

## CONSTITUTION WORKING PARTY

Minutes of the meeting of the Constitution Working Party held on Tuesday, 25 October 2022 in the remotely via Zoom at 2.00 pm

**Committee** A Varley (Chairman)  
**Members Present:** T FitzPatrick  
V Gay  
E Vardy

**Officers in Attendance:** Assistant Director for Finance, Assets, Legal & Monitoring Officer  
Democratic Services Manager

### 10 APOLOGIES FOR ABSENCE

Apologies had been received from Cllr L Shires.

### 11 MINUTES

The minutes of the meeting held on 7<sup>th</sup> June were agreed as a correct record.

### 12 ITEMS OF URGENT BUSINESS

None received.

### 13 DECLARATIONS OF INTEREST

None received.

### 14 REVIEW OF WORKING PARTIES

The Chairman invited the Democratic Services Manager to introduce this item. She explained that at the previous meeting of the Constitution Working Party, on 7<sup>th</sup> June, it had been agreed that the guidance and procedures relating to working parties should be reviewed and strengthened to reflect best practice and to ensure a consistent approach. The matter had arisen because the Planning Policy & Built Heritage Working Party had continued to hold its meetings remotely, despite being a public meeting. This was not in line with the Council's other public meetings and it was felt that it would be helpful if a consistent approach could be taken. The Democratic Services Manager said that she had prepared a protocol setting out guidance and procedures for the operation of the Council's working parties and groups. She drew members' attention to the following section of the Constitution, Chapter 5, section 6 – Working Parties, which stated the following:

6.2 *Working parties shall in law be Committees of the Council. The terms of reference of Working Parties shall be specified by the body appointing them as shall their duration or the event on which they shall cease to meet. The continuation of Working Parties shall be reviewed at least annually by the body appointing them and, in the case of those appointed by Committees, the agreement of the Cabinet shall be required for their continuation for more*

*than a year.*

She said that it was proposed that the statement '*working parties shall in law be committees of the Council*' was removed as this was not an accurate reflection of the role and remit of working parties and caused confusion by effectively treating them as having the same status as committees.

Cllr E Vardy sought clarification regarding the attendance of members of the public at meetings of working parties and whether it related to a general 'open' meeting or whether the public were invited to a specific meeting to contribute on a certain issue. He said that he wanted to keep things as simple as possible and asked whether consideration should be given to making all working parties open to the public by invitation only. The Democratic Services Manager replied that the Planning Policy & Built Heritage Working Party held its meetings in public as the Local Plan was of interest to a lot of residents. She agreed that smaller working parties and groups may choose to invite the public to attend for specific matters and said that she would amend the protocol to reflect this.

Cllr V Gay said that the difficulty was that the Planning Policy & Built Heritage Working Party (PPBH) was the anomaly in that it was of importance and interest to the public but also because it didn't make decisions. All of the other public meetings that were committees and decisions were taken. She felt that it would not be appropriate for PPBH to meet in private and invite the public as and when required as the public would not feel that this was acceptable. She went on to say that although PPBH was not making decisions, it was effectively involved in drafting and shaping the Local Plan and if it continued to hold meetings remotely, it was not complying with the approach that was being taken with all of the other public meetings, which were held in person. Cllr Vardy reiterated that it might be helpful to differentiate where a small working group was operating and where public consultation was required. It could be helpful to clarify the type of meeting and the nature of the topic and whether public consultation and input was required.

Cllr T FitzPatrick suggested that the nomenclature could be changed to differentiate between working parties and working groups. The Democratic Services Manager supported this approach. She said that she could reflect this in the protocol and that those bodies working informally or on a task and finish basis could be called groups, whilst those operating on a long-term basis, possibly in the public arena (if required) could be called working parties.

It was proposed by Cllr T FitzPatrick, seconded by Cllr V Gay

**RESOLVED** to recommend to Full Council

1. That the Protocol for Working Parties is approved, subject to the inclusion of the following:
  - The different roles of a working party and a working group will be set out
  - The nomenclature of the body will reflect this, depending on its role.
  - The names of existing working parties or groups will be changed in accordance with the above

2. That the Constitution is updated to reflect any consequential changes.

## **15 REVIEW OF PUBLIC SPEAKING ARRANGEMENTS**

The Chairman invited the Democratic Services Manager to introduce this item. She explained that she had brought forward this item for discussion as there had been several occasions recently where the public had been confused by the existing guidance on public speaking. She said that the current guidance required questions or statements to be submitted 24 hours before the meeting for all committees, with the exception of Development Committee which required 48 hours' notice. In recent months, members of the public who wished to speak at Development Committee had looked at the guidance on the website and assumed that they could submit a request to speak 24 hours in advance and had missed the 48 hour deadline. Although these occurrences had been dealt with, it was causing additional work for the Customer Services team and creating challenges for the effective management of the Development Committee meeting. It was therefore proposed that the differing deadlines were reviewed and if possible, aligned. She suggested that the requirement should be 48 hours across all committees.

The Chairman said that he supported the proposals. By putting in place a 48 hour notice period for the public who wished to speak at committee meetings, it would assist the Customer Services team and ensure that a clear, consistent approach was taken.

Cllr V Gay said that she was supportive of the proposals. She felt that 48 hours' notice was a reasonable amount of time and ensured that members of the public were treated fairly.

Cllr E Vardy commented that he would be wary of allowing the Chairman to use their discretion to allow questions at short notice, as suggested by the Democratic Services Manager. He said that it may be worth advising committee chairmen that it should only be used in exceptional circumstances to ensure that the intention to introduce a consistent approach was not undermined. The Chairman agreed, however, said it could be appropriate in limited circumstances for the chairman to allow a late question.

Cllr T FitzPatrick said that he was supportive of introducing 48 hours' notice for public questions across all committees, however, as the meetings were held at different times of the day, it might be beneficial to be more precise about the deadline – for example by 4pm two working days prior to the meeting. That way, a clear cut off time would make it easier for the Democratic Services Team to manage. The Democratic Services Manager agreed with this suggestion and said that the web page for each committee could be updated to state the deadline for public speaking submissions.

It was proposed by Cllr E Vardy, seconded by Cllr T FitzPatrick and

### **RESOLVED**

To recommend to Full Council that public questions and statements are submitted two days in advance of a meeting, with the deadlines for each committee to be clearly set out on the Council's website and that the Constitution and accompanying guidance is amended to reflect this.

## 16 PROPOSED AMENDMENTS FOR CONTRACT PROCEDURE RULES

The Chairman invited the Monitoring Officer to introduce this item. She explained that the report outlined recent legislative changes to procurement matters and sought approval to make amendments to Contract Procedure Rules (CPR). It was intended to strengthen the procurement process within the Council, increasing expenditure thresholds to include VAT and add an additional discretionary amount as well as updating terms to remove references to EU procurement rules following Brexit. She concluded by saying that she anticipated further changes as procurement legislation went through Parliament. She outlined the proposed amendments to the Constitution, which were included in the report as tracked changes and then spoke about the options for amending the expenditure thresholds. She set out three options – to maintain the current threshold, to increase the thresholds in line with VAT and to increase them in line with VAT plus an additional discretionary amount to cover inflation. She concluded by saying that she had included some examples of thresholds at neighbouring authorities.

The Chairman invited members to speak:

Cllr E Vardy said that he had some concerns regarding the terminology, specifically 'discretionary amount'. He felt that it would be helpful to include additional detail explaining what it was for. The Monitoring Officer replied that it was to cover inflationary costs. She added that it was important that members considered including VAT as a minimum. Cllr Vardy thanked her for her comments and said that he felt that an explanation would be beneficial and the inclusion of a maximum amount.

The Chairman asked whether other local authorities were also reviewing their thresholds. The Monitoring Officer said that she was not sure but she would expect so.

Cllr V Gay referred to Appendix 3 which set out the thresholds currently used by neighbouring authorities. She queried why the lower figure of £15k was suggested for NNDC as this was different to other Norfolk councils. Cllr Gay added that she did not understand the definition of 'liquidated damages' and asked if an explanation could be provided. She then referred to the tracked changes set out on page 35, specifically the reference to UK Procurement Thresholds and then the removal of the £100k and above threshold. She asked whether this meant that it was proposed that there would be no upper limit about £75k.

The Monitoring Officer replied that South Norfolk & Broadland District Council was more generous, with Breckland DC and Great Yarmouth Borough Council having much lower thresholds. She said that £15k sat in the middle. Regarding the £75k to the upper limit, she said that she would need to spend more time looking into this and would provide an explanation shortly.

Cllr T FitzPatrick said that he had no issue with the proposed uplifted amounts. He referred to page 45 and the first box which referred to 'no minimum number of quotations'. He suggested that this was amended to state 'minimum of three written quotations must be requested'. This would show transparency and if only one was received then it could be demonstrated that three had been requested. The Monitoring Officer replied that she had some concerns that this could be onerous for very small amounts. Cllr FitzPatrick suggested that a lower level of £1500 could be included. He proposed that the following wording could be inserted (removing the word 'obtain') 'request three written quotations above £1500'.

The Chairman agreed with this proposal. He said that it was about demonstrating that the Council had gone through a robust process. He asked the Monitoring Officer if £1500 was too low. She replied that it could state 'a single quotation is required for up to £5k and three written quotations are requested between £5k and £10k'. The Chairman then asked if the report had been shared with the Portfolio Holder. She confirmed that it had.

Cllr E Vardy commented that his earlier query regarding clarification on the definition of an 'additional discretionary amount'. He felt that this would protect both officers and members. The Monitoring Officer replied that it could state 'to reflect inflation and increasing costs'. Cllr FitzPatrick agreed that this would be beneficial. The Chairman suggested that it could be a percentage amount and also be capped. Cllr Vardy proposed that the S151 Officer could offer advice on an appropriate level. The Monitoring Officer replied that she had shared the report with the S151 Officer and they were supportive of the proposals.

Cllr V Gay referred to her previous comments regarding page 35 and sought clarification on the £75k and above to the UK procurement threshold. The Monitoring Officer said she would check and provide a written response after the meeting. it was possible that the wording needed to be removed.

Cllr T FitzPatrick referred to page 40 paragraph 16.4 'Tenders over the value of £74,999 must be returned electronically via the Council's e-tendering system' and asked whether the specific amount needed to be included as it would be preferable to encourage all tenders to be submitted electronically. The Monitoring Officer replied that she thought it was to comply with the new table for the Contract Procedure Rules (CPR). She added that any tender could be submitted electronically.

Cllr T FitzPatrick referred to page 45 and said that the proposals clearly specified a figure and that it was not actually a discretionary amount as indicated in the report. Once it was agreed and recommended to Full Council then it would be an agreed amount. The Monitoring Officer concurred, adding that she had meant that the chosen figure was at members' discretion.

It was proposed by Cllr T FitzPatrick, seconded by Cllr E Vardy and

**RESOLVED** to recommend to Full Council

To update the Contract Procedure Rules to reflect UK legislation, removing reference to EU law and increase expenditure thresholds to include VAT and an additional amount which takes into account inflation (as set out in Appendix 1)

That for contracts under £5k, a single quotation will be required and that three written quotations will be requested for contracts between £5k and £10k.

## 17 **CONSTITUTION REVIEW**

The Monitoring Officer introduced this item. She explained that at the last meeting of the Constitution Working Party, there had been a discussion about undertaking a full review of the Council's constitution as there had not been a full review since it was adopted in 2012. Over time, small amendments had been made as and when required but there had not been any substantial work. It had therefore been agreed that officers would contact possible consultants to ascertain the likely cost of such

work. It was anticipated that, if members were supportive of the review being undertaken, that it would be completed in time for the AGM in May 2023.

The Democratic Services Manager said that she had contacted three consultants. A provider who had previously worked with the Council on standards and governance matters, a law firm specialising in local government law and the Local Government Association (LGA). All three had provided a rough indication of costs, with the law firm quoting about £30k and the consultant between £12k - £15k. The LGA had offered to provide funding to cover half of the cost of the work and would outsource it to the Centre for Governance & Scrutiny (CfGS). The offer of funding was likely to bring the cost down to below £10k. It was therefore proposed that the LGA was commissioned to undertake this work, if members were supportive.

Cllr FitzPatrick sought clarification on whether it was the East of England LGA which had provided the quote, as he had previously chaired that organisation and may need to declare an interest. The Democratic Services Manager replied that the initial contact had been via EELGA but that it had been referred onto the national body. Cllr FitzPatrick said that he was supportive of the LGA undertaking the work.

Cllr V Gay agreed, saying that she also favoured the LGA offer. She said that it was disappointing that it could not be done in-house as she strongly believed that the constitution reflected the custom and practice of an authority. She said that she would like to request a couple of things were considered as part of the review and she would share these ahead of the work starting. Cllr Gay said that it was important that training on the constitution was provided as part of the package. She added that she would also like to request that the Constitution Working Party met with the consultants before the work started to talk through the key objectives of the review and to highlight any particular areas that needed attention. She also asked that a comprehensive index was included.

Cllr V Gay then spoke about Chapter 5, section 13.1, which was a matter she had raised at previous meetings. She said that she still had some concerns about the revised wording as it still seemed to be at odds with the access to information provisions. She said that any member that did not want to use a matter for political purposes, should be able to explain why a meeting was of interest to them and be able to attend. She did not support members being excluded from meetings.

The Chairman said that he was supportive of the LGA undertaking the work. He said that they had a good understanding of local authorities and what was needed. He also supported a pre-meeting with the LGA before the work began. He agreed that training was very beneficial.

The Democratic Services Manager thanked members for their comments. She said that the LGA was keen to meet with the Constitution Working Party both before and during the work. She agreed with the suggestion that training should be provided and this had also been raised when the initial brief was discussed with the three potential providers. If the work was completed in time for May 2023, then training could be incorporated into the Members' Induction Programme. She went onto say that she was fully supportive of having a comprehensive index and there had been a discussion with the LGA about pulling the standing orders out of the constitution so that they were easily accessible in one place.

Cllr Vardy commented that it would be helpful to have an initial meeting with the LGA to outline the brief. He added that it might be best to share the draft version with all members before it went to Full Council for final approval, this may provide an opportunity to flag up any concerns.

Cllr V Gay sought clarification on the process and said that when a draft version was

shared with Constitution Working Party members, perhaps all members could be offered the opportunity to see it at that point.

The Democratic Services Manager agreed and suggested that all members could be invited to be involved in the process, certainly in the latter stage. Being open and engaging throughout the process could only be beneficial to ensuring that it received support when the final version was presented to Full Council for approval.

It was proposed by Cllr T FitzPatrick, seconded by Cllr V Gay and

**RESOLVED** to recommend to Full Council

That a review of the Constitution is undertaken and that the preferred provider for undertaking this work is the Local Government Association in partnership with the Centre for Governance & Scrutiny

## **18 UPDATES TO THE CONSTITUTION**

The Monitoring Officer began by referring to the suggested revision to the wording for Chapter 5, section 13.1:

### **Current excerpt from Constitution, Chapter 5, para 13.1**

#### **13. Attendance of other members of the Council**

- 13.1 A Member who is not a Member of the particular Committee or Sub-Committee may attend all meetings of any Committee or Sub-Committee, save that he/she shall withdraw from any part of a meeting from which the Committee or Sub-Committee excludes press and public unless specifically invited to remain by the Chairman because of the special contribution which he/she can bring to the issue under consideration.

### **Proposed amendments to para 13.1**

#### **13. Attendance of other members of the Council**

- 13.1 A Member who is not a Member of the particular Committee or Sub-Committee may attend all meetings of any Committee or Sub-Committee, save for where the Chairman of the Committee considers an item to be particularly sensitive, including, but not limited to where such item involves the personal information of a specific employee. Where the Chairman considers the item to be particularly sensitive, he/she shall require Members who are not Members of that Committee to withdraw from any part of a meeting from which the Committee or Sub-Committee excludes press and public, unless specifically invited to remain by the Chairman because of the special contribution which that Member can bring to the issue under consideration.

She explained that she intended to provide more flexibility by ensuring that the decision to exclude a member sat with the Chairman.

Cllr V Gay said that she did not feel that there should be a blanket circumstance

where non-committee members were excluded from a meeting just because exempt information was being discussed. They should be able to stay in the meeting and observe proceedings unless there was a very compelling reason for them to leave. The Chairman agreed with Cllr Gay's comments. Cllr Gay said that it was not always the case that a member had a special contribution to bring to a meeting, it may be that they just want to observe the meeting.

Cllr Gay said she would be supportive of the revised wording if 'require' was changed to 'request'. She acknowledged that the constitution would be reviewed in the coming months and said that further changes to this section could be considered then.

Cllr T FitzPatrick requested that this specific matter was looked at when the review of the constitution was undertaken.

It was proposed by Cllr T FitzPatrick, seconded by Cllr V Gay and

**RESOLVED** to recommend to Full Council

That Chapter 5, section 13.1 of the constitution is amended to state:

*A Member who is not a Member of the particular Committee or Sub-Committee may attend all meetings of any Committee or Sub-Committee, save for where the Chairman of the Committee considers an item to be particularly sensitive, including, but not limited to where such item involves the personal information of a specific employee. Where the Chairman considers the item to be particularly sensitive, he/she shall require Members who are not Members of that Committee to withdraw from any part of a meeting from which the Committee or Sub-Committee excludes press and public, unless specifically invited to remain by the Chairman because of the special contribution which that Member can bring to the issue under consideration.*

The Monitoring Officer then outlined the minor amendments that she wanted to make to the constitution. Most of them related to legislation that was out of date and needed to be amended. The section on the scope of delegation had also been updated to allow senior officers to authorise another officer to exercise a delegated power on their behalf. The proposed changes had been included in the agenda. Members agreed to note the amendments.

The Chairman thanked everyone for their contribution to the meeting.

The meeting ended at 3.53 pm.

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Chairman