



GOVERNANCE COMMITTEE

REPORT

9 November 2011

Subject Heading:	AMENDMENTS TO THE CONSTITUTION
Report Author and contact details:	Ian Burns Acting Assistant Chief Executive, Legal & Democratic Services – 2442
Policy context:	Constitutional amendments
Financial summary:	There are no relevant financial implications

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

1. While the Monitoring Officer has the power to make amendments to the Constitution in certain limited circumstances other amendments are dealt with under Part 1 Article 4.02 paragraph (a) of the Constitution, which provides that only the Council will exercise the function of adopting and changing the Constitution.
2. Part 3 Section 1 paragraph 1.2 of the Constitution provides that this Committee will
 - a. monitor and review the operation of the Constitution to ensure that the views and principles of the Constitution are given full effect
 - b. make recommendations to the Council about amending the Constitution

3. Recent applications of the Constitution have identified a number of areas where small amendments or additions to various delegated powers would assist the delivery of the Council's work.

RECOMMENDATIONS

Governance Committee recommend to Council the amendments as set out in the body of this report.

REPORT DETAIL

- A. To amend Part 3 Section 2.5 Para (q) of the Constitution – powers of Cabinet Members - which currently states:-

(q) To approve applications for the submission of bids for grants and other financial assistance which require the provision of additional finance or match funding or are likely to lead to residual costs or implications for the Council

by adding at the end:-

"or where the amount of the grant application exceeds £500,000".

This is to complement the authority already delegated up to £500,000 to a Director in consultation with the relevant cabinet member under Part 3 Section 3.3 of the Constitution

- B. To amend Part 3, Section 2.5 paragraph (t) – powers of Cabinet Members – which currently states:

(t) To approve the 'in principle' decision of the Council disposing of an interest in property or land where the disposal or acquisition receipt is not considered likely to exceed £1,000,000.

by adding after 'Council disposing':

"or acquiring"

While it is unusual now for the Council to acquire land, the situation has arisen and the amendment would simplify the internal authorisation process while retaining Member control of the issue.

- C. To amend Part 3, Section 3.6.5 of the Constitution – powers of the Head of Regeneration, Policy & Planning – adding:

(q) To lead and co-ordinate the Council's corporate equalities and diversity programme, and to advise the Council on statutory and non-statutory equalities and diversity issues.

This is to reflect the extended equalities obligations that the Council has as a result of the Equalities Act 2000.

- D. To amend Part 3, Section 3.8.1 of the Constitution – powers of the Assistant Chief Executive, Legal & Democratic Services – by adding:

(2a) To authorise Council staff to represent the Council in proceedings in the County Court and the Magistrates Court”.

Councils have particular powers to be represented in the County Court and Magistrates Court by non-legally qualified staff. This currently happens with staff dealing with Council Tax and other debts. The delegation of this power would simplify the authorisation process for appointing new staff to undertake such activities

- E. To amend Part 3 Section 3.7.6 of the Constitution – powers of the Head of Development & Building Control – by adding

(b) (xiv) to decide all proposals under the advertisement regulations and applications for external building alterations including shop-fronts in respect of LBH submitted applications which, were they not Havering properties, would be determined under staff delegated powers.

These applications are routinely brought to Regulatory Services Committee solely because of the Council's interest in the property. They very rarely generate any neighbour responses and / or concerns about impact on their surroundings including amenity. In terms of risk, the inclusion of such applications on the Committee agenda adds unnecessarily to the Committee business and is disproportionate to the extremely low risk of the Council acting, or being perceived to act, improperly in the determination of such proposals.

The delegation procedure would continue to have a Call - in facility through which any Member can exceptionally request that an application falling within the above category be brought to Committee for its decision, thereby providing a safeguard in the process.

- F. To amend Part 3 Section 3.7.6 (l) of the Constitution – powers of the Head of Development & Building Control that currently states:

(l) To determine the making of tree preservation orders and applications for the topping, lopping and felling of trees where the trees are covered by a confirmed tree preservation order, to serve Tree Replacement Notices, to waive the requirement to replace trees where appropriate to determine applications under High Hedges legislation (Anti Social Behaviour Act 2003 [Part 8]) and undertake any related legal or direct action arising from such application, including issuing of Remedial Notices.

by replacing with:

“ (l) To determine the making of Tree Preservation Orders and applications for the topping, lopping and felling of trees where the trees are covered by a Tree Preservation Order; to confirm or revoke Tree Preservation Orders; to waive the requirement to replace trees where appropriate; to serve Tree Replacement Notices when necessary; to determine applications under High Hedges legislation (Anti Social Behaviour Act 2003 [Part 8]) and undertake any related legal or direct action arising from such applications, including issuing of Remedial Notices.”

Deletion of "confirmed" (from line 2) is to ensure that the service can issue consents before orders are confirmed in cases where action needs to be taken quickly, for example where trees are found to be causing damage or causing a legal nuisance. It will also help the service to issue a consent which could allay a householder's anxieties about the size of a tree which would otherwise cause them to object to an order which leads in turn to a formal objection to a new TPO - which in turn uses up staff time and adds to the Council's operational costs.

The addition of the power to revoke a tree preservation order (line two) is to streamline the Council's administrative procedures. Some TPOs become redundant over time when the trees they protect cease to exist but the orders themselves still exist as legal entities unless revoked. At present the matter can only be dealt with by a non-executive report, which is time consuming and unnecessarily expensive way of dealing with what should be straightforward administrative matter.

IMPLICATIONS AND RISKS

*There is a **corporate** requirement to set out the implications and risks of the decision sought, in the following areas*

Financial implications and risks: There are no specific financial implications

Legal implications and risks: There are no relevant legal implications

Human Resources Implications and risks: There are no relevant HR implications

Equalities implications and risks: There are no relevant equality implications

BACKGROUND PAPERS

There are none