

REPORT TO COUNCIL

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

REPORT NO: LDS080

DATE: 18 October 2012

TITLE:	Recommendations from the Constitution Committee - 24th September 2012	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	n/a	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Governance and Communication	
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INITIAL IMPACT ANALYSIS	Carried out and appended to the report:	Full impact assessment Required:
Equality and Diversity	n/a	n/a
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	<p>The Council's Constitution http://www.southkesteven.gov.uk/index.aspx?articleid=1974 Constitution Committee Agenda and Reports - 24th September 2012 http://moderngov.southkesteven.gov.uk/mgConvert2PDF.aspx?ID=2843&T=10 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 http://www.legislation.gov.uk/uksi/2012/2089/made 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</p>	

1. RECOMMENDATIONS

It is recommended that Council approve the recommendations made by the Constitution Committee at its meeting on the 24th September 2012 as follows:

1.1 Motions on Notice

The Constitution Committee recommends to Council that the Constitution be amended at clause 12.3 of page 28 to read:

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.

1.2 Neighbourhood Plans – Delegation

The Constitution Committee recommends to Council that the Constitution be amended to insert at page 105.3 the following delegation to the Head of Development and Growth:

Neighbourhood Planning

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*

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

The Constitution Committee recommends 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 follows:

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 at 17.3

The Leader must submit at least one report under paragraph 17.3 annually to the Council.

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.*

2. PURPOSE OF THE REPORT

The purpose of this report is to detail the recommendations made by the Constitution Committee at its meeting on the 24th September 2012 to Council for approval. The minutes of the Constitution Committee meeting of the 24th September 2012 are attached to this report at the Appendix for information.

3. DETAILS OF REPORT

The details of the recommendation and the reasons for the recommendations are given in the minutes of the Constitution Committee meeting attached to this report and the reports made to that meeting.

3.1 The recommendation at 1.1 relating to motions on notice at council meetings is made to ensure that each motion can only be accepted on the Council meeting

agenda where it relates to one single matter item. The recommendation also clarifies that if the member proposing a motion is not present at the meeting when the motion is to be debated, the motion will not be debated.

3.2 The recommendations made at 1.2 above are made to delegate to the Head of Development and Growth the authority to make procedural decisions relating to the implementation of neighbourhood plans and orders. The provision for neighbourhood plans and orders was introduced by the Localism Act 2011 and is regulated by the Neighbourhood Planning (General) Regulations 2012. The provisions allow parish, town councils and neighbourhood forums to instigate neighbourhood plans and orders which must be considered by local planning authorities. The ultimate decision as to whether to bring a plan or order into effect will be a decision for full Council.

3.3 The amendments to the Constitution recommended at 1.3 above are made to update the Constitution to include provisions introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (The Regulations). The Regulations made under the Localism Act 2011 make changes to the decision making process in respect of meetings where exempt material is to be considered and the public are excluded, the process for taking key decisions, records of decisions and the availability of background papers. The amendments are necessary to ensure the various sections of the Constitution make reference to the Regulations and the wording of the Regulations is reflected in the Constitution.

4. OTHER OPTIONS CONSIDERED

Council has no other option but to consider the recommendations made by the Constitution Committee.

5. RESOURCE IMPLICATIONS

There are no known resource implications from the recommendations made.

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 arise as a result of this report

9. COMMENTS OF FINANCE SECTION

There are no financial implications resulting from this report.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

Council is required to consider any change to the Constitution.

12. COMMENTS OF OTHER RELEVANT SERVICE MANAGERS

None applicable

13. APPENDIX

Minutes of the Constitution Committee meeting of the 24th September 2012