

<b>TITLE</b>	<b>Changes to the Constitution</b>
<b>FOR CONSIDERATION BY</b>	Council on 23 November 2017
<b>WARD</b>	None Specific
<b>LEAD OFFICER</b>	Andrew Moulton, Assistant Director, Governance

## OUTCOME / BENEFITS TO THE COMMUNITY

Reviewing the Council's Constitution on a regular basis ensures that it is relevant and fit for purpose.

## RECOMMENDATION

That Council agree the following changes to the Constitution as recommended by the Constitution Review Working Group:

1) Chapter 4 The Council Meeting

that Rule 4.2.3.2 be amended as follows:

**4.2.3.2 Business**

"The business to be conducted at an extraordinary meeting of the Council shall be a single item only ***unless exceptionally agreed by the Mayor.***"

2) Chapter 8 Regulatory and Other Committees

that Rule 8.4.2 be amended as follows:

**8.4.2 Meetings of the Licensing and Appeals Committee**

"The Licensing and Appeals Committee shall ***schedule a minimum of*** ~~meet at least four times~~ ***meetings*** per Municipal Year, as scheduled in the Timetable of Meetings, agreed by Council;"

3) revisions to Rules 11.5.3, 11.5.4 and 11.6.5.3 (Officer Employment Procedure Rules) and Chapter 11.6 (Delegated Powers Relating to Staffing Matters) as set out in paragraph 4 of the report;

4) revisions to the Financial Regulations as set out in Appendix 1 of the report;

5) revisions to the Procurement and Contract Rules and Procedures as highlighted in Appendix 2 to the report.

## SUMMARY OF REPORT

Chapter 1.1.4 of the Council's Constitution states that the Monitoring Officer will monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

The report contains revisions to a number of areas in the Constitution which were agreed by the CRWG at their meeting on 30 October 2017.

## Background

### SECTION 4 – THE COUNCIL MEETING

1. The CRWG considered proposals regarding extraordinary meetings of Full Council. Members were of the view that extraordinary meetings of Full Council should be to consider a single item of business only unless exceptionally agreed by the Mayor.

The following change is therefore proposed to Rule 4.2.3.2:

“The business to be conducted at an extraordinary meeting of the Council shall be a single item only ***unless exceptionally agreed by the Mayor.***”

### SECTION 8 – REGULATORY AND OTHER COMMITTEES

2. The CRWG considered a request to amend the terms of reference of the Licensing and Appeals Committee so that the Committee was not required to meet at least four times a year. This change had been proposed because a number of Licensing and Appeals Committee meetings have been cancelled due to a lack of business, meaning that this requirement has not been met.

3. The CRWG considered this request and felt that this would be appropriate.

The following change is therefore proposed to Rule 8.4.2:

#### **8.4.2 Meetings of the Licensing and Appeals Committee**

“The Licensing and Appeals Committee shall ***schedule a minimum of*** ~~meet at~~ ***meetings*** per Municipal Year, as scheduled in the Timetable of Meetings, agreed by Council;”

### SECTION 11 – OFFICERS

#### **Chapter 11.5. – Officer Employment Procedure Rules and Chapter 11.6 Delegated Powers Relating to Staffing Matters**

4. The CRWG considered a proposal to facilitate the appointments process for the permanent appointment of the Head of Paid Service, S151 Officer, and the permanent or interim appointment of the Monitoring Officer and also the permanent appointment of Directors and the interim appointment of the Head of Paid Service and the S151 Officer. This would also create consistency in the appointments process.

The following amendments, which have the agreement of Personnel Board members, are therefore proposed to Rules 11.5.3, 11.5.4 and 11.6.5.3:

#### **11.5.3 Permanent appointment of Head of Paid Service, S151 Officer, and Permanent or Interim appointment of Monitoring Officer**

- a) *Executive members will be informed of Personnel Board’s decision and given an opportunity to object to **the** appointment then:*
- b) *Personnel Board make the recommendation to approve the appointment to Council*

#### 11.5.4 Appointment of Directors and the Interim appointment of the Head of Paid Service and the S151 Officer

- a) *Executive **Members** will be informed of Personnel Board’s decision and given **an** opportunity to object to **the** appointment then:*
- b) *Subject to ~~no objections~~ **the majority of Executive Members not objecting**, Personnel Board **to** make the appointment.*

#### 11.6.5.3 Appointment – Interim Chief Executive, Permanent Directors and Monitoring Officer

*Executive **members** will be informed of Personnel Board’s decision and given **an** opportunity to object to the appointment.*

*Subject to ~~no objections~~ **the majority of Executive members not objecting**, Personnel Board **to** make **the** appointment with the exception of the Monitoring Officer where Personnel Board will make a recommendation to Council.*

*Process managed by the **Lead Specialist, Human Resources**.*

### SECTION 12 – FINANCIAL REGULATIONS

5. The CRWG considered a number of proposed amendments to the Financial Regulations. These are shown in bold italics in Appendix 1 to the report.

### SECTION 13 - PROCUREMENT AND CONTRACT RULES AND PROCEDURES

6. The CRWG considered a number of proposed amendments to the Procurement and Contract Rules and Procedures which are highlighted and set out in Appendix 2 to the report.

#### FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

***The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context***

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0		
Next Financial Year (Year 2)	£0		
Following Financial Year (Year 3)	£0		

#### Other financial information relevant to the Recommendation/Decision

There are no financial implications arising from this report.

<b>Cross-Council Implications</b>
None

<b>List of Background Papers</b>
The Council's Constitution

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<b>Date</b> 13 November 2017	<b>Version No.</b> 1

## Finance Regulations – Proposed Changes

Ref.	Text and Proposed Change	Reason for Change
12.1.5.9	<p>The Service Manager, Strategic Assets may approve the disposal <b>or acquisition</b> of land or buildings which are worth less than £150,000, in consultation with the appropriate Director, together with Director of <b>Corporate Services</b> (Chief Finance Officer) and <b>the relevant</b> Executive Member(s). The disposal of surplus land or buildings of a higher value shall also be subject to the approval of the Executive.</p>	<p>Due to the high level of development in the area, there is a need to take on land as part of the delivery of some infrastructure projects, such as highways and public open space. In order to deliver these projects, the Council will sometimes buy land and properties that are needed.</p> <p>At present any proposed acquisition has to go to Executive for final approval. This is the previous approval where the overall project to which the acquisition relates has already had Executive approval as part of the Council's capital programme process. This can cause delay to the timely acquisition of the land required, and the delay can cause legal problems for the Council and increased costs.</p> <p>The proposed change is to expedite the acquisition process by delegating sign off for land acquisition schemes that have already been approved through the Council's Capital Programme.</p> <p>N.B. Discretionary land acquisitions are not covered under this section. Council policy on discretionary land acquisition was adopted by Executive on 30 March 2017.</p>
12.1.17.5	<p>On approval by the Executive of a programme of capital expenditure, the Directors concerned may request the Service Manager, Strategic Assets to take steps to enable land required for the purposes of the programme to be acquired in time. Subject to approval by the Executive <b>Assistant Director Strategic Property and Commercial Assets, Assistant Director Delivery and Infrastructure and Director Corporate Services (Chief Finance Officer)</b> before any acquisition is finalised.</p>	

Ref.	Text and Proposed Change	Reason for Change
12.1.17.3	<p><b>Community Infrastructure Levy and Section 106 Developer Contributions</b>            The utilisation (including the creation of new projects in the capital programme) of all <b>CIL and Section 106 Developer Contributions</b>, and other funding from developers received under specific legislation, up to £25,000 are to be agreed by the Resources Manager (<b>CIL/S106</b>) and the relevant Head of Service. Between £25,000 and £100,000 to be agreed by the <del>Head of Finance</del> <b>Director Corporate Services</b> (this authority has been delegated by the <del>Head of Finance</del> <b>Director Corporate Services</b> to the <del>Head of</del> <b>Assistant Director Development Delivery and Infrastructure and by the Assistant Director Delivery and Infrastructure to the Lead Specialist Infrastructure Delivery &amp; Projects</b>); <del>the Service Manager responsible for the release of S106 money</del> <b>the Service Manager Strategic Assets</b>; and the Executive Member responsible for the area spending the <b>CIL / S106</b> money. Above £100,000 will require approval from Executive <b>quarterly as part of the capital programme</b>.</p>	<p>To make provision for spending CIL funds within the finance regulations and to align the approval process for CIL with the approvals process for S106. Officer titles have been updated in line with the Council's 21<sup>st</sup> Century restructure.</p>
12.1.8.2	<p>Section 106 or <b>Community Infrastructure Levy (excluding CIL payments to Town and Parish Councils as prescribed under the CIL Regulations 2010)</b> contributions to third parties, require the submission of a bid from the third party, <b>and approval via the protocol for CIL and Section 106 contributions outlined at paragraph 12.1.17.3.</b> <del>signed approval from Resources Manager (S106); the Executive Member responsible for the release of S106 money; and the Executive Member responsible for the area spending the S106 money.</del></p>	<p>To make the process consistent between CIL or s106 spent directly and CIL or s106 contributions to third parties. This will simplify the process, and ensure greater consistency. The approvals process above, outlined in 12.1.17.3 will continue to be followed.</p>

**a) 13.3.2 – Overview of Required Procurement Procedures**

*Second paragraph: addition of “...or the use of existing frameworks from other central procurement bodies...”*

**13.3.2 Overview of Required Procurement Procedures**

ALL procedures in the PCR2015 (including Schedule 3 Services) are subject to “the principles of transparency and equal treatment of economic operators [*tenderers*]”. Accordingly, there is no mechanism for negotiation with any individual tenderer, at any stage of a procurement procedure. Procedures are available to allow for negotiation, dialogue and innovation but they may only be used in specific circumstances and involving all parties equally. These procedures are difficult to manage effectively and should generally be avoided.

For procurements exceeding £50k, the default procedures are the Open or Restricted procedures only **or the use of existing frameworks from other central procurement bodies**; in order to use another procedure, officers need to consult with Procurement and raise a waiver. For Services that need to manage urgent requirements (e.g.: emergency placements), a blanket waiver (clearly specifying the circumstances in which such a procedure is appropriate) may be available.

Check with your Service Manager to verify if any such waiver exists.

**b) Table 13.3.2.1 – Goods & Services and 13.3.2.2 – Schedule 3**

*Addition of a “recommended” standstill period for contract values from £50k – OJEU.*

*Addition of a new line requiring the completion of a Reg84 Report for contracts above OJEU level.*

**13.3.2.1**

The following table gives an overview of the Procurement and Contract requirements for expenditure on **Goods** and **Services** (excluding Schedule 3 Services - see below) at various contract values:

Goods & Services Contract Value	Below OJEU Threshold			Above OJEU
	£0k - £25k	£25k - £50k	£50k - OJEU	> OJEU Threshold
Fully compliant OJEU process – any applicable process may be utilised.				✓
Open (single step) process			✓	
Request for Quotation (RFQ) process, with credit check & references		✓ (min 3 quotes)		
Simple quotation and selection process	Min 3 Quotes			

Approved business case for the procurement at the appropriate level			✓	✓
Legal & Procurement teams to be notified before start of procurement undertaking			✓	✓
Formal specification & evaluation criteria			✓	✓
Simplified specification & evaluation	(if necessary)	✓		
All documents available on the date of publication of notice or advertisement			✓	✓
Publish in OJEU				✓
Advertise in Contracts Finder (within 24 hrs of 1 <sup>st</sup> advert anywhere else)		if advertised anywhere	✓	✓
Pre-Qualification Questionnaire (PQQ)	prohibited	prohibited	prohibited	✓
Invitation to Tender (ITT)			✓	✓
Formal tender opening process			✓	✓
Formal tender evaluation process			✓	✓
Award notified in OJEU				✓
Award notified in Contracts Finder		✓	✓	✓
Signed contracts lodged with SLS			✓	✓
Standstill period			recommended	✓
Service Area to add contract data to central Contracts Register	Contracts > £5k	✓	✓	✓
<b>Complete Reg84 Report</b>				✓

### 13.3.2.2

The following table gives an overview of the Procurement and Contract requirements for expenditure on **Schedule 3 services** at various contract values. These are for specific services such as health, social care, education, cultural and certain other service contracts as defined by Common Procurement Vocabulary (CPV) codes:

Schedule 3 Services Contract Value	Below OJEU Threshold		Above OJEU
	< £50k	> £50k	> OJEU Threshold
Light Touch Regime (“LTR”)			✓
Any appropriate process may be used		✓	✓

Legal & Procurement teams to be notified before start of procurement undertaking		✓	✓
Formal specification & evaluation criteria	Min 3 Quotes	✓	✓
Advertise in OJEU – contract notice or PIN ALL documents available at date of notice			✓
Advertise in Contracts Finder	> £25k, if advertised anywhere		✓
Pre-Qualification Questionnaire (PQQ) (Restricted Procedure)	prohibited	Optional (but prohibited below the Goods & Services OJEU Threshold)	✓
Invitation to Tender (ITT)		✓	✓
Formal tender opening process		✓	✓
Formal tender evaluation process		✓	✓
Publish contract award notices (can publish notices grouped quarterly)	If > £25k	✓	✓
Standstill period		recommended	✓
Service Area to add contract data to central Contracts Register	Contracts > £5k	✓	✓
Complete Reg84 Report			✓

For ALL procurements, any appropriate process may be used and there is flexibility in the types of award criteria that can be defined but any procedure used must ensure equal treatment of tenderers and transparency. There are no prescribed timescales for procedures but they must be “reasonable and proportionate”.

The procedure can deviate from the LTR as long as there is no breach of equal treatment & transparency and the reasons are documented & communicated.

### c) Table 13.3.2.3 – Works

*Addition of new lines covering the standstill period and the Reg84 Report.*

#### 13.3.2.3

The following table gives an overview of the Procurement and Contract requirements for expenditure on **Works** at various contract values:

Works Contract Value	Below OJEU Threshold		Above OJEU
	£0 - £50k	£50k - OJEU	> OJEU Threshold
Full OJEU process			✓
Invitation to Tender (ITT)		✓ (if not Construction Line)	✓
Optional Construction Line “Tender”	✓	✓ (if no ITT)	n/a

Approved business case for the procurement at the appropriate level		✓	✓
Legal & Procurement teams to be notified before start of procurement undertaking		✓	✓
Formal specification & evaluation criteria		✓	✓
Simplified specification & evaluation	✓		
Publish in OJEU. ALL documents to be available prior to issue of the OJEU notice			✓
Advertise in Contracts Finder	if advertised anywhere		✓
Pre-Qualification Questionnaire (PQQ) (Restricted Procedure)	prohibited	Optional (but prohibited below the Goods & Services OJEU Threshold)	
Formal tender evaluation process		✓	✓
Request for Quotation (RFQ), credit check and references for selected supplier	✓ (min 3 quotes)		
Award notified in OJEU			✓
Award notified in Contracts Finder	If > £25k	✓	✓
Signed contracts lodged with SLS		✓	✓
<b>Standstill period</b>		<b>recommended</b>	<b>✓</b>
Service Area to add contract data to central Contracts Register	Contracts > £5k	✓	✓
<b>Complete Reg84 Report</b>			<b>✓</b>

**d) Table 13.3.3.1 – Overview of Contract Terms and Conditions**

*Increase in the Contract Value threshold from £50k to £100k.*

**13.3.3.1 Overview of Contract Terms and Conditions**

Having selected an appropriate supplier, the following sources of T&Cs may be appropriate for various contract values. These represent the minimum requirements for any given contract value; for low value contracts, more stringent T&Cs (e.g. simplified Contract Terms instead of a standard PO) may be relevant in some circumstances:

Contract Value	Duration	Risk	Procurement Cards	Standard Purchase Order Terms	Template Contract	Formal Contract Terms (via SLS)	Suppliers' Terms
<50k	<12mth	any	✓	✓			By exception and only with input of Shared Legal Solutions
	>12mth	Any	n/a	✓			
>£50k <100k	Any	Any	n/a	✓	✓		
>£100k	any	Any	n/a	n/a		✓	

**NOTE:** Services may have Procurement Cards, which can be utilised for low value, low risk, one-off transactions, subject to the individual spending limit on the card. All ongoing / recurring requirements should be procured under a PO.

If you have any questions or concerns around contracts that may be high risk, consult SLS and/or Procurement. For example: relatively low value contracts may have risks around sensitive data associated with them, which make the inclusion of a Confidentiality Agreement appropriate in that particular case.

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