

Item No. 4A	Classification: Open	Date: May 31 2006	Meeting Name: Council Assembly
Report title:		Constitutional Review 2006/07 – Addendum Report - Metropolitan open land	
Ward(s) or groups affected:		All	
From:		Chief Executive (Borough Solicitor)	

RECOMMENDATIONS

1. That the additional information set out in this report on metropolitan open land be considered in conjunction with the Constitutional Review 2006/07 report circulated on the main agenda.

BACKGROUND INFORMATION

2. The terms of reference of standards committee include specific responsibility for the oversight, review and recommending amendments to the constitution. The report on the Constitutional Review 2006/07, which included a section on metropolitan open land, stated that this additional information would be circulated as an addendum report.

KEY ISSUES FOR CONSIDERATION

Legal and constitutional position

3. Currently in the Southwark constitution disposal of council owned metropolitan open land (MOL) is a matter reserved to council assembly. However some recent advice has led to this matter being reviewed. The original decision to reserve to council assembly dates back to May 2002 when council assembly was given the option of reserving disposal of MOL to itself or delegating the matter to the executive. Under the Local Government Act 2000 section 13(2) any function of a local authority which is not expressly specified in regulations - either as not to be the responsibility of the executive or a function that maybe the responsibility of the executive or is a function not to be the sole responsibility of the executive – is strictly defined as powers that **must** be an executive function. The disposal of MOL does not appear to fall into any of these categories. In order to clarify this matter the borough solicitor is recommending that the constitution should be amended to reflect this position. Counsel's opinion was sought on this matter and a full copy of the advice is attached as appendix B to the main report.
4. Officers advised the standards committee constitutional steering group on May 10 2006 the steering group of the following information: -
 - Section 123 Local Government Act 1972 gives local authorities a power to dispose of land held by them in any manner they wish.
 - Where the local authority wishes to dispose of land at a consideration less than the best that can be reasonably be obtained (other than by way of a short term lease) the permission of the

secretary of state is required (section 123(2) of the Local Government Act 1972).

- Section 123(2)(A) provides that a principal council may not dispose of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider objections to the proposed disposal which may be made to them.
- Section 13(2) Local Government Act 2000 provides that any functions of a local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority
- Section 13(3) provides that the secretary of state may by regulations make provision for any function of a local authority specified in the regulations –
 - To be a function which is not to be the responsibility of an executive of the authority under executive arrangements,
 - To be a function which may be the responsibility of such an executive under such an executive arrangement; or
 - To be a function which –
 1. to the extent provided by the regulations is to be the responsibility of such an executive under such arrangements, and
 2. to the extent provided by the regulations is not to be the responsibility of such an executive under such arrangements.
- The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 specify those functions, which are not the responsibility of the executive, those that may be (but need not be) the responsibility of the executive or is or is not the responsibility of the executive to a specified extent.
- The sale of metropolitan open land has not been specified in the regulations in any of the categories of functions, which are not the responsibility of the executive. Therefore in accordance with the provisions of section 13(2) Local Government Act 2000, the sale of metropolitan open land is a function of the executive.

Planning issues

5. In planning terms, the Emerging Southwark Plan policy 3.25 restricts development on MOL. There is a presumption against development on MOL as these sites are considered to be of strategic importance to London enhancing its “World City” image. MOL is defined in the plan and a schedule of open spaces designated as MOL is appended to the Emerging Plan.
6. The Emerging Southwark Plan at policy 3.25 refers to MOL sites as being of strategic importance. Any change to the designation of MOL would have to

occur through an amendment to the Southwark Plan which forms part of the Local Development Framework and is subject to extensive consultation and a public inquiry before amendment and final adoption.

7. Under the Constitution Part 3F, paragraph 5 states that planning committee “To consider and determine all planning applications of strategic importance in the borough, including applications for the development of metropolitan open land”.
8. In addition to the policy protections, the process for the Council to consider planning applications for development on MOL is set out in the Statement of Community Involvement (“SCI”) and a revised SCI was agreed by the council’s executive on the March 14 2006. This SCI sets out the process for dealing with applications for the development of MOL. It says that applications for development on MOL always go to planning committee (see page 8 of SCI March 14 2006).
9. Under the council’s adopted Consultation Policy for Development Control agreed by the executive on June 21 2005, planning applications for development on MOL (departures from the development plan) will be advertised by placement of a site notice posted adjacent to the site, a press notice will be placed and neighbour consultations will be made. There is also a requirement to consult with statutory consultees and these are set out in the council’s Statement of Community Involvement. The SCI expands on the consultation requirements for council own applications and requires the council to also carry out pre-application consultation in addition to the above.
10. Taken together the various documents mean that applications for development on MOL would always be considered by planning committee in line with council policy.
11. Additional protections on the development of MOL include referral to the Government Office for London to determine whether their involvement is required where there is a recommendation for approval which allows a departure from the development plan. This would include where planning permission was approved for a development on MOL. Under this procedure, the government can “call in” a departure application and a public inquiry will be held to determine the application, removing power from the authority to determine the application the secretary of state.
12. Additionally, the Greater London Authority Act 1999 specifies that consent of the Mayor is required for development on MOL. The Mayor can direct the council to refuse planning permission but cannot direct approval on planning applications. The London Plan, like the Emerging Southwark Plan, also contains a presumption against development on MOL. In addition, PPG2 *Green Belts* (1995) contains government guidance which protects loss of open spaces.
13. Following the provision of the above information requested as an addendum report, council assembly is requested to consider the changes outlined in recommendation 5 below.

Recommendation 5

That in line with legal advice, the borough solicitor recommends the following

Recommendation 5

changes to the constitution:

1. In article 4.02 – Functions of council assembly – delete “(l) disposal of council owned metropolitan open land”; and,
2. In Part 3C, matters reserved to the executive in paragraph 12 delete exclusion from executive decision of “disposal of council owned metropolitan open land”.

Community Impact Statement

34. This report contains no specific proposals that will impact on local communities. In general when considering constitutional changes regard should be given to the impact on individuals and structures:
- Not to erode officer delegations
 - Have regard to the opportunity for individual members of the public and groups to make representations to decision-makers
 - Taking account of public access to information.
35. The constitution contains a number of routes whereby members of the public can access their elected councillors either as local representatives or when taking decisions, e.g. public question time, deputations and petitions.

Consultation

36. On November 7 2005 officers met with the whips of the three political groups to discuss constitutional review issues. In addition to this the standards committee constitutional steering group met on May 10 2006 to discuss various constitutional issues.

Resource Implications

37. There are no specific financial implications within this report

Legal Implications

38. The borough solicitor and her staff have been involved in the preparation of this report and the legal implications are contained in the body of the report.

REASON FOR URGENCY

39. The report on the Constitutional Review 2006/07, which included a section on metropolitan open land, stated that this additional information would be circulated as an addendum report. The recommendation set out in the report is based on counsel’s opinion that an amendment should be made to the constitution.

REASON FOR LATENESS

40. The additional information on planning issues was not available at the time of the agenda despatch.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark's constitution	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Ian Millichap 020 7525 7225
Standards committee – minutes	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Lesley John 020 7525 7228
Standards committee constitutional steering group minutes	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Lesley John 020 7525 7228

AUDIT TRAIL

Lead Officer	Deborah Holmes, Borough Solicitor	
Report Authors	Ian Millichap, Constitutional Team Manager Ellen Fitzgerald, Legal Officer	
Version	Final	
Dated	26/05/06	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Regeneration	Yes	Yes
Borough Solicitor	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Team	26/05/06	