a combination of the two.</u></p> <p><u>For all schemes, the capital programme will set out how they will be funded. Funding will either that held by the Council, that expected to be received in the future or further borrowing.</u></p>	
Capital programme approval	<p>5.5 The Cabinet shall recommend a capital programme to Council prior to the beginning of each year. The programme may be for one or more years. The Council shall approve the capital programme.</p> <p><u>In approving the Capital programme, Council will allow Cabinet to determine the details of specific schemes to be delivered (if they are not fully appraised at the time of approval) unless they specify otherwise irrespective of value.</u></p>	<p>For expediency, once the capital programme is approved (as outlined above), it is expedient for Cabinet to approve specific schemes not evaluated prior to approval of the programme.</p> <p>For example, the approved capital programme always includes an allocation for the Highways Capital programme. Cabinet typically receive a separate report with details of how the allocation will be spent and then approval is sought from Council. The rule change will allow Cabinet to approve unless Council wishes to retain the right of approval.</p>
Funding of the capital programme	<p>5.7 Any proposal to amend the capital programme (which includes the resources allocated to schemes and resources available but not allocated at the time the budget is approved) by including a new project, increasing the project budget, deleting an approved project or <u>changing how projects are funded</u> shall require the formal approval of the Cabinet <u>(there are no limits to the number of schemes that may be added)</u> unless any one</p>	<p>As funding available may change during the year then it may be advantageous for how projects are funded to be amended e.g. unallocated grant to replace borrowing.</p> <p>Council will retain decisions over projects in excess of £1m and over use of new funding (not known about or included in the capital programme).</p> <p>The rules allow Cabinet to add an unlimited number of schemes to the programme of less than £1m but this is now</p>

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	<p>of the following applies:</p> <ul style="list-style-type: none"> A. <u>the total cost of the new Scheme is above £1m</u> B. <u>changes involve using new resources (e.g. new borrowing, capital receipts or revenue) not listed in the original programme</u> C. <u>Council have set out any special provisions at the time of approving the programme</u> D. <u>Cabinet has delegated any of its authority to Directors or other groups</u> 	<p>made clearer.</p>
<p>Capital Outturn</p>	<p>New paragraph 5.12</p> <p><u>Council/Cabinet determine how capital projects will be funded on advice from the Chief Finance Officer. There may be exceptional circumstances whereby it is financially beneficial to the Medium Term Financial Plan and thereby the Revenue Account to change how projects are funded (e.g. to avoid borrowing costs) if the financial context has altered when preparing the outturn.</u></p> <p><u>The Chief Finance Officer in preparing the outturn will seek approval of any changes from Cabinet or Council if changes involve using new funds are not listed in the original programme.</u></p>	<p>This will allow the Chief Finance Officer to propose changes to how projects are funded where it is financially advantageous.</p> <p>For example, the Council decides to make a £200k revenue contribution to capital upon programme approval but mid-year receives new funding which if applied would avoid using revenue resources at a time when the Council is seeking revenue savings.</p>
<p>Emergency situations</p>	<p>New paragraph 4.6</p> <p><u>In the case of a 'major incident' as defined in Section 5 of the Major Incident Plan, the Chief Finance Officer may determine that alternative arrangements to those in Finance Procedure Rules shall apply. In particular, the Chief Finance Officer in conjunction with the Chief Executive may: (a) establish</u></p>	<p>Following a Business Continuity exercise, it became apparent that the FPRs may not provide the flexibility of the Chief Executive and Chief Finance Officer to respond to the needs of an emergency. This paragraph gives that flexibility.</p> <p>The Emergency Plan uses the Civil Contingencies Act (CCA) 2004 definition of a major</p>

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	<p><u>different rules for financial systems and financial administration to the extent necessary to meet the requirements of the emergency; (b) establish a budget for the emergency, over and above the approved budget; (c) determine which officers may commit the emergency budget, and any rules to apply in managing the budget; (d) authorise any capital expenditure required as a consequence of the emergency.</u></p>	<p>incident: <i>“An event which threatens serious damage to human welfare, damage to the environment, or terrorism activities which threaten the security of Leicester, Leicestershire and/or Rutland”</i></p>
<p>Chief Executive delegated authority</p>	<p>New paragraph</p> <p><u>The Chief Executive as Head of Paid Service has authority to make various decisions in relation to HR and employment policies (e.g. payment of honoraria, removal expenses etc). These items are often not known about when the budget is set and therefore in exercising his/her authority under these policies the Head of Paid Service would need budget provision.</u></p> <p><u>As part of budget setting the Council will approve a ring-fenced budget for the Chief Executive to use solely for executing HR and employment policies (in the region of £50k but the amount to be decided by Council). Virements from this budget to others will fall outside of any rules that apply to Functional Budgets.</u></p>	<p>Aligns Financial Procedure Rules with other policies.</p> <p>When the Chief Executive makes a decision to use this budget, this could be achieved in one of two ways. For example, in the case of the payment of removal expenses: a) Chief Executive could pay directly from his/her own budget, or b) Chief Executive could transfer the budget to another area for payment to be made. There will be some cases e.g. payment of honoraria where b) is the better option.</p>
<p>Spending across financial years</p>	<p>New paragraph 4.23</p> <p><u>The Financial Procedure Rules allow Directors to use under spends within functional budgets to deliver functional objectives and priorities. If Directors plan to use an under</u></p>	<p>There is a potential concern that Directors may use under spends in any given year to fund recurring expenditure. This may inadvertently create a budget pressure in future years. Directors must seek authority to increase the budget if this is the</p>

Area/Issue	Change	Rationale
	<u>spend in a given year to fund recurring expenditure (this is not allowed in respect of permanent staffing) but are of the view that this expenditure cannot be contained within the following years indicative budget (current budget plus inflation) then permission must be sought from Cabinet to increase the budget for the following year before any expenditure is incurred.</u>	case.

3 CONTRACT PROCEDURE RULES

- 3.1 The Contract Regulations 2015 introduced a requirement that where contract procedure rules (CPR) require a procurement to be advertised, that the advert must be published on a national website (Contracts Finder) and that all documents must be available and published at the time of advertising. This includes the full specification, award criteria etc.
- 3.2 Our CPR set the advertising threshold at £25,000. At the time the new regulations were brought in, the CRWG did consider increasing this threshold to £50,000 but felt that keeping it as it was would increase the number of tenders received and therefore reduce costs. Over the 14 months this has been in operation, there has been no notable increase in the response to tenders.
- 3.3 It is therefore recommended that the advertising threshold is now increased to £50,000. This will reduce the administrative burden on the lower value procurements. It will also bring us into line with our partners in the Welland Procurement Unit who all have their threshold set at £50,000. This may increase the opportunity for joint procurement exercises.
- 3.4 The threshold could be increased to an amount higher than £50,000 but this is not being recommended at the current time. Consideration can be given to this when the CPR are next reviewed. The changes to the procurement thresholds are set out in the table below:

Current Threshold	Action Required	Proposed Threshold
Less than £10,000	Demonstrate value for money and obtain written quotation	No change
£10,000-£24,999	Obtain 3 written quotations	£10,000-£49,999

Current Threshold	Action Required	Proposed Threshold
£25,000-£49,999	Place advert for requirement and follow One Stage (open) Tender process	£50,000- EU threshold
£50,000-EU threshold	Place advert for requirement and follow One Stage (open) Tender process	Delete
EU thresholds and above	Contact Welland Procurement Unit	No change

4 COUNCIL PROCEDURE RULES

- 4.1 Appointments by the Council are dealt with under Procedure Rule 49, which set out that where there are more nominations than vacancies votes will be cast through a ballot. For the past few years the Council has moved away from this practice and through a suspension of this procedure rule has voted on appointments by a show of hands. It is therefore recommended that the procedure is amended to reflect this as standard practice. The current and proposed Procedure Rule 49 is shown at Appendix A.

5 SCHEME OF DELEGATION

- 5.1 The scheme of delegation currently includes the following delegation to the Director for Places (Development and Economy)

‘To agree expenditure of developer contributions made under section 106 TCPA 1990 agreements, but excluding the expenditure of any sums contributed for the purposes of being applied to the provision of affordable housing’

- 5.2 This delegation is not consistent with the process by which approval is granted for the spend of other capital funding streams and as such it is proposed that this delegation is removed. The intention is that the allocation and spend of this funding is dealt with as part of the budget setting process.

6 CONSULTATION

- 6.1 No formal external consultation is required. CRWG have been consulted in the drafting of changes.

7 ALTERNATIVE OPTIONS

- 7.1 Council can choose to accept, amend or reject the amendments. The changes/additions gives clarity to various matters and do not fundamentally change the roles and responsibilities of Cabinet or Council.

8 FINANCIAL IMPLICATIONS

- 8.1 There are no specific financial implications arising from these changes.

9 LEGAL AND GOVERNANCE CONSIDERATIONS

9.1 One of the key issues to address is to ensure that FPRs comply with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 [as amended]. Schedule 4 of this legislation sets out those circumstances in which functions are not to be the responsibility of an authority's executive.

9.2 Our legal advice and interpretation of the legislation is that once the overall budget envelope has been agreed at the beginning of the year (we define the envelope as the overall budget, the budgets for specific functions and available reserves) by Council, subsequent decisions of the Executive that may impact on that budget need only be brought back to Council:

- If the decision is likely to cause the authority's overall budget envelope to be exceeded, or
- If it is contrary to the authority's borrowing or capital expenditure plans; and
- If it is not authorised by the Council's executive arrangements, financial regulations, standing orders or other rules or procedures.

9.3 The changes/additions are consistent with the above.

10 EQUALITY IMPACT ASSESSMENT

10.1 An Equality Impact Assessment (EqIA) has not been completed.

11 COMMUNITY SAFETY IMPLICATIONS

11.1 There are no community safety implications.

12 HEALTH AND WELLBEING IMPLICATIONS

12.1 There are no health and wellbeing implications.

13 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

13.1 Minor changes are required to ensure that the Finance Procedure Rules are up to date, fit for purpose and are compliant with relevant legislation.

14 BACKGROUND PAPERS

14.1 There are no background papers.

15 APPENDICES

15.1 Appendix A: Procedure Rule 49

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.

