

CANNOCK CHASE COUNCIL

COUNCIL

24 SEPTEMBER, 2008

REPORT OF DIRECTOR OF GOVERNANCE ON BEHALF OF THE CONSTITUTION WORKING

GROUP

REVIEW OF THE COUNCIL'S CONSTITUTION

1. Purpose of Report

- 1.1 Enclosed with this report is a summary of proposed changes to the Constitution. The proposed changes follow several meeting of the Cross-Party Constitution Working Group who have reviewed the Constitution. The report makes various recommendations for changes to the Constitution and seeks Council's endorsement for those changes. Marked copies of the Constitution which show the proposed changes have been made available to Councillors in the Group Rooms.

2. Recommendation(s)

2.1 Council is recommended to:-

- 1) Adopt the changes as identified in the marked copy of the Constitution (and as presented in the attached Summary) with effect from 25 September, 2008.
- 2) Request that the Constitution Working Group continue to meet to determine what changes should be made to the Budget / Policy Framework Council meetings and that the outcome of the Working Group's deliberations be reported to Council in December 2008.
- 3) In relation to (2) above, the three Group Leaders be required to attend the meetings of the Constitution Working Group.

3. Conclusions and Reason(s) for the Recommendation(s)

- 3.1 Following a thorough review of the Constitution the Working Group has concluded that overall the Constitution is fit for purpose. The changes that have been made to Constitution reflect best practice and the conventions adopted by the Council. It is acknowledged that it is impossible to anticipate all scenarios which may arise during Council meetings and that a pragmatic approach needs to be adopted by the Council in defining its Constitution. The Working Group is of the view that the changes suggested in the summary document enclosed

are reasonable and proportionate and address the key inadequacies of the current Constitution. As at the date of reporting, the Working Group was unable to resolve on the appropriate approach to be adopted by the Council in relation to the Budget / Policy Framework meeting. The recommendations to continue working on that aspect of the Constitution are made on the condition that all three Group Leaders are involved as part of those discussions to ensure that the political leadership contributes to the debate and the framing of the procedures to be adopted at the Budget / Policy Framework Council meeting. Other aspects of the Constitution (such as the Human Resources Guidelines/Procedures) require more detailed work which is planned for later in the year.

4. **Key Issues**

4.1 The summary document attached identifies the changes to the Constitution.

4.2 The key aspects to note are the following:

- (a) There has been a general "tidying up" of the Constitution and an attempt to simplify its language and presentation for the benefit of Citizens and Councillors.
- (b) The Working Group recommends that the threshold for "key decisions" be decreased to 0.5% of the Council's gross turnover. This would mean that any decision which could result in expenditure / saving of around £310,000 should be reported in the Forward Plan. The current threshold is 1%.
- (c) In relation to Council Procedure Rules, express provision has been made in relation to arrangements for Annual Council and prior notification of nominations and other procedural matters. In addition, during Council debates the right to reply has been amended. Previously the Council Leader or Portfolio Leader would have the right to reply to a motion. The Constitution Working Group suggest that this should be now the mover of the motion

4.3 Other issues are referred to in the summary document. At the end of the summary document a section headed "Other Matters" identifies aspects of the Constitution which were considered but have not been changed. The Council may wish to request that the Working Group consider these suggestions in more detail. The proposed arrangements for the Budget and Policy Framework Procedure rules are included and will form part of any future work undertaken by the Working Group in this regard.

REPORT INDEX

Background	Section 1
Details of Matters to be Considered i.e. Options Considered, Outcome of Consultations etc.	Section 2
Contribution to CHASE	Section 3
Financial Implications	Section 4
Human Resource Implications	Section 5
Legal Implications	Section 6
Section 17 (Crime Prevention)	Section 7
Human Rights Act Implications	Section 8
Data Protection Act Implications	Section 9
Risk Management Implications	Section 10
Equality and Diversity Implications	Section 11
Other Options Considered	Section 12
Report Author Details:	
Philip Lloyd – Williams	
Director of Governance	
Ext 4223	

Section 1

Background

At its Annual meeting Council agreed to refer the Constitution to a Working Group for review. This report follows the work of that Working Group.

Section 2

Details of Matters to be Considered

Council may determine to adopt the proposals of the Working Group in full or in part. It is best practice for significant variations to those recommended to be deferred to a later meeting in order that the full legal and financial implications of any changes are advised to Council. In relation to the Summary enclosed and the changes proposed in this report, the legal and financial implications have been considered.

Section 3

Contribution to CHASE

The appropriateness of a robust Constitution is essential if the Council is to have a clear means of engaging and explaining to citizens the function of meetings and the role of councillors and citizens in governing the community. The Constitution is a cornerstone to all of the CHASE objectives.

Section 4

Financial Implications

There are no direct financial implications arising from the report. Reducing the financial threshold may result in additional items appearing in the Forward Plan.

The Financial Implications of any Key Decision will be reflected in the relevant report associated with the Forward Plan.

Section 5

Human Resource Implications

There are no human resource implications arising directly from the report.

Section 6

Legal Implications

The Council is required to have a written Constitution which complies with legislation. The proposed changes are in accordance with legislation and follow good practice.

Section 7

Section 17 (Crime Prevention)

There are no Section 17 (Crime Prevention) implications arising directly from the report.

Section 8

Human Rights Act Implications

There are no Human Rights Act implications arising directly from the report.

Section 9

Data Protection Act Implications

There are no Data Protection Act implications arising directly from the report.

Section 10

Risk Management Implications

There are no risk management implications arising directly from the report.

Section 11

Equality and Diversity Implications

There are no equality and diversity implications arising directly from the report.

Section 12

Other Options Considered

The Council may consider that further work should be undertaken in relation to the changes to the Constitution. It is suggested that if the Council is not in agreement with the proposals, that an indication of areas of disagreement be presented to the Constitution Working Group for them to make further suggestions.

Report of the Constitution Working Group

Summary of Proposed Changes to the Constitution

September 2008

General

The Constitution has been reviewed following several cross-party meetings of the Working Group.

The Constitution has been changed so that terminology has been explained in a glossary and the pages are numbered from 1- (end number) as opposed to discreet numbering of each section. Members with note that at the end of each section several pages are blank with the words "This page has been left blank intentionally" typed on the blank page. It is anticipated that by adopting this process, any changes to the Constitution will be accommodated by these blank pages rather than having to issue the whole Constitution afresh with new numbering.

The contents page of the Constitution and the various sections were previously referred to as "Articles". The Working Group feels that the use of the word "article" is confusing and less clear for members of the public. Therefore, all the relevant parts of the Constitution are now referred to as "Sections". Duplication has been removed and where certain documents were previously part of the Constitution which added no value or were subject to regular changes (for example management structure) those sections have been removed. It has been the overriding intention of the Working Group to make the Constitution "future proof" so that future council meetings do not need to re-address the fundamentals of the Constitution and that its structure and arrangements can transcend electoral cycles, as far as practicably possible, the Constitution is a "living" document and inevitably it will never be able to anticipate all necessary changes.

Part 1 – Summary and Explanation

This section has had minor changes to assist in the clarity of definitions and in the way the council works.

Part 2 – Sections of the Constitution

The title "Articles" has been replaced by the word "Section".

Section 1 – The Constitution

The 'vision' and definition relating to the Local Strategic Partnership have been updated.

Section 2 – Members of the Council

Minor changes have been included to clarify definitions

Section 3 – Citizens and the Council

Minor changes have been included to clarify definitions

The section entitled "Citizens Have the Right to" (at now (e) in this section) has been inserted from the later section for ease of reference. It is considered that the citizen's right should be included in this part of the Constitution.

Section 4 – The Full Council

This section has been updated to provide clarity for the terminology used in the section

Section 5 – The Role of the Chairman of the Council

This has been slightly updated to ensure that the role of the Chairman of the Council also includes an ambassadorial role within and outside of the District.

Section 6 – Scrutiny Committee

The general role of the Scrutiny Committee has been clarified to include co-optees as necessary who will be non-voting. Co-optees from the Staffordshire County Council who will be attending the Scrutiny Committee to scrutinise health matters will have a vote as a co-optee as such reciprocal arrangements exist from the District co-optees to the County Council. An opportunity has also been taken to clarify the specific functions of the Scrutiny Committee. There are no new additions to the principles governing scrutiny presented in this change. The intention has been to clarify all the scrutiny functions in one place.

Section 7 – Performance & Partnership Scrutiny Sub-Committee Terms of Reference

Council at the annual meeting agreed to the terms of reference for the Performance & Partnership Scrutiny Sub-Committee. These are included in the Constitution for completeness.

Section 8 – The Cabinet

Provisions regarding the role and form and composition of Cabinet have been clarified.

Section 9 – Policy Development Committees

The Policy Development Committees were created at Annual Council in May 2008. They are included in the Constitution for completeness.

Section 10 – The Opposition & Shadow Cabinet

The section regarding the role of the opposition and Shadow Cabinet have been merged.

Section 11 – The Standards Committee

The information regarding the Standards Committee has been updated following the changes to the "local filter arrangements" as introduced in May 2008. These have previously been reported to Council.

Section 12 – Community Forums

This section has been condensed to make the definition of Community Forums generic.

Section 13 – Joint Arrangements

Minor changes have been made to this section.

Section 14 – Officers

Minor changes have been made to this section.

Section 15 – Decision Making

Minor changes have been made to this section to assist with clarity. The most significant change to this section is that the definition of a “key decision” be amended. Currently, a key decision is defined as: any expenditure or saving of 1% of the gross turnover of the Council or a decision affecting communities living or working in 2 or more wards. It is proposed that the threshold for expenditure be reduced to 0.5% of the gross turnover (which would mean expenditure / saving of around £310,000 as opposed to £620,000).

Section 16 – Finance, Contracts and Legal Matters

Minor changes have been made to this section.

Section 17 – Review and Revision of the Constitution

Minor changes have been made to this section.

Section 18 – Suspension, Interpretation and Publication of the Constitution

Minor changes have been made to this section.

Part 3 – Responsibility for Functions

Section 19 – Responsibility for Functions

This chart has been reformatted to make the various responsibilities clearer and more easily read. Various statutory provisions which have been revoked or subsequently changed have been removed. There are no changes in actual responsibility.

Section 20 – Responsibility for Council Functions

This section has been tidied up to make it more beneficial to Members.

Section 21 – Responsibility for Cabinet Functions

This section has been tidied up.

Section 22 – Responsibility of Cabinet Members

Significant aspects of this former section have been deleted as the contents were self-explanatory and were covered by the descriptions provided in the collective responsibility of Cabinet and Portfolio Leaders

Section 23 – Allocation of the Portfolio Responsibilities of Respective Cabinet Members

This section has been introduced to note the allocations provided by the Leader. This will be advised to Council Members following the first Cabinet meeting after the AGM.

Section 24 – Policy Development Committee

Section 25 – Planning Control Committee Terms of Reference

This section has been refreshed to comply with current legislation and procedures. The section regarding the protocol for public speaking at Planning Control Committee has not been amended.

Section 26 – Licensing and Public Protection Committee Terms of Reference

This section has been updated to reflect current practice by the insertion of the paragraph regarding quorum. The section also includes references to the gambling legislation.

Section 27 – Licensing Sub-Committee Terms of Reference

As for the main Licensing Committee, the paragraph regarding quorum has been included within the Terms of Reference.

Section 28 – Standards Committee Terms of Reference

These have been amended following the changes to the Standards Committee regime as previously reported to Council. The previous sections regarding Parish Council Standards Sub-Committee have been deleted as they are no longer applicable. All work of the Standards Committee is now undertaken through Sub-Committees (detailed at Annex A) which deal with initial assessments of complaints, reviews and determinations.

Section 29 – Audit and Governance Committee Terms of Reference

The additional paragraph regarding quorum has been inserted together with the noting of the minutes by Council.

Section 30 – Rate Relief Committee Terms of Reference

The additional paragraph regarding quorum has been inserted. Other minor grammatical and textual changes have been made.

Section 31 – Appeals and Complaints Panel Terms of Reference

No change at this date. There is a need to review the Terms of Reference in due course. A minor correction has been made at Annex 3 to this section

Section 32 – Appointments Panel Terms of Reference

Minor changes have been undertaken in relation to this section. Political balance requirements are now included for the Panel.

Section 33 – Community Forums

Individual Terms of Reference for the respective community forums have been deleted, as they have been incorporated in the former general provisions for community forums (now Section 12).

The description of community forums have been merged to one Terms of Reference document.

Section 34 – Trade Union Consultative Forum Terms of Reference

No changes.

Section 35 – Chairman of the Council Civic Committee Terms of Reference

The only change in this section relates to the provision of a quorum for the meeting as specified in the Terms of Reference.

Section 36 – Joint Parking Committee Terms of Reference

This is a new committee created as a result of the Decriminalised Parking arrangements.

Section 37 – Substitution Scheme for Committees

This is included for completeness.

Section 38 – Scheme of Delegation

The Scheme of Delegation has recently been approved by Council. No further changes are proposed as part of this review.

Part 4 – Rules of Procedure

Section 39 – Council Procedure Rules

The majority of changes in this section have been made to assist in clarity. Where previously one paragraph has had two points within it, the paragraphs have been split. At section 4a (1(p)) a requirement has been included that Group Leaders submit to the Chief Executive at

least 48 hours prior to the commencement of the Annual General Meeting details of their appointed representative to outside bodies. No amendments to these proposals are permitted once the nominations are received by the Chief Executive (acting as Proper Officer). In addition, in the same section at (m) the Council will appoint Chairman and Vice-Chairman of Committees providing advance notification of the political group's intentions are provided to the Chief Executive at least 24 hours prior to the Annual General Meeting.

Where a specific number of days are given for the receipt of questions / notice of a motion it has been amended in the Constitution that such days shall be calendar days as opposed to working days. For example, a notice of question has to be given at least 10 calendar days to the Proper Officer.

At sub-section 9 of this section, the minutes of other meetings / forums will be moved by the Chairman of the Council en-bloc, rather than have individual chairmen of the committee / forum stand and propose that the minutes be presented and moved. The same provision where each page will be called in turn is provided for and questions and matters in the minutes may be asked by relevant Members. Any individual decisions referred through a Committee to Council for a decision will be specified as a separate item on the Council agenda.

Section 10 (10) refers to the rights of reply. This has been amended. Previously the Council Leader or Portfolio Leader would have the right of reply in relation to a motion. This has been amended. It is proposed that the *mover of the motion* will have a right to reply. The intention behind this change is to allow the mover of the motion to sum up their proposed motion having had the wider debate on what they had originally presented. The Working Group considers that this is more just and appropriate as the person putting the motion forward may indeed seek to have the motion amended or removed following the debate. This does not mean that the Council Leader or Portfolio Holder cannot be part of the debate. Similar provisions relating to closure motions will apply and the mover of the motion (or the mover of the amendment) will have the final opportunity to have the right to reply as opposed to the Council Leader, Portfolio Leader or Chairman of the Committee, Sub-Committee, Panel or other body.

In relation to points of order and personal explanation, no point of order may be raised unless the Member refers explicitly to the relevant rule or procedure. This will require such a Member at the *start* of their address to refer to the relevant rule, law or issue of personal explanation.

The requirement for Members to stand when addressing Council has now been amended to include Officers. This will ensure that all those present in the Chamber will be able to hear any advice being given by Officers.

The definition of a recorded vote has been amended to be known as a "named vote". This avoids any confusion regarding the difference between the two. The named vote is a record of how each individual Member votes. A recorded vote records the number of votes for or against and abstentions, but does not identify how an individual Member will have voted.

The scheme for receiving questions from the public at ordinary Council meetings has been widened to include not only those who are residents of the district, but also those who conduct their business within the district. Similar provision has been afforded to the scheme for receiving deputations at ordinary Council meetings.

Section 40 – Access to Information Procedure Rules

There have been very minor amendments to this section. The only particular insertion to note is the clarity at 12.3 where the Shadow Cabinet is indicated as not being subject to the same rules as Cabinet given its non-statutory role.

Section 41 – Budget and Policy Framework Procedure Rules (please also see the end of this paper)

This section has had significant changes and are presented as a model for debate as the Working Group have not settled on this matter. In sum, the proposed budgetary framework now reads as follows:-

Paragraph 1 – Cabinet publicises its proposed budget and consults. The Scrutiny Committee and Shadow Cabinet will form part of that consultation but they are not required to respond should they not wish to do so. Cabinet shall take into account such responses.

Paragraph 2 – At the Council meeting no amendments can be made to the proposed Cabinet budget. The Council will only be able to adopt the Council's budget without amendment or refer one alternative budget proposal per political group back to Cabinet asking Cabinet to reconsider their proposed budget. Any alternative budget must be a "balanced budget". The ability of Members to propose amendments to motions is removed as the options open to the Council in terms of budget settings are different.

The options open to Council are either to accept the Cabinet's proposals or to request Cabinet to consider the alternative budgets (which must be balanced budgets) presented by the respective political groups who are not part of the administration. The other provisions regarding to the next stages of the budget meeting have not been changed.

Section 42 – Cabinet Procedure Rules

The definition of working days has been changed to calendar days in relation to the Procedure Rules.

Section 43 – Overview and Scrutiny and Policy Development Procedure Rules and Terms of Reference

The Scrutiny Committee and Policy Development Procedure Rules and Terms of Reference have been updated to be consistent with that adopted by Council at the Annual Council Meeting. In relation to the Terms of Reference for the Scrutiny Committee, the co-optees from the Staffordshire County Council being voting members on the Scrutiny Committee when health matters are being considered are included within the Terms of Reference.

Section 44 – Financial Regulations

No changes have been made. The updated Financial Regulations were approved by Council earlier in the year.

Section 45 – Contract Procedure Rules

These have not been amended. There will be a review of the Contract Procedure Rules during the autumn with the intention that updated Procedure Rules will be presented to Council early in the new year.

Section 46 – Human Resource Guidelines

These guidelines have not been amended. A review of the guidelines is expected in the near future.

Part 5

Section 47 – Codes and Protocols – Members

No changes

Section 48 – Code of Conduct for Employees

The Code of Conduct has not been reviewed and has not been amended. There is a national discussion underway regarding a Code of Conduct for Council Officers. Pending the outcome of such negotiations and discussions, the Code has not been reviewed.

Section 49 – Code and Protocols – Local Protocols

There have been no changes to this section

Part 6

Section 50 – Councillors' Allowances Scheme 2008-10

No changes have been made. The updated Members' Allowance Scheme was approved by Council earlier in the year.

Part 7 – Management Structure

This has been deleted. Previously it was a chart of the management structure of the Council. Given the flexible nature of management and roles and responsibilities, it is considered more beneficial that this be available through other means such as the website.

Other Matters

Matters the Council may wish to consider, for further consideration which are not part of the changes presented:-

- a) At the Cabinet meeting, Scrutiny and Community Forums the opportunity for questions to be asked by members of the public (having given advanced notice) and a response

presented to the member of the public. This will provide greater opportunity for public engagement at Council meetings and community forums. Additionally, Council may consider an opportunity (say 10 minutes) at the start of Cabinet, Scrutiny and community forums for any member of the public to attend and ask a question which could either be responded to at the meeting or followed up by a written response within a specified number of days to the questioner. A copy of the question and response should also form part of the minutes of that meeting to ensure that the wider public can see the questions asked and the response being given.

- b) Council may wish to remove the requirement for political balance on Scrutiny Committees. The possibility of making a requirement that the Chair of Scrutiny be a member of the largest opposition group may wish to be considered.
- c) Alternative proposals to Section 39 – Budget & Policy Framework Procedure Rule.

The Working Group have considered extensively how the budget meeting by the Council should be managed. No agreement has been achieved as yet in relation to this particular part of the Constitution. It is hoped that the Council will agree to the Working Group continuing to meet to deliberate on this matter and request that the three Group Leaders join them for this part of the work.

What is presented in this version of the Constitution is already explained at Section 39. An alternative approach which has also been explored looks towards facilitating a greater debate around the budget earlier in the process while still allowing opportunities for Groups/Members to seek smaller/individual amendments to the proposed Cabinet budget. One option (in simple terms) which could be considered is as follows:-

1. The Cabinet issues its proposed budget 14 days earlier than scheduled currently. Seven days after the release of the proposed budget a Council meeting is called for the purposes of the Leader explaining the budget and the Cabinet's proposals to all Members. The meeting would not undertake any resolutions or make any decisions. It would sit purely as a debating chamber for the purposes of hearing the Cabinet's proposals and rationale for the budget and to allow other Members to put forward other suggestions/ideas to the Cabinet with a request that they consider those suggestions and respond to them when the Council meets subsequently in say 10 days time.
2. The first meeting (the budget debate meeting) would require any Member putting forward a proposal to ensure that the compensatory savings/increased income are identified. For example, were a Councillor to suggest that a particular service should be provided for free or at a reduced cost that Councillor would need to identify where the compensatory income would be found within the budget. The overriding principle for any changes to the budget must mean that the budget is a "balanced budget".
3. The Council reconvenes 10 days after the first debate meeting and the Leader puts forward his budget again (amended if he has considered the previous suggestions acceptable). An opportunity may arise at this stage for political groups to put forward an alternative budget as is already the practice. The

Working Group will need to consider whether or not this is appropriate given that at the earlier budget debating meeting proposed changes should have been presented at that time. A balance needs to be struck between allowing good ideas to be put forward to the Council to amend the budget and also the opportunity for other political groups to present "alternative budget" as part of a democratic challenge to the administration. Clearly this is a matter for further debate and negotiation for the Working Group.

4. At the second meeting, the Council must resolve to either adopt a budget and that budget would then form part of the Council's budgetary framework for the next financial year.

There are several options available in relation to the budget process. Experience at other authorities would indicate that the most common approach is for a budget to be put forward by the administration and at the budget meeting individual amendments which might be seen as "good ideas" from individual Members are presented and voted upon. The risk with this kind of approach is that the number of amendments could be significant and it makes the process of understanding whether or not the net effect of those amendments has an impact on the bottom line budget an impossibility. One alternative approach would be to require all those who wish to put forward an amendment to do so during the pre-budget meeting consultation. In addition, the Shadow Cabinet could attend the Cabinet meeting where the budget is being discussed by the Cabinet and put forward views at that time.

Philip Lloyd-Williams
Director of Governance & Monitoring Officer
22 August, 2008