

**Ward:** All

**Portfolio:** Cross-Cutting

**FROM:** Monitoring Officer **Date: 27 September 2021**

**SUBJECT: Proposed Changes to the Council's Constitution**

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<b>Report Sign off</b>	<b>Seen by:</b>	<b>Name</b>	<b>Date</b>
	Legal	Lesley Dolan	15/09/2021
	Finance	Richard Bates	16/09/2021
	Chief Executive Officer	Stuart Brown	16/09/2021
	Head of Service	N/A	
<b>Summary:</b>	<p>Pursuant to Section 4 of the Council's Constitution the Council is required to approve any changes to the Constitution as detailed in this report. The proposed changes can be summarised into 3 main areas:</p> <ol style="list-style-type: none"> <li>1. General procedural alterations and clarifications</li> <li>2. Minor changes to the Planning Scheme of Delegation, Section 19 Part D, to align it with proposed changes to the Appendix D – Code of Good Practice for Planning Procedure and Appendix K – Planning Application Decision making Process.</li> <li>3. Revisions to Section 21 – Contract Procedure Rules following the in-sourcing of the procurement service in January 2021.</li> </ol>		
<b>Recommendation:</b>	<p>That Council is asked to:</p> <ol style="list-style-type: none"> <li>1. Agree to the proposed changes to the Constitution as detailed in this report.</li> </ol>		
<b>Direct and/or indirect impact on service delivery to our customers and communities</b>	<p>The Constitution ensures our customers and communities are clear on the Council procedures, which ensure decisions are taken efficiently and openly.</p>		
<b>Financial Implications:</b>	<p>There are no specific financial implications arising from the report.</p>		
<b>Climate Change Risks and Opportunities:</b>	<p>There are no climate change implications arising from this Report</p>		
<b>Legal Implications:</b>	<p>The Local Government Act 2000 requires the Council to have and maintain a Constitution.</p>		

<b>Crime and Disorder Implications:</b>	There are no crime and disorder implications identified.
<b>Equalities Implications:</b>	There are no specific equality considerations that need to be taken into account in relation to this report.
<b>Risk Assessment and Adverse Impact on Corporate Actions:</b>	There is an evident risk if the Council's Constitution does not reflect best practice, its processes and internal arrangements. The proposed changes to the Constitution seek to improve processes, provide clarification and align it to existing practice and thus mitigate risk.

## **INTRODUCTION**

Changes to the Constitution are made throughout the year by the Council through its consideration of matters referred to it by the Monitoring Officer. In addition, the Monitoring Officer also has delegated authority to make amendments to the Constitution during the course of the year.

It is a constitutional requirement whereby each year, the Council (at its annual meeting) must adopt its Constitution for the forthcoming year.

Due to the large size of the Constitution, it has not been included with the agenda, but is available at <http://www.mendip.gov.uk/constitution>.

## **KEY UPDATES TO THE CONSTITUTION**

A thorough review of the Constitution took place during 2019 and the resultant changes were approved by Full Council in February 2020. The proposed changes detailed in this report can be summarised into 3 main themes:

1. General procedural alterations and clarifications
2. Minor changes to the Planning Scheme of Delegation, Section 19 Part D, to align it with proposed changes to the Appendix D – Code of Good Practice for Planning Procedure and Appendix K – Planning Application Decision making Process.
3. Revisions to Section 21 – Contract Procedure Rules following the in-sourcing of the procurement service in January 2021.

The general procedural alterations and clarifications were presented to Annual Full Council in April where they requested that Standards Committee undertake a further review of the proposals. This took place on 28 July 2021 and the revised proposals within this section reflect the Committee's observations.

At the same meeting, and following a request from the Planning Board, the Standards Committee also undertook a thorough review of the proposed changes to Appendices D & K of the Constitution. The Standards Committee subsequently recommended that Planning Board adopt the amendments to the appendices, which they have the authority to do under para 1.4.1 of the Constitution, and the Board are scheduled to consider this at their September meeting. Other than minor changes only Full Council can approve alterations to the Constitution therefore theme 2 addresses proposed changes to the Planning Scheme of Delegation. However, these changes simply mirror the changes proposed to Appendices D & K to ensure consistency across the 3 documents.

Theme 3 addresses proposed updates to Section 21 of the Constitution: The Contract Procedure Rules. This document has not been reviewed for a number of years as a result of the proposed outsourcing of the Procurement service under the 5 Councils Contract and subsequent transfer in 2015/16. Following the return of the service to Mendip District Council in January 2021 the opportunity has been taken to ensure the document is updated and fit for purpose. The emerging CPR's have been produced in consultation with the Scrutiny Contracts Working Group who have commented on various iterations and endorse the version presented in Appendix 2 of this report.

## PROCEDURAL ALTERATIONS AND CLARIFICATIONS

The following table highlights the sections of the Constitution which are proposed to be amended, providing details of the proposed alteration and the rationale.

Ref	Current	Proposed (Highlighted)	Comment
4.7.3	Formal Questions at Full Council – list of criteria whereby the Chief Executive may reject a question.	Add <ul style="list-style-type: none"> <li>Is already the subject of a complaint</li> </ul>	This ensures that the Council's adopted complaints process is followed and formal questions to Full Council are not used to circumnavigate this process.
5.2.1	The Cabinet consists of the Leader of the Council, the Deputy Leader and up to eight other members all appointed by the Leader. Further details relating to the Leader, Deputy Leader and members of the Cabinet are given in Section 7.	The Cabinet will comprise of a maximum of ten members, consisting of the Leader of the Council, who will appoint the Deputy Leader(s) and the remaining other members. Further details relating to the Leader, Deputy Leader(s) and members of the Cabinet are given in Section 7.	Provides clarity as to the make-up of Cabinet and addresses potential misinterpretation that DL's are not appointed by the Leader.
5.2.2	Neither the Chair nor the Deputy Chair of the Council may be appointed to the Cabinet.	Neither the Chair, the Deputy Chair of the Council or any members serving on Scrutiny Board may be appointed to the Cabinet.	Mirrors the restrictions present within Section 8 – Scrutiny Board
5.4.1	The Leader may put on the agenda of any Cabinet meeting any matter which he/she thinks that the Cabinet should consider	The Leader may put on the agenda of any Cabinet meeting any executive matter which he/she thinks that the Cabinet should consider	Provides clarity on the remit of Cabinet in that it should only be considering Executive matters
6.0	Local Choice Functions includes 'Best Values Reviews'	Remove - The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under section 5 of the Local Government Act 1999.	No longer relevant

10.3.3	Licensing Sub-Committee  Additional para	Members will be unable to serve on a Licensing Sub-committee which is considering applications from within their ward.	This is presently custom and practice as regards Licensing Sub - committees. The amendment will align the Constitution with current practice.
11.2.1	The Standards Committee shall comprise of 8 elected members of the Council appointed proportionally to include 1 member of the Cabinet, two dual hatted members (i.e. parish and district) and 1 member of the opposition.	The Standards Committee shall comprise 8 elected members of the Council appointed proportionally to include at least 1 member of the Cabinet, two dual hatted members (i.e. Parish and District) and 1 member of the opposition.	Clarifies that the membership of the Standards Committee is not restricted to a single Cabinet Member which was a potential misinterpretation of the previous wording.
15.5.1	However, members may speak about any issue which is relevant to the Council body holding the meeting, and which they think that body should consider at a later meeting, under the agenda item 'Suggestions for Future Business'.	However, members may speak about any issue which is relevant to the Council body holding the meeting, and which they think that body should consider at a later meeting, under the agenda item 'Suggestions for Future Business' or under the relevant Forward Plan.	It is custom and practice to include the Forward Plan as an agenda item rather than 'Suggestions for Future Business' This change simply confirms current practice.
15.5.9 c	Due to the restrictions referred to in paragraph (4) below	Due to the restrictions referred to in paragraph (d) below	Correct reference should be to paragraph (d) rather than (4)
15.7.1	<ul style="list-style-type: none"> <li>either notify the Committee Officer at least three hours before the start of the meeting, or</li> </ul>	<ul style="list-style-type: none"> <li>either notify the Committee Officer by 12 noon on the day of the meeting, or</li> <li>complete the on-line form by 12 noon on the day meeting.</li> </ul>	These changes to the public speaking notification process will allow the meeting

	<ul style="list-style-type: none"> <li>complete the form which will be in, or immediately outside, the room where the meeting is going to take place and hand this to the Committee Officer before the start of the meeting.</li> </ul>		updating to be distributed in good time.
15.7.3	<p>Members of the public, at the Chair's discretion, may make representations about any matter which is not on the agenda for the meeting. Any matters raised cannot be debated at the meeting but may be referred to a future meeting.</p>	<p>Members of the public, at the Chair's discretion, may make representations about any matter which is not on the agenda for the meeting. Any matters raised cannot be debated at the meeting but may be referred to a future meeting.</p> <p>In any event, requests to speak under paras 15.7.1, 15.7.2 and 15.7.3 may be rejected or terminated if it:</p> <ul style="list-style-type: none"> <li>is not about a matter for which the local authority has a responsibility, or which affects the District</li> <li>is defamatory, frivolous or offensive</li> <li>is substantially the same as a matter which has been put at any meeting of the Council in the past six months and there has been no material change in circumstances in the meantime.</li> <li>requires the disclosure of confidential or exempt information.</li> <li>Is the subject of a formal complaint.</li> <li>relates to employment or industrial relations issues concerning the Council in its role as employer.</li> </ul>	<p>These changes bring the criteria for managing public speaking into line with those applied to Motions and seeks to avoid the same issue being raised repeatedly or inappropriately.</p>
17.4.1 d	any other executive decision if it is so urgent that any delay likely to be caused by the	any other executive decision if it is so urgent that any delay likely to be caused by the call-in process would seriously prejudice the interests of the Council or the public.	The Leader/Deputy Leader will inevitably have a vested interest in <i>executive</i>

	<p>call-in process would seriously prejudice the interests of the Council or the public.</p> <p>In this case, the Chair of the Council and Leader must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency.</p> <p>In the absence of the Chair, the Deputy-Chair's consent shall be required, and in the absence of the Leader, that of the Deputy Leader. If either the Deputy-Chair or the Deputy Leader is also absent, the Chief Executive's or Deputy Chief Executive's consent shall be required.</p>	<p>In this case, the Monitoring Officer in consultation with the Chair of Scrutiny must agree that (i) the decision proposed is reasonable in all the circumstances and that (ii) it is a matter that needs to be treated as one of urgency.</p> <p>In the absence of the Chair of Scrutiny, the Deputy-Chair or the Chair of Council will be consulted.</p> <p>In the absence of the Monitoring Officer the Deputy Monitoring Officer will consult with relevant members listed above.</p>	<p><i>decisions;</i> therefore, it is appropriate to distance them from any call-in waiver in respect of urgent decisions in favour of the Monitoring Officer and Chair of Scrutiny.</p>
19 Part B 1.7	<p>In cases of urgency or emergency, and after consultation with the Leader where reasonably practicable, to incur any expenditure or take any decision on behalf of the Council where in</p>	<p>In cases of urgency or emergency, or in exceptional circumstances where meetings of the relevant committee/board are unable to be held, and after consultation with the Leader where reasonably practicable, to incur any expenditure or take any decision on behalf of the Council where in his/her opinion it would be impractical to implement the normal decision-making procedures.</p>	<p>This widens the Chief Executive's delegation that allows decisions still to be made if Committees/Boards are unable to meet for whatever reason, rather than limiting it to</p>

	his/her opinion it would be impractical to implement the normal decision-making procedures		cases of urgency or emergency. This situation arose in April 2020 and again in May 2021. The wording confirms that formal meetings will always look to be held unless exceptional circumstances persist
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**MINOR CHANGE TO THE PLANNING SCHEME OF DELEGATION**

The following table highlights the minor change proposed to the Planning Scheme of Delegation. As discussed above the Standards Committee considered a number of changes to Appendices D & K of the Constitution at their recent meeting and have made a recommendation to Planning Board to adopt these revisions. This proposed change to the main body of the Constitution simply mirrors the changes to the appendices to ensure consistency across the 3 documents.

Ref	Current	Proposed (Highlighted)	Comment
3.1	<p>a) Matters which are referred to the Board in accordance with the Council's Planning Application Decision Making Process as approved by the Board from time to time;</p> <p>b) Where the application is made by a member of the Council or by any of the Council officers listed below, or it involves land owned by any of them:</p>	<ul style="list-style-type: none"> <li>• Proposed (Highlighted)</li> <li>• Where the following situations exist: <ul style="list-style-type: none"> <li>i. The applicant is a member of the Council</li> <li>ii. The applicant is one of the Council Officers listed below: <ul style="list-style-type: none"> <li>• Members of the Council's Corporate Management Team;</li> <li>• Members of staff employed in the Planning and Growth Service;</li> <li>• Where the applicant is directly related or a close friend of a member of staff in the Planning and Growth Service;</li> </ul> </li> <li>• Any other employee who has any involvement with the planning process in the course of their duties.</li> <li>iii. The application involves land owned by i and ii above</li> <li>iv. Where a member of the Council or an officer is personally</li> </ul> </li> </ul>	<p>The list of exemptions has been amended to reflect the changes to section 2 of Appendix D to align our guidance with the national guidance produced by the Local Government Association and Planning Advisory Service entitled Probity in Planning (Advice for councillors and officers making planning</p>



	<ul style="list-style-type: none"> <li>Members of the Council's Strategic Leadership Team;</li> <li>Group Managers of each service area of the Council;</li> <li>Members of staff employed in the Planning and Growth Group;</li> <li>Where the applicant is directly related or a close friend of a member of staff in the Planning and Growth Group;</li> <li>Any other employee who has any involvement with the planning process in the course of their duties.</li> </ul> <p>c) Where a planning application is for development within Areas D, E and J of the Masterplan for Commerce Park.</p>	<ul style="list-style-type: none"> <li>involved as agent, consultant or in any other advisory capacity.</li> <li>Matters which the Planning and Growth Head of Service considers should be considered by the Board such as: <ul style="list-style-type: none"> <li>Due to their size, nature or impact, or for any other reason, including (following consultation with the Monitoring Officer) probity;</li> <li>Where the Officer's recommendation is for approval, but this would represent a significant departure from the Council's approved development policies;</li> <li>Where a planning application is for development within Areas D, E and J of the Masterplan for Commerce Park. <a href="#">(link to map)</a>;</li> <li>The revocation of any planning or other permission, with or without the payment of compensation by the Council.</li> </ul> </li> </ul>	<p>decisions). Clearer wording.</p> <p>Improved consistency across the three documents - they now mirror each other.</p> <p>Includes clarity in relation to probity as a result of amendments to Appendix D outlined below.</p> <p>The automatic requirement for departure applications to go to Planning Board, where they are being recommended for approval has been amended - it is now proposed to be at the discretion of the Planning and Growth Head of Service.</p> <p>A link to the map of the masterplan for Commerce Park needs to be added to all three documents before publication.</p>
3.2	The powers delegated under this Scheme shall also be subject to	The powers delegated under this Scheme shall also be subject to the general limitations and exclusions set out in Section 19 Part	To provide consistency across the three

	the general limitations and exclusions set out in Section 19 Part A	A and Appendix K - Planning Application Decision Making Process.	documents.
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## REVISIONS TO SECTION 21 – CONTRACT PROCEDURE RULES

Following the insourcing of the procurement service from Capita to the Council on 1 January 2021 the opportunity has been taken to review our Contract Procedure Rules (CPRs) as set out in Section 21 of the Constitution. These various changes and updates are proposed to ensure the document is fit for purpose and represents best practice. The changes also align the CPRs to the new insourced Procurement operating model and the text has been updated to reflect the UK's withdrawal from the EU.

While a tracked changes version and a clean version of section 21 are included at appendix 1 & 2 respectively, the principal changes to the CPR's can be summarised as follows:

- Sourcing, quoting and tendering activity built around the new Procurement team, and managed as a sliding scale dependent upon project value:
  - **Low value** – 'self-serve' managed by the individual Service teams with input and advice from the Procurement team.
  - **Medium value** – managed by agreement between the Service teams and the Procurement team.
  - **High value** – managed by the Procurement team.
- Content updates reflecting the latest UK Procurement suite of legislation and guidance.
- Process updates to ensure compliance with Transparency Act 2015 obligations.
- Changes to reflect the fact that the Procurement Service will sit within the recently insourced Finance team under the Section 151 Officer.
- Environmental, social and enterprise value to be written into the sourcing activity where appropriate.
- Aligning processes with new internal systems e.g.
  - The use of pro-contract (industry standard tendering tool) for quotes/tendering above specific values.
  - Electronic signature of any digital contracts produced by the MDC legal team.

The revised Section 21 has been produced in collaboration with the Scrutiny Contracts Working Group and our in-house legal team.

## RECOMMENDATION

That Council:

1. Agree to the proposed changes to the Constitution as detailed in this report.

## REASON FOR RECOMMENDATION

Pursuant to Sections 1 & 4 of the Council's Constitution the Council is required to approve and changes to the Constitution.

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Appendix 1 – Tracked Changes version of Section 21 – Contract Procedure Rules

Appendix 2 – Clean version of the revised Section 21 – Contract Procedure Rules

**Background Papers – the Council's Constitution**