

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
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Submitted to:	Constitution and Members Development Committee
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Date:	16 August 2023
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Title:	Refresh of the Council's constitution
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Report for:	Discussion
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Not applicable
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Urgent:	Not applicable
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Why:	Not applicable
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Executive summary
<p>The purpose of this report is to provide a summary of the key changes that have been made to the draft Constitution which is appended to the report. The draft Constitution has been through a fundamental review to ensure that it will ensure good corporate governance is in place. The focus of the review has been on addressing the concerns expressed by internal and external stakeholders and reflecting feedback from Members and Officers that has been gathered as part of the Corporate Governance Improvement Plan work and feedback from this committee. Following this committee's endorsement, the draft Constitution will be shared with Members and officers through a series of briefings, prior to being submitted for Council consideration on 20 September 2023.</p> <p>Any feedback gathered through the briefing process will also be taken into account, if there are further proposed changes as a result, this will be highlighted in the report to Council for its consideration.</p>

Purpose

1. The purpose of this report is to seek comments on the draft Constitution, which is attached to this report at Appendix 1 and the supporting documentation at appendices 2 to 5.

Background and relevant information

2. This is the third in a series of reports to this committee which have outlined the steps taken to refresh the Council’s Constitution and supporting procedures and documents.
3. Members of the committee were consulted for their views on a number of topics in those reports. The draft Constitution reflects the views of Members, as well as those of officers, and internal and external stakeholders that have been gathered as part of the Corporate Governance Improvement Plan. In some cases, this ongoing, live process has resulted in some changes to previous views on elements expressed by the Committee. This has been necessary in order to ensure that the final document effectively addresses corporate governance weaknesses identified in a series of reports and decisions that have been considered by various Council bodies in the last year.
4. Key changes / retained elements which are deemed as necessary in order to provide internal and external stakeholders with assurance that the Constitution is fit for purpose are set out in the table below in full to ensure new Members of the committee have a complete overview of the key issues that have been addressed:

Content	Rationale
Amendments to the structure	Ensures the constitution is easier to follow, removed duplication.
Simplification of language	This will ensure increased understanding of processes and expectations.
Moving statutory references to footnotes	As above. Ensures that the focus on the constitution is ensuring process is explained in simple terms to support the public, Officers and Members understanding of the document and provides a better flow of information.
Strengthening of statutory role profiles	Ensures clarity and supports steps to ensure greater understanding across officers and members of roles and responsibilities, which was a theme within the Corporate Governance Improvement Plan.
Amendments to Council procedure rules	Addresses historic queries in relation to interpretation of process and simplifies process. As previously set out for this committee, this includes amendment to the motions process, provision of clarity around the no confidence process, provision of clarity around disqualifications, clarity around departures from office before the end of a term and clarity to ensure

Content	Rationale
	members stand when speaking, only if they are able to.
Inclusion of a section on Council Companies	This reflects the recently agreed policy on Companies Governance and ensures compliance with it is embedded within the Council's Constitution. The policy was agreed by the Executive member for Finance and Governance on 25 July 2023.
Expansion of information on the governance of the Teesside Pension Fund	Inclusion of information on the functions exercised by the Pensions Fund Committee and Officers to ensure compliance with pensions regulations.
Change to the threshold for a key decision	This has not been raised for some years and reflects a natural increase in inflation since it was last put in and is accompanied by strengthened Financial Procedure Rules and Contract Monitoring Rules which will strengthen good governance.
Inclusion of definitions where necessary	Definitions will support understanding of provisions in the Constitution and provide clarity.
Updating the policy framework list	This is a list of decisions reserved for Council. The Change Strategy no longer exists and was therefore removed.
Alignment of content in the main body of the Constitution and the proposed Financial Procedure Rules and the Contract Management Rules.	Ensures constituency and ensures that both documents reflect the expectations of internal and external stakeholders that processes around finance actions and contract management are strengthened.
Amendments to the call-in process	Provision of clarity around the process and removal of the prescriptive list of reasons why a decision could be called in.
Amendments to Standards Procedure Rules	Provision of clarity and simplified process. Clarification around the role of the Parish Council where a complaint is made against a Parish Councillor. Closer alignment with the LGA model code.
Council Scheme of Delegation	Updates to reflect movement in services, changes in job titles, deletion, and creation of new functions since it was last reviewed.
Key committees	Inclusion of further information on the functions of key committees including Licensing, Planning and Standards.
Creation of a new standing Committee for Corporate Affairs	Function removed from Audit Committee's list of functions to provide a separation between decision making and auditing of decisions. The committee will be Chaired by the Chair of Council and will only meet when it is not possible or plausible for Council to meet. There will be no impact on the cost of Member allowances as a result of the Chair of the Council also chairing this committee.

Content	Rationale
Clarification around the roles of Political and Mayoral assistants	Addresses lessons learned from previous governance issues.
Clarification around Access to Information Procedure rules	Simplification of rules, reflection of repeal of elements of underpinning legislation.
Officer Code of Conduct	Amended to reflect learning from the Corporate Governance Improvement Plan, feedback from officers and Members and explicit inclusion of a statement that the Nolan Principles also apply to officers.
Financial Procedure Rules	Improved readability. Improved guidance on budget responsibilities, virements, fees and charges, bidding for external funding and asset management.
Contract Procedure Rules	Amended to replace reference to standing orders to link to Contract Procedure Rules, provision of direction on pre-procurement considerations, alignment with Financial Procedure Rules, provision of stronger controls on the provision of exemptions to Contract Procedure Rules, clarity around roles and responsibilities.

Next steps

- Once this committee has considered the draft document, a series of briefings will be undertaken to ensure all members are given the opportunity to be briefed on the key changes, the rationale for them and provide an for wider comment, prior to formal consideration of the draft Constitution at full Council on 20 September 2023.

What decision(s) are being recommended?

- That the Committee endorses the proposed Constitution for submission to Council for decision.

Rationale for the recommended decision(s)

- The adoption of a refreshed Constitution will ensure that a document is in place which:
 - reflects the lessons that have been learned in recent years in relation to corporate governance;
 - ensures the learning to date from the Corporate Governance Improvement journey is reflected within the Council’s key governance document; and
 - will provide assurance to the Council’s Members, officers, internal and external stakeholders that a Constitution is in place which is fit for purpose and will underpin a robust approach to corporate governance.

Other potential decision(s) and why these have not been recommended

8. The Committee could choose not to support a refresh of the Constitution; however it is the advice of both the Monitoring Officer and the Section 151 Officer that amendments are required in order to provide them with assurance that appropriate corporate governance arrangements are in place. In addition, discussions with the Department for Levelling up, Housing and Communities and external auditors have underlined the importance of a refreshed Constitution. As such, to retain the existing unamended Constitution is not recommended as an option.

Impact(s) of the recommended decision(s)

Legal

9. The adoption of the Constitution by full Council in September 2023, will ensure ongoing compliance with the Council’s legal obligations by officers and Members.

Strategic priorities and risks

10. Adoption of the refreshed Constitution by Council will positively impact on the following risks within the Council’s Strategic Risk Register by strengthening and clarifying the governance arrangements of the Council:

- ‘If the Council’s Corporate Governance arrangements are not fit for purpose and appropriate action is not taken to rectify this at pace, this could result in government formal intervention including removal of powers from officers and members and direction of council spend.’
- ‘If the Council took a decision that was unlawful then there is a risk of legal challenge or regulatory action that could damage its reputation and its financial position.’

Human Rights, Equality and Data Protection

11. Not applicable.

Financial

12. Not applicable directly as a result of the recommendation that the content of this report is endorsed, however successful implementation will have a positive impact on compliance with corporate governance good practice.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Undertake a series of Member briefings on the draft Constitution, prior to presentation of the document for adoption at a meeting of full Council	Monitoring Officer	20 September 2023

Appendices

1	Draft Middlesbrough Council Constitution
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2	Draft Council Scheme of Delegation
3	Draft Detailed Officer Scheme of Delegation
4	Draft Financial Procedure Rules
5	Draft Contract Procedure Rules

Background papers

Body	Report title	Date
Constitution and Member Development Committee	Middlesbrough Council Constitution	20 February 2023
Constitution and Member Development Committee	Middlesbrough Constitution Progress Update	13 April 2023
Executive member for Finance and Governance	Party and Wholly Owned Council Companies Policy	25 July 2023

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