

AGENDA



For a meeting of the
CONSTITUTION COMMITTEE
to be held on
MONDAY, 24 SEPTEMBER 2012
at
10.30 AM
In the
WITHAM ROOM, COUNCIL OFFICES, ST PETER'S HILL, GRANTHAM
Beverly Agass, Chief Executive

Group Members:	Councillor Ray Auger, Councillor Susan Sandall, Councillor Rob Shorrocks, Councillor Adam Stokes (Vice-Chairman) and Councillor Raymond Wootten (Chairman)
Portfolio Holders:	Councillor Paul Carpenter (Governance and Communication Portfolio)
Support Officer:	Lucy Bonshor 01476 40 61 20 l.bonshor@southkesteven.gov.uk

Members of the Group are invited to attend the above meeting to consider the items of business listed below.

1. MEMBERSHIP

The Committee to be notified of any substitute members.

2. APOLOGIES

3. DISCLOSURE OF INTERESTS

Members are asked to disclose any interests in matters for consideration at the meeting.

4. MINUTES OF THE MEETING HELD ON 28TH MAY 2012

(Enclosure)

5. AMENDMENTS TO THE CONSTITUTION

(i) MOTIONS ON NOTICE – Council Procedure Rule 12
Report LDS074 by the Chairman of the Constitution Committee
(Enclosure)

**(ii) AMENDMENTS TO THE CONSTITUTION – LOCALISM ACT -
MEMBERS CODE OF CONDUCT AND INTERESTS**
Report LDS075 by the Head of Legal and Democratic Services
(Enclosure)

(iii) NEIGHBOURHOOD PLANS - DELEGATION
Report PLA948 by the Planning Policy and Partnerships Service Manager
(Enclosure)

**(iv) THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS)
(MEETINGS AND ACCESS TO INFORMATION) (ENGLAND)
REGULATIONS – Report LDS076 by the Head of Legal and Democratic
Services.**
(Enclosure)

**6. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASONS OF
SPECIAL CIRCUMSTANCES, DECIDES IS URGENT**

MINUTES

CONSTITUTION COMMITTEE
MONDAY, 28 MAY 2012



COMMITTEE MEMBERS PRESENT

Councillor Ray Auger
Councillor Rob Shorrock

Councillor Adam Stokes (Vice-Chairman)
Councillor Raymond Wootten (Chairman)

OFFICERS

Head of Legal and Democratic Services (Lucy Youles)
Democratic Officer (Lucy Bonshor)

1. APOLOGIES

An apology for absence was received from Councillor Susan Sandall.

2. DECLARATIONS OF INTEREST

Councillor Wootten and Councillor Adam Stokes declared a personal interest in agenda item 6 as the County Council had agreed their Member Code of Conduct at their Annual meeting on 18th May 2012.

3. MINUTES OF THE MEETING HELD ON 16TH APRIL 2012

The minutes of the meeting held on 16th April 2012 were agreed as a correct record of the decisions taken subject to the close of meeting being changed to 11.05am.

4. DECISION ON MOTIONS REFERRED BACK FROM COUNCIL ON 3RD MAY 2012

Recommendation:

That the Constitution Committee reassess the decision on motions until further enquires have been made with surrounding local authorities to see how they deal with motions and Members have been asked for their views on motions.

Members debated the decision on motions which had been referred back to the

Committee by Council from its meeting held on 3rd May 2012. As one of the Members was new to the Committee he asked for the background to the Committee's decision. The Chairman replied that following the Council meeting in April he had been approached by a number of Members who were concerned that the motions were not given enough time to be debated fully and that there were too many motions for debate at the budget setting meeting. The Member could see the reasoning on whether or not to allow motions at a budget setting meeting but could not understand how this could come in to play for all Council meetings. The Chairman replied that he did not wish to stifle debate but timing was a factor and too many motions had been submitted to the budget setting meeting. The Member replied that if the objective was to improve the time management of council meetings then not just motions should be looked at, other issues such as guest speakers and having a timed agenda should be looked at. It was suggested that Members be asked how they think that the operation of council meetings can be improved. The Head of Legal and Democratic Services confirmed about the pending project to review the Constitution was imminent. It was suggested that perhaps a working group be convened to help look at the Constitution review, and due to its size it could be broken down into sections. A member asked what the urgency was, could it not be incorporated into the whole review and he proposed that the answer be deferred until further enquires have been made with the Members to gain their views on motions; however he did not get a seconder. The Chairman proposed that the issue of motions be reassessed until further enquires have been made with surrounding local authorities to see how they deal with motions and Members have been asked for their views on motions.

A working party to look at the Constitutional Review should be drawn from the Constitution Committee.

5. AMENDMENTS TO THE CONSTITUTION

The Head of Legal and Democratic Services referred to the Standards Committee which had recently taken place at which a new draft Code of Conduct for Members had been recommended to Council for approval. The new code was to be in place by 1st July although this was not a statutory deadline. It was proposed that the Council meeting on 12th July would adopt the code. She had brought the issue before the Constitution Committee for information as there would be changes required to the Constitution when the new code was adopted. She listed those pages where changes would be required, page 70, page 251 and page 49. She circulated for Members information a copy of the new draft code which included the seven principals as required by law; however, the Standards Committee had also requested that a paragraph on respect should also be included in the code especially as most complaints received dealt with the matter of respect. This issue was highlighted by one Member as being a 'Slippery concept'. The Head of Legal and Democratic Services replied that there was clear guidance from previous standard board cases and well documented case studies which covered this

area. She indicated that following adoption of the new code the Standards Committee would no longer exist as there would be no need for a Committee. Complaints received would go to the Monitoring Officer and the independent person to try and get a resolution with the complaint. Any complaint that required a hearing could be dealt with by three Members of a review board, membership of which was taken from the Licensing Committee as happened at present. A Member asked about a right of appeal to which the Head of Legal and Democratic Services replied there was no right of appeal for the complainant and none proposed in the legislation or regulations. If there was a major breach of the code relating to disclosable pecuniary interests, this would be a matter for the criminal court.

6. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASONS OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT

A question was asked about the Constitutional Review. The Head of Legal and Democratic Services replied that the project had not yet started but had been identified by the priority of well run council. The concept had been for a third party to act as a critical friend to the review however, this had not worked out as planned. The Member asked that the item be put on to the next agenda.

Meeting closed at 10.58am.

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: CHAIRMAN OF THE CONSTITUTION COMMITTEE –
COUNCILLOR RAY WOOTTEN

REPORT NO: LDS074

DATE: 24TH SEPTEMBER 2012

TITLE:	MOTIONS ON NOTICE – Council Procedure Rule 12	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Constitutional change	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
CONTACT OFFICER:	Lucy Youles Head of Legal and Democratic Services l.youles@southkesteven.gov.uk Tel:01476 406105	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	Report to Constitution Committee – LDS057	

1. RECOMMENDATIONS

It is recommended the Constitution committee consider an amendment to clause 12.3 of page 128 of the Constitution relating to the scope of “Motions on Notice” as follows:

Motions must be about matters for which the Council has a responsibility or which directly affect the district. The content of any motion on notice shall consist of one single subject matter. No motion on notice shall be debated in the absence of the member who has proposed the motion.

2. PURPOSE OF THE REPORT

The purpose of the report is to propose an amendment to the provision relating to the scope of motions on notice to provide clarity on the procedure relating to motions on notice.

3. DETAILS OF REPORT

The Committee has previously debated changes to the provisions relating to motions on notice. In April a proposal was made to restrict the number of motions to be debated at a council meeting. This proposal was not agreed at Council. The matter was referred back to the Constitution Committee for further consideration.

4. OTHER OPTIONS CONSIDERED

No other options have been considered in respect of this proposal

5. RESOURCE IMPLICATIONS

There are no resource implications relating to the proposal

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
No significant risks	

7. ISSUES ARISING FROM IMPACT ANALYSIS

Equality impact analysis not required

8. CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications

9. COMMENTS OF FINANCIAL SERVICES

There are no financial implications relating to the proposal

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

The Constitution Committee is required to consider any changes to the constitution proposed.

11. COMMENTS OF OTHER RELEVANT SERVICES

None relevant

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: HEAD OF LEGAL AND DEMOCRATIC SERVICES

REPORT NO: LDS075

DATE: 24TH SEPTEMBER 2012

TITLE:	AMENDMENTS TO THE CONSTITUTION – LOCALISM ACT - MEMBERS CODE OF CONDUCT AND INTERESTS	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Constitutional change	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
CONTACT OFFICER:	Lucy Youles Head of Legal and Democratic Services l.youles@southkesteven.gov.uk Tel:01476 406105	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	Report to Council – LDS072- Localism Act – Members' Code of Conduct and Interests. Minute no.25 – Council meeting 12.7.12 http://moderngov.southkesteven.gov.uk	

1. RECOMMENDATIONS

It is recommended the Constitution Committee note the changes to the Constitution following the decision of Council at its meeting on the 12th July 2012 to adopt a new Members' Code of Conduct and Standards regime as set out in the details of this report.

2. PURPOSE OF THE REPORT

The purpose of the report is to confirm the amendments as approved by Council at its meeting on the 12th July 2012 relating to the new Members Code of Conduct and changes to the Standards regime introduced by the Localism Act 2012.

3. DETAILS OF REPORT

At its meeting on the 12th July, the Council agreed recommendations as detailed at Appendix 1 attached to this report. Item number 13 of Appendix 1 confirms Council's approval to the required amendments to the Constitution to incorporate the new Code of Conduct and the new procedure for dealing with complaints made about District, Town and Parish Councillors. This report clarifies those amendments for noting.

The amendments are as follows (page numbers refers to page numbering in the Constitution) :

- Page 5 - delete reference to the Standards Committee.
- Page 10 – delete Article 10 and renumber subsequent Articles on pages 11, 12 and 13.
- Page 23 – delete reference to Standards Committee.
- Page 26-27 – delete the contents of the Members' Code of Conduct and replace with new contents:
 - Principles
 - Registration of Interests
 - Disclosure of Interests
 - Sensitive Interests
 - Attendance at meetings
 - Disclosure of Gifts and Hospitality
- Page 32 – delete reference to the Standards Committee in reference to “how the council operates”
- Page 34 – delete reference to Standards Committee at bullet point 7
- Page 35 – delete reference to Standards Committee.
- Page 40 – delete reference to the Standards Board for England.
- Page 49,50,51and 52 – delete all relating to Standards Committee
- Page 52 to 72 and throughout the Constitution – renumber Article numbers and tie in reference in Article numbers to the correct Article.
- Page 62.1 (d) **Supporting the Members Code of Conduct**
 - The monitoring officer will assist Members with the promotion and maintenance of high standards of conduct.
 - The monitoring officer will receive all complaints relating to District Councillors and assist Parish and Town Councils with complaints relating to the Members' Code of Conduct.

Delete (e) **Receiving reports.**

The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.

Delete (f)i and replace with - complaints relating to the Members' Code of Conduct where investigation is required by the monitoring officer or the Independent Person appointed by the Council for such purposes.

- Page 70 - Article 18 - **Review and Revision of the Constitution** – delete reference to the Standards Committee.
- Page 82 – include under Review Board:
 3. Members' Code of Conduct – to receive reports on investigations carried out into alleged failure to comply with the Members' Code of Conduct;
To consider whether a complaint should be investigated as required by the monitoring officer;
Determine the outcome of investigations by hearing reports of investigations, the evidence of the parties involved and any other evidence available to the Board.
- Page 83 – delete reference to the Standards Committee – whole page – renumber pages.
- Page 102 – Head of Legal and Democratic Services (Monitoring Officer) – add paragraph 5, 6 and 7:

After consultation with the Independent Person or reserve, to determine whether a complaint merits formal investigation and to arrange such investigation.

To receive complaints of failure to comply with the Members' Code of Conduct by district, town and parish councillors, with authority to delegate the function of dealing with the complaints relating to parish and town councillors to the relevant town or parish council where appropriate.

To consider and determine applications for dispensations in accordance with the legislation relating to dispensations to allow Members to participate and vote in any decision where they have an interest. In the event that the Monitoring Officer is unable to determine such an application for dispensation, the Monitoring Officer is authorised to refer that application to the Review Board for consideration and determination.
- Page 106 Scheme of Delegation – List of Proper Officers. Refer to disclosable pecuniary interests and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Page 137 Council Procedure Rules – paragraph 21.1 – add A Member who has disclosed a disclosable pecuniary interest or other interest in any item on the agenda of a meeting must leave the meeting during the consideration of that item to which the interest relates, take no part in the debate and not vote on that item.
- Page 147 Meaning of Exempt Information – amend to read – Categories 8—10 relate to the Review Board when dealing with reports on failure to comply with the Members' Code of Conduct.
- Page 153 Exempt information – clarify exemptions 8,9 and 10 which related to Standards Committees – now relate to the Review Board

when considering reports on investigations of complaints about Members.

- Page 173 Executive Procedure Rules – paragraph 1.5 – delete reference to “prejudicial”
- Page 196 – Financial Regulations – delete reference to the Standards Committee.
- Page 251 – 289 – delete existing code and replace with new Members’ Code of Conduct.

4. OTHER OPTIONS CONSIDERED

No other options have been considered in respect of these amendments which are reported for note only.

5. RESOURCE IMPLICATIONS

There are no resource implications relating to the proposal

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
No significant risks	

7. ISSUES ARISING FROM IMPACT ANALYSIS

Equality impact analysis not required

8. CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications

9. COMMENTS OF FINANCIAL SERVICES

There are no financial implications relating to the amendments.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

The report is made for note only to show the changes made to the Constitution as required by the Localism Act 2011 and approved by Council at its meeting on the 12th July 2012.

11. COMMENTS OF OTHER RELEVANT SERVICES

None relevant

Appendix 1 - extract of minutes of the Council meeting 12.7.12

Extract from Minutes of the Council meeting

12th July 2012

Minutes 25 – Members Code of Conduct

Decision:

- 1. The Council adopts the draft Members' Code of Conduct attached as Appendix A to report number LDS072.***
- 2. The Council adopts arrangements to deal with complaints made about District Councillors set out in Appendix B to report number LDS072 and considers arrangements for dealing with complaints about parish and town councillors.***
- 3. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Members' Code of Conduct by district, town and parish councillors, with authority to delegate the function of dealing with the complaints relating to parish and town councillors to the relevant town or parish council where appropriate.***
- 4. The Council approves the appointment of Mr Fred Mann as the Independent Person and the Venerable Tim Barker as the reserve.***
- 5. That the Monitoring Officer be given delegated authority, after consultation with the Independent Person or reserve, to determine whether a complaint merits formal investigation and to arrange such investigation.***
- 6. That the Council disband the Standards Committee and delegate to the Review Board (see Constitution page 82) the authority to receive reports on investigation carried out into alleged failure to comply with the Members' Code of Conduct, to consider whether a complaint should be investigated as required by the Monitoring Officer, determine the outcome of investigations and report findings to Council as and when required by the Review Board.***
- 7. That the Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that the Monitoring Officer be given discretion to refer decisions on investigation to the Review Board where it is inappropriate for the Monitoring Officer to take the decision.***
- 8. Where an investigation finds no evidence of failure to comply with the Members' Code of Conduct, the Monitoring Officer is instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant, to the Member concerned and to the Independent Person.***
- 9. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person is authorised to seek local resolution in appropriate cases with a summary report for information to the Council. Where such local resolution is not appropriate or not possible, the Monitoring Officer is to report the investigation findings to the Review Board for local hearing and determination.***

- 10. That the Council delegate to the Review Board such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:**
- Reporting its findings to Council [or the Town or Parish Council] for information.**
 - Recommending to the Member's Group leader (or in the case of ungrouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.**
 - Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.**
 - Instructing the Monitoring Officer to [or recommend that the Town or Parish Council] arrange training for the member.**
 - Recommending to Council that the Member be removed [or recommend to the Town or Parish Council that the Member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Town or Parish Council].**
 - Withdrawing [or recommend to the Town or Parish Council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and internet access.**
 - Excluding [or recommend that the Town or Parish Council exclude] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or sub-Committee meetings.**
- 11. That the Council adopt a Council Procedure Rule requiring Members to leave the room of any meeting which they attend where they have registered a disclosable pecuniary interest and/or have disclosed an interest in accordance with the Members' Code of Conduct in any item of business at that meeting. The proposed procedure rule will equate to the current code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of the business in which he/she has an interest, except where they are permitted to remain as a result of the grant of a dispensation.**
- 12. That the Monitoring Officer be granted delegated authority to consider and determine applications for dispensations in accordance with the legislation relating to dispensations to allow Members to participate and vote in any decision where they have an interest. In the event that the Monitoring Officer is unable to determine such an application for dispensation, the Monitoring Officer is authorised to refer that application to the Review Board for consideration and determination.**
- 13. The Council approves appropriate amendments to the Constitution to enable the approved provisions to be documented in the Constitution.**

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: Planning Policy and Partnerships Service Manager

REPORT NO: PLA948

DATE: 24th September 2012

TITLE:	Neighbourhood Planning: Amendment to Constitution	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Key Decision	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Cllr Paul Carpenter Governance and Communication	
CONTACT OFFICER:	Karen Sinclair, Planning Policy & Partnerships Service Manager 01476 406438 k.sinclair@southkesteven.gov.uk	
INITIAL IMPACT ANALYSIS:	Carried out and Referred to in paragraph (7) below	Full impact assessment Required:
Equality and Diversity	Not applicable	
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	The Localism Act 2011 (http://www.legislation.gov.uk/ukpga/2011/20/contents) The Neighbourhood Planning (General) Regulations 2012 (http://www.legislation.gov.uk/uksi/2012/637/contents/made)	

1. RECOMMENDATION

1.1 That the Constitution Committee recommend to Council that the Constitution be amended at page 105.3 – Delegation to the Head of Development and Growth by the insertion of the following:

4. Neighbourhood Planning

(i) To take, after consultation with the relevant Portfolio Holder and the local ward member(s), decisions on the following matters, as defined in the Localism Act 2011 and Neighbourhood Planning (General) Regulations 2012 (or as may be amended):

- Applications to designate a Neighbourhood Area
- Applications to designate a Neighbourhood Forum

- **To accept or decline repeat proposals for a Neighbourhood Development Plan or Neighbourhood Development Order**
- **Validity and acceptance of proposals for a Neighbourhood Development Plan or Neighbourhood Development Order**
- **Appointment of person to carry out examination of a Neighbourhood Development Plan or Neighbourhood Development Order**

2. PURPOSE OF THE REPORT

- 2.1 The Localism Act 2011 (the Act) introduced neighbourhood planning as a new way for communities to help shape future development in their area. The Act and the Neighbourhood Planning (General) Regulations 2012 (the Regulations) confer specific functions on local planning authorities (LPA) in relation to neighbourhood planning. As the Act and Regulations are not specific as to where within the LPA decision making on neighbourhood planning should rest, it is a matter of local choice. This report, therefore, considers where within the Council the authority to carry out these functions would most appropriately sit and any consequential amendments to the constitution that may be necessary to reflect this.

3. DETAILS OF REPORT

- 3.1 The Localism Act has introduced the following:
- Neighbourhood Development Plans (NDP) which set out policies for the development and use of land in a particular area. If a NDP has successfully passed all stages of preparation including an examination and referendum the LPA must adopt it as part of the Development Plan for their area
 - Neighbourhood Development Orders (NDO) which grant planning permission for a specific type of development within a specified area or a site specific development. These must also be subject to examination and referendum
- 3.2 The procedures for making NDPs and NDOs are very similar. In each case only a qualifying body (Parish or Town Councils except in unparished areas where a Neighbourhood Forum, a local organisation or body which must meet certain criteria set out in the Act, can be designated) can instigate NDPs and NDOs. Specific pre-submission consultation and publicity must be carried out by the qualifying body before a NDP or NDO is submitted to the LPA for the examination and referendum stages.
- 3.3 The Act and Regulations set out certain decisions to be taken in respect of the LPA's functions at various stages of preparing NDPs or NDOs. This includes the designation of neighbourhood areas (the area to be covered by a NDP or NDO) and forums and decisions on moving the NDP or NDO to the next stage of the process. A summary of the stages and the LPA functions is attached as Appendix 1. As a number of the decisions to be made are administrative and/or technical against set criteria established in the Act, where the element for discretion is limited, it is recommended that these decisions are delegated to the Head of Development and Growth. Any applications or submissions would be discussed with the relevant Portfolio Holder and local ward member thereby

allowing for any contentious issues that may arise to be considered at a higher level.

3.4 The exception to the above is in respect of action to be taken in response to an examiner's report and whether to modify the Plan in response before submitting it for referendum and the bringing into force the NDP as part of the Development Plan. Decisions on these matters would rest with the Cabinet and Full Council respectively.

3.5 It is, therefore, proposed that decisions on the following matters, as defined in the Act and Regulations, be delegated to the Head of Development and Growth after consultation with the Portfolio Holder for Economic Development and the relevant local ward member(s):

- a. Whether to designate a Neighbourhood Area
- b. Whether to designate a Neighbourhood Forum
- c. Whether to accept or decline repeat proposals for NDPs and NDOs
- d. Validity and acceptance of proposals for a NDP or NDO
- e. Who to appoint as an examiner

3.6 An application to designate Long Bennington Parish as a Neighbourhood Area has been made by Long Bennington Parish Council. The application has been advertised in accordance with the Regulations and the publicity period for making comments on the application will end on the 14th September. This will be reported to Council on the 11th October for a decision on the application. Subject to the Committee and Council's agreement of the recommendation, future decisions will be made in accordance with the proposals set out in paragraph 3.5.

4. OTHER OPTIONS CONSIDERED

4.1 Decisions need to be taken in an efficient and effective way in order not to delay the process of preparing the NDP or NDO. The proposed decision making processes are considered to represent the most appropriate way to ensure that this is achieved for decisions on matters that are relatively minor and un-contentious whilst providing for input from members at key stages.

5. RESOURCE IMPLICATIONS

5.1 There are costs associated with Neighbourhood Planning that will fall to the Council as it has a duty, as the LPA, to support Parish/Town Councils or Neighbourhood Forums. Whilst the nature/extent of this support is for each authority to determine, the Act and Regulations are clear that the cost of the early administration costs of designation and arranging the necessary examination and referendum will fall to the Council to fund.

5.2 It is not possible to predict how many communities will come forward to prepare a NDP or NDO but the support costs for Neighbourhood Planning this financial year can be met from the Planning Policy service budget. The Government have recently announced a grant scheme for 2012/13 to enable local authorities to claim £30,000 for each neighbourhood plan completed in their area. This is payable in two stages: £5,000 following designation of a neighbourhood area and £25,000 following completion of the examination

stage. Government funding arrangements beyond the end of this financial year have yet to be announced.

6. RISK AND MITIGATION

- 6.1 Risk has been considered as part of this report no exceptional or specific high risks have been identified.

7. ISSUES ARISING FROM IMPACT ANALYSIS

- 7.1 Not applicable. It will be for Town and Parish Councils or Neighbourhood Forums to carry out any necessary impact analysis and assessment of their proposals.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 None arising out of this report.

9. COMMENTS OF FINANCIAL SERVICES

- 9.1 Any financial implications arising from approving the recommendations will be met from existing budgetary provisions.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

- 10.1 There are a number of decisions to be taken in the preparation of either a Neighbourhood Development Plan or Order. These decisions are administrative or technical relating to the consideration process which are suitable for delegation to the Head of Development and Growth in consultation with the Portfolio Holder and relevant ward members. Any decision relating to bringing a Plan or Order into effect or modification will remain with Cabinet and Council. This will allow decisions to be dealt with efficiently.

11. APPENDICES:

Appendix 1 – Neighbourhood Planning Key Stages

Appendix 1: Neighbourhood Planning Process

Step 1. Designation of Neighbourhood Area/Forum

- Parish/Town Council apply for designation as Neighbourhood Area¹
- SKDC publicise application allowing minimum of 6 weeks for representations
- SKDC makes decision on application

Step 2. Preparation of Neighbourhood Development Plan/Order

- Parish/Town Council drafts Plan/Order
- Consultation with community and consultation bodies on draft Plan/Order (allowing 6 weeks minimum for representations)
- Undertake Strategic Environmental Assessment of Plan if required²
- Revise Plan/Order in light of responses to representations

Step 3. Examination

- Parish/Town Council submits Plan/Order to SKDC
- SKDC publicise Plan/Order (allowing 6 weeks minimum for representations)
- SKDC check Plan/Order and submit it for independent examination³
- Examiner's report is published⁴

Step 4. Referendum

- SKDC organise referendum on Plan/Order⁵

Step 5. Adoption

- SKDC bring Plan/Order into effect

Notes:

¹Where there is no Parish or Town Council an application to designate a Neighbourhood Forum will also need to be made

²The draft Plan/Order will have to conform with the EU Directive on Strategic Environmental Assessments (SEA). At a minimum a screening procedure to determine whether the proposals are likely to have an impact on the environment is likely to be required.

³SKDC will check the Plan/Order for legal compliance before it is submitted for examination by an independent suitably qualified person.

⁴The Inspector's report is not binding. They can recommend that the Plan is put forward for referendum, or that it should be modified or that the proposal should be refused.

⁵Where the examination is favourable the draft Plan/Order will be subject to a referendum organised by SKDC. If more than 50% of those who vote agree with the Plan/Order it will be brought into effect by SKDC.

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: HEAD OF LEGAL AND DEMOCRATIC SERVICES

REPORT NO: LDS076

DATE: 24TH SEPTEMBER 2012

TITLE:	AMENDMENTS TO THE CONSTITUTION – The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Statutory requirement	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
CONTACT OFFICER:	Lucy Youles Head of Legal and Democratic Services l.youles@southkesteven.gov.uk Tel:01476 406105	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 http://www.legislation.gov.uk/uksi/2012/2089/made	

1. RECOMMENDATIONS

The Constitution Committee recommend to Council the amendments to the Constitution to incorporate the changes introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations) as detailed in the Appendix to this report.

2. PURPOSE OF THE REPORT

The purpose of the report is to set out the requirements of the Regulations for note and for the Committee to approve the changes to the Constitution to give effect to the requirements of the Regulations.

3. DETAILS OF REPORT

On the 15th August 2012, the Regulations were laid before Parliament to come into force on the 10th September 2012. The Regulations revoke existing arrangements and replace them with similar arrangements with changes relating to meetings where the public are excluded, the forward plan, scrutiny and background papers.

Meetings from which the Public are excluded

Changes are made to the provisions relating to Cabinet meetings from which the public are excluded because the reports contain exempt material.

There is now a requirement to give notice at least 28 clear days before the meeting of its intention to hold a fully or partly private meeting and the reasons for the business to be considered in private. A 'clear day' is defined as a period of 24 hours running from midnight to midnight and excluding any days when the Council offices are not open to the public, the day the notice is given and the day on which the meeting is held ('28 clear days' is equivalent 36 days – longer if there are bank holidays during that period.)

A further notice must be published five clear days before the meeting, restating the reasons for a private meeting. The notice must also include details of any representations made about why the business should be transacted in public, and the Cabinet's response to the representations.

If the above timetable is impracticable, **special urgency** provisions apply: the meeting can still go ahead if the Cabinet has had **agreement** from the Chairman of the relevant PDG and the Scrutiny Committee Chairman. If either of them is unavailable, agreement should be obtained from the Chairman of the Council. Notice must then be given setting out the reasons why a meeting is urgent and cannot reasonably be deferred.

Process for taking a key decision.

There is no longer a requirement to publish a forward plan; however, the following details must be published at least 28 clear days before a **key** decision is to be taken

- That a key decision is to be made, and details of the matter;
- The decision-maker's name and title, or, if a body, its name and full membership;
- The date on which, or period during which, the decision is to be made;

- The documents to be submitted to the decision-maker for consideration and details of how to receive copies;
- A note that other documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.

There is no longer any requirement to give details of consultation undertaken or how a member of the public may make representations to the decision-maker or proper officer. There is a **general exception**. If this timetable is impracticable, the decision can still be taken if:

- The proper officer has **informed** the Chairman of the relevant PDG and Scrutiny Committee in writing of the details of the decision to be made (or, if the Chairman is unable to act, each member of the relevant Committee);
- Notice is given of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days' notice; and
- At least five clear days have elapsed between notice being given and the decision being taken.

In addition, the rules relating to **special urgency** apply. If the general exception rule is impracticable, the decision can still be taken if the decision-maker has obtained the **agreement** of the Chairman of the PDG and Scrutiny Committee, or if either is unable to act, the Chairman of the Council, and published a notice stating that a decision is urgent and the reasons why it cannot reasonably be deferred.

Records of Executive Decisions

Records of Executive decisions must state:

- The decision taken and the date it was made;
- The reasons;
- Details of options considered and rejected and the reasons why they were rejected;
- Declarations of interest and details of any dispensations granted in respect of interests.

Details of any consultation undertaken are not required.

The regulations specifically state that details of any dispensations granted by the "**head of paid service**" from any "declared conflict of interest" must be included in the decision record. The Localism Act 2011 says only that authorities may grant dispensations from interests, but leaves the process to individual authorities. This was delegated to the Monitoring Officer by Council at its meeting on the 12th July 2012. Further delegation must now be provided to the Head of Paid Service.

Background Papers

Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection at the offices and on the Council's website.

The Council may now charge 'a reasonable fee' for access to background papers to be inspected at the offices. Background papers are to be retained and made

available for inspection for at least four years from the date on which the decision was made.

Scrutiny

The Executive must make available any material relating to past decisions if requested by Scrutiny. This must be provided as soon as reasonably practicable and no later than 10 clear days after the request is made.

Exempt information does not need to be provided unless it relates to an action or decision that the member is scrutinising, or to any review in a relevant PDG or scrutiny committee's work programme. PDG and scrutiny members are not entitled to any exempt material which contains advice provided by a political adviser or assistant.

If the Executive determines that material will not be provided, it must set out in writing its reasons for that decision.

It is proposed the current forward plan remains in place for this month to cover the notice required for decisions to be made at the Cabinet meeting scheduled for the 1st October 2012.

A new proforma " Schedule of Decisions" will be produced with the required information for publication in readiness for the Cabinet meeting in November.

4. OTHER OPTIONS CONSIDERED

No other options have been considered in respect of these amendments. The proposed amendments relate to statutory requirements

5. RESOURCE IMPLICATIONS

There are no resource implications relating to the proposals.

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
No significant risks	

7. ISSUES ARISING FROM IMPACT ANALYSIS

Equality impact analysis not required

8. CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications

9. COMMENTS OF FINANCIAL SERVICES

There are no financial implications relating to the amendments.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

The Regulations are legally binding whether they are included in the constitution or not. The Constitution must be amended to ensure that current provisions do not contradict the requirements of the new legislation. It would not be practical or appropriate to include the Regulations in their entirety in the Constitution.

11. COMMENTS OF OTHER RELEVANT SERVICES

None relevant

Appendix - Amendments to Constitution

PROPOSED CHANGES TO THE CONSTITUTION

RELATING TO

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Page 63 – Proper Officer for Access to Information

15.3 (h) – delete existing clause and replace with:

Publication of Notices relating to Key Decisions

The Monitoring Officer will publish notices relating to key decisions in accordance with the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Page 90 – Delegation to the Chief Executive

Add new item 4 – To authorise the Head of Paid Service to grant dispensation in respect of any conflict of interest of any Member of the Cabinet declared at meetings of the Cabinet

Page 106 – List of Proper Officers and Designated Officers for Particular Functions

Column C - add reference to Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 for items relating to Monitoring Officer and officer responsible for background papers

Add new item –

Column A - Monitoring Officer

Column B – Recording of Executive Decisions

Column C – Local Government Act 2000; The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Page 143 – Access to Information Procedure Rules

Scope – add reference to regulations made in accordance with section 9G, 9GA and 105 Local Government Act 2000.

Page 144 – Access to Agenda and Reports before the Meeting

Add after ..and designated offices – “and on the Council’s website”.

Page 146 – Public Inspection of Background Papers

Add to 8.2 – which will also be available on the Council’s website.

Page 147 – Exclusion of access by the Public to Meetings

Add new paragraph at clause 10.5 as follows:

Where there is a requirement to hold a Cabinet meeting in private:

At least 28 clear days before a private meeting, the Cabinet must--

- (a) make available at the designated offices a notice of its intention to hold the meeting in private; and
- (b) publish that notice on the website.

Any such notice must include a statement of the reasons for the meeting to be held in private.

At least five clear days before a private meeting, the Cabinet must--

- (a) make available at the designated offices a further notice of its intention to hold the meeting in private; and
- (b) publish that notice on the website,

Any such notice must include--

- (a) a statement of the reasons for the meeting to be held in private;
- (b) details of any representations received by the Cabinet about why the meeting should be open to the public; and
- (c) a statement of its response to any such representations.

Where the date by which a meeting must be held makes compliance with this requirement impracticable, the meeting may only be held in private where the Cabinet has complied with Rule 16 (special urgency)

Page 155

Delete reference to the forward plan and replace with “Schedule of Decisions”

Page 156 and 157 - The Forward Plan

Delete pages 156 and 157 relating to the Forward Plan and replace with:

Schedule of Decisions

A key decision must not be made until a Schedule of Decisions has been published and made available for public inspection at the offices of the Council and on the Council's website at least 28 clear days before the decision is made which states:-

- (a) that a key decision is to be made on behalf of the local authority;
- (b) the matter in respect of which the decision is to be made;
- (c) where the decision maker is an individual, that individual's name, and title if any and, where the decision maker is a decision-making body, its name and a list of its members;
- (d) the date on which, or the period within which, the decision is to be made;
- (e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed are available;
- (g) that other documents relevant to those matters may be submitted to the decision maker; and
- (h) the procedure for requesting details of those documents (if any) as they become available.

Exempt information need not be included in the Schedule of Decisions and confidential information cannot be included.

Page 157 – General Exception

- (i) Delete “forward plan” and insert “Schedule of Decisions”
- (ii) Insert “ the chair of the relevant Policy Development Group and....” before Scrutiny Committee
- (iii) Insert “..... and on the Council’s website

Add (iv) As soon as reasonably practical after all the above have been satisfied, The Monitoring Officer must make available at the Council offices a notice setting out the reasons why compliance with procedure rule 14 is impractical; and

Publish that notice on the Council’s website

Page 158 – Special Urgency

Add after notifies in writing :..... the Chairman of the relevant Policy Development Group and

Add further paragraph:

As soon as reasonably practicable after the decision maker has obtained agreement under this rule that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must--

- (a) make available at the designated offices of the Council a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred; and
- (b) publish that notice on the website.

Page 158 - Report to Council

- (a) Delete forward plan and replace with Schedule of Decisions

Page 159 – Quarterly Reports on Special Urgency Decisions

Add further paragraph

The Leader must submit at least one report under paragraph (1) annually to the relevant local authority.

Page 162 – Access to Documents – Policy Development Groups and Scrutiny Committee

Delete clause 24 and replace with new clause 24 as follows:

24.1 A member of a Policy Development Group or Scrutiny Committee is entitled to a copy of any document which--

- (a) is in the possession or under the control of the Cabinet; and
- (b) contains material relating to--
 - (i) any business that has been transacted at a meeting of a decision-making body of the Council;
 - (ii) any decision that has been made by an individual member of the Cabinet in accordance with executive arrangements; or
 - (iii) any decision that has been made by an officer of the authority in accordance with executive arrangements.

24.2 Where a member of a Policy Development Group or the Scrutiny Committee requests a document which falls within paragraph 24.1, the Cabinet must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the Cabinet receives the request.

24.3 No member of a Policy Development Group or Scrutiny Committee is entitled to a copy--

- (a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to--
 - (i) an action or decision that that member is reviewing or scrutinising; or
 - (ii) any review contained in any programme of work of such a Policy Development Group or Scrutiny Committee or sub-committee of such a committee;
- (b) of a document or part of a document containing advice provided by a political adviser or assistant.

24.4 Where the Cabinet determines that a member of a Policy Development Group or Scrutiny Committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph 24.3, it must provide the Policy Development Group or Scrutiny Committee with a written statement setting out its reasons for that decision.

Page 163 – Additional Rights of Access for Members

Delete clause 25 and replace with new clause 25 as follows:

25.1 Any document which--

- (a) is in the possession or under the control of the Cabinet; and
- (b) contains material relating to any business to be transacted at a public meeting,

must be available for inspection by any member of the Council.

25.2 Any document which is required by paragraph 25.1 to be available for inspection by any member of the Council must be available for such inspection for at least five clear days before the meeting except that--

- (a) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available under paragraph 25.1 in relation to that item, must be available for inspection when the item is added to the agenda.

25.3 Any document which--

- (a) is in the possession or under the control of the executive of the local authority; and
- (b) contains material relating to--
 - (i) any business transacted at a private meeting;
 - (ii) any decision made by an individual member in accordance with executive arrangements; or
 - (iii) any decision made by an officer in accordance with executive arrangements,

must be available for inspection by any member of the Council when the meeting concludes or where an executive decision is made by an individual member or an officer immediately after the decision has been made.

25.4 Any document which is required by paragraph 25.3 to be available for inspection by any member of the relevant local authority must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.

25.5 Paragraphs 25.1 and 25.3 do not require a document to be available for inspection if it appears to the proper officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the 1972 Act (descriptions of exempt information: England).

25.6 Notwithstanding paragraph 25.5, paragraphs 25.1 and 25.3 do require the document to be available for inspection if the information is information of a description for the time being falling within--

- (a) paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or
- (b) paragraph 6 of Schedule 12A to the 1972 Act.

25.7 Where it appears to the proper officer that compliance with paragraph 25.1 or 25.3 in relation to a document or part of a document would involve the disclosure of advice provided by a political adviser or assistant that paragraph will not apply to that document or part.

25.8 The rights conferred by paragraphs 25.1 and 25.3 are in addition to any other rights that a member of a local authority may have.

Page 163

Add new paragraph 26

26 Reports to the local authority where the key decision procedure is not followed

- 26.1 Where an executive decision has been made and--
- (a) was not treated as being a key decision; and
 - (b) the Scrutiny Committee is of the opinion that the decision should have been treated as a key decision, that Committee may require the executive which is responsible for the decision to submit a report to the Council within such reasonable period as the Committee may specify.
- 26.2 A report under paragraph 26.1 must include details of--
- (a) the decision and the reasons for the decision;
 - (b) the decision maker by which the decision was made; and
 - (c) if the executive are of the opinion that the decision was not a key decision, the reasons for that opinion.