

Item No. 3.4	Classification: Open	Date: 23 May 2012	Meeting Name: Council Assembly (Annual Meeting)
Report title:		Constitutional Review 2012/13	
Ward(s) or groups affected:		All	
From:		Strategic Director of Communities, Law & Governance	

RECOMMENDATIONS

That the following constitutional changes be adopted by council assembly, as recommended by the constitutional steering panel:

AUDIT AND GOVERNANCE COMMITTEE

Part 3L – Terms of reference

1. That the changes to the terms of reference of the audit and governance committee as described in paragraph 28 of this report be agreed.

Part 4 – Rules – Composition of the committee

2. That committee procedure rule 6.1 on the composition of the audit and governance committee be deleted (see paragraph 31) and it be noted that size of the committee is to be increased to seven as part of the recommendation to the annual meeting on the establishment of committees and proportionality.

COMMUNITY COUNCILS

3. That following the decisions of council assembly on 29 February 2012 relating to changes to community councils, the following constitutional changes are recommended for approval:
 - That the Article 8 be updated as set out in paragraph 28 to reflect the change in community council boundaries and names.
 - That the changes to planning function/thresholds and establishment of new structure of strategic planning committee and two sub-committees as set out in paragraphs 40-43 of this report be agreed.
 - That the addition of a cleaner greener safer revenue fund as set out in paragraph 46 of this report be agreed.
 - That school governor appointments be delegated to the relevant chief officer (see paragraph 47).

STANDARDS COMMITTEE

4. That the following recommended constitutional changes to the standards committee as set out in Appendix 4 be agreed:
 - Change to roles and functions / matters reserved of the standards committee
 - Part 4 – Rules – Change to procedure rules of the standards committee
 - Changes to scope of questions and deputations in the procedure rules for all meetings.

The changes in Appendix 4 will take effect from 1 July 2012, with the exception of the changes to clauses 6 and 14 of the matters reserved which take immediate effect.

PART 3N: URGENCY COMMITTEE

5. That paragraph 55 be noted.

PART 4: COMMITTEE PROCEDURE RULES CONCERNING LICENSING AND PLANNING COMMITTEE

6. That a new rule on the use of social media in relation to members sitting on the planning and licensing committees/sub-committees, as described in paragraph 65 of this report, be agreed.

PART 4: COUNCIL ASSEMBLY PROCEDURE RULES

7. That changes to the procedure rules on the themed debate as described in paragraph 73 of this report be agreed.
8. That the changes to members' questions on reports as described in paragraph 75 of this report be agreed.
9. That the changes to public question time as described in paragraph 76 of this report be agreed.
10. That the changes to members' question time, questions on behalf of community councils, as described in paragraph 79 of this report be agreed.
11. That a new clause be added to allow for changes to the date and venue of a meeting in exceptional circumstances, as described in paragraph 81 of this report.
12. That the changes to length of speeches in relation to the annual budget report, as described in paragraph 82 of this report, be agreed.
13. That the changes to the order of business in relation to deputations relating to the themed debate, as set out in paragraph 84 of this report, be agreed.

PART 4: RULES – OVERVIEW AND SCRUTINY COMMITTEE

14. That the constitutional changes to the overview and scrutiny procedure rules as set out in paragraph 86 be agreed in order to reflect a decrease in the number of scrutiny sub-committees from five to three and an amendment to the terms of reference of overview & scrutiny committee.

PART 4: CONTRACT STANDING ORDERS

15. That the substantive changes to contract standing orders as described in paragraph 88 and as set out in full in Appendix 6 of this report be agreed.

PART 4: FINANCIAL STANDING ORDERS

16. That the substantive changes to financial standing orders as described in paragraph 91 and as set out in full in Appendix 7 of this report be agreed.

PART 5: CODE OF CONDUCT

17. That council assembly notes the proposed new code of conduct following the Localism Act 2011, considered by the standards committee on Tuesday 24 April 2011 (see Appendix 5). The code will need to be amended once regulations on the “Disclosable Pecuniary Interests” are published and therefore the code will be brought to the July council assembly for adoption.

PART 6: MEMBER AND OFFICER PROTOCOL

18. That the changes to the member and officer protocol as described in paragraphs 104-107 of this report and the comments of the standards committee be agreed (see Appendix 8).

PART 6: COMMUNICATION PROTOCOL

19. That the changes to the communication protocol as described in paragraphs 108-112 of this report be agreed (see also Appendix 9).

PART 6: MEMBERS ALLOWANCES SCHEME

20. That the panel considers the separate report on the member allowances scheme.

CONSEQUENTIAL CHANGES

21. As a result of the changes suggested within this report officers will be required to update the constitution. Therefore council assembly is requested to authorise officers to undertake any necessary consequential changes.

BACKGROUND INFORMATION

22. This report covers constitutional areas and a number of other statutory changes that had come to officers’ attention that form the annual review of the constitution.

23. The objective for making changes to the constitution is to ensure that it is easily understood and user friendly. In order to achieve this, council assembly should take into account that the constitution should be:
- **Accessible** to all those who need to use it to understand their rights and obligations under it.
 - **Efficient:** supporting effective decision-making so that the business of the council can be delivered in line with best practice on corporate governance.
 - **Inclusive:** so that decision-making is open and transparent and involves local communities.
24. All constitutional changes are considered by constitutional steering panel, which then recommends changes to council assembly. Changes to the constitution are generally agreed by council assembly, unless another body or individual is authorised to do so – see Article 1.15. All the changes were considered by the constitutional steering panel at its meetings on 23 April and 9 May 2012.

KEY ISSUES FOR CONSIDERATION

Introduction

25. The constitutional changes in this report focus on those specific issues identified over the course of the year, including the impact of any government announcements. The constitutional steering panel also considered proposals submitted from the political groups.
26. The report sets out the key issues and changes arising from the constitutional review. Changes to the constitution are shown as follows:
- Additions (shown as underlined);
 - Deletions (shown with a ~~strike through~~).

Community impact statement

27. There will be no direct impact on local people from adoption of these changes to the council's constitution. The constitution will enable people, including the local community where relevant, to understand the role that they can play in the decision making of the council and how the council will safeguard high standards of conduct amongst members and officers. Any specific issues relevant to each constitutional change are set out in the relevant section below.

AUDIT AND GOVERNANCE COMMITTEE

Part 3L – Terms of Reference

28. The audit and governance committee has received reports on retrospective contract related decisions since 2008 and although this has been formalised within contract standing orders and the committee's work plan, it has not been picked up within the committee's role and functions section in part 3L. It is proposed to make this role explicit within the 'Regulatory framework' section of its role and functions through the inclusion of the following clause:

19. To receive reports on retrospective contract related decisions as set out in contract standing orders.

Part 4 – Rules – Composition of the committee

29. Committee procedure rule 6.1 states that the audit and governance committee will comprises at least three councillors and up to five councillors, including at least one member of each political group. As an ordinary committee of the council, it needs to take account of the rules concerning political balance. The size of an audit committee is not prescribed, but whereas HM Treasury guidance recommends between three and five members, guidance issued by CIPFA notes only that if the number of members is too small, it may be difficult to achieve political balance, and if too large, meetings may become unwieldy.
30. Since it was first constituted the committee has comprised of five councillors, however in view of proposed changes to other ordinary committees for 2012/13 and to provide a slightly larger pool of members on the audit and governance committee it is recommended that the membership is increased to seven councillors. This is in line with other committees of the council and will help ensure that the committee will continue to have representatives from all political groups. Irrespective of the size of the committee, it is important that it remains independent of executive and scrutiny functions and those members receive training as required to enable them to fulfil their role.
31. In order to ensure this change in the size of the committee is reflected in committee procedure rules, it is recommended that committee procedure rule 6.1 on the number of councillors serving on the committee is deleted and subsequent clauses renumbered as set out below:

6. ADDITIONAL RULES APPLYING TO AUDIT AND GOVERNANCE COMMITTEE

Composition

- ~~1. The committee will consist of at least three councillors, and up to five councillors, including at least one member of each political group as defined by the Local Government and Housing Act 1989 and Regulation 8 of Local Government (Committees and Political Groups) Regulations 1990.~~
 2. No more than one member of the cabinet or deputy may be a member of the committee, and no cabinet member may chair the committee.
 3. No more than one member of the overview and scrutiny committee may be a member of the committee, and no overview and scrutiny committee member may chair the committee.
 4. The leader of the council may not be a member of the committee.
32. The reasons for this change are two fold. First, this will also avoid duplication with the report establishing ordinary committees which regularly appears on the annual meeting agenda. Second, it will simplify the wording of the constitution. The only other committee with a similar rule is the standards committee and from 1 July 2012 this is also likely to change as the annual meeting considers how the committee is constituted in the future.

33. For information it should be noted that in a few years time as a result of the abolition of the Audit Commission and changes in external audit arrangements, there will be a need to have a more in-depth review of the composition, role and functions of the audit and governance committee. Grant Thornton is set to become the council's external auditor from September 2012 for a period of five years and officers are currently awaiting greater clarity as to arrangements which will need to be put in place thereafter in order to ensure that the council is able to fulfil its responsibility to appoint an external auditor. These arrangements are expected to require the establishment of an independent audit committee though it is not yet clear how this might look or what its remit might be.

COMMUNITY COUNCILS

ARTICLE 8 – COMMUNITY COUNCILS

34. The council has agreed that there should be five community councils, meeting five times a year. Article 8 of the constitution needs to be amended by inserting the new table below to reflect this change; full changes are set out in Appendix 1. The recommended names of the community council areas are set out in the table below:

Name of community council	Members from electoral wards serving on community councils
Bermondsey and Rotherhithe	Grange, Livesey (north of the Old Kent Road), Riverside, Rotherhithe, South Bermondsey and Surrey Docks wards
Borough, Bankside and Walworth	Cathedrals, Chaucer, East Walworth, Faraday and Newington wards
Camberwell	Brunswick Park, Camberwell Green and South Camberwell wards.
Dulwich	College, East Dulwich and Village wards.
Peckham and Nunhead	Livesey (south of the Old Kent Road), Nunhead, Peckham, Peckham Rye and the Lane wards

PART 3 – PLANNING

35. Council assembly has agreed that delegated authority in relation to planning applications is no longer exercised by community councils and to introduce a sub-committee model (comprising of 1 strategic planning committee and 2 sub-committees with fixed memberships) with revised thresholds. The commission were keen that an alternative be established that whilst contributing to the savings required, retained a level of member lead decision making.
36. Some constitutional changes are necessary to allow the commissions' preferred option of two sub-committees to be implemented, thus achieving the required level of savings. The two sub-committee model saves £92,238. It was also reported to council assembly that the thresholds for planning decisions would need to be reviewed to achieve these savings. The proposed thresholds set out below are likely to see around 100 applications at sub-committee meetings but

will reduce the need for minor applications to be considered by a committee. This is outlined in paragraphs 46-49.

37. The model proposed allows member level decisions whilst streamlining the decision making process. The commission considered the level of applications considered by community councils which were outside of the application deadline (between June 2010 and May 2011 approximately 76% of applications were considered after the application expiry date) which could be challenged on the basis of non-determination and the difficulties for local councillors in representing local interests whilst taking part in the decision making process.

Size and membership of planning sub-committees

Proportionality

38. Sub-committees are not “ordinary committees” and therefore are considered individually for the purposes of proportionality. So far as it is reasonably practicable to do so, the allocation of seats on each sub-committee should bear the same proportion to the number of the seats held by that group on the council. The most proportionate allocation will depend on the number of members of the sub-committee. The following general principles apply when determining proportionality on sub-committees:
- (i) That not all the seats on a sub-committee are allocated to the same political group;
 - (ii) That the majority group must have the majority of seats on each sub-committee;
 - (iii) Subject to (i) to (ii) above, the proportion of each political group’s seats on each sub-committee reflects as closely as possible their proportion of seats on full council.
39. If the sub-committees have 7 members this would be consistent with the size of the main planning committee. Sub-committees are required to be proportional. Based on the general principles above, seats would be allocated to political groups on the following basis: Labour: 4 seats, Liberal Democrats 3 seats and Conservatives 0 seats. A proportionate allocation of seats is set out in the table below:

	Labour	Liberal Democrats	Conservative	Total
Main Committee	4	3	0	7
Sub-Committee A	4	3	0	7
Sub-Committee B	4	3	0	7

40. Council assembly would agree the overall arrangements for planning sub-committees as part of any necessary changes to the constitution. The planning sub-committees will be established by the planning committee. This is reflected in the recommended revised Part 3F at Appendix 2 (new clause 4). Members of the planning committee can agree planning sub-committee memberships that

are disproportionate, provided no committee member votes against this. Sub-committees are not ordinary committees of the council so allocating seats to minority political groups would not affect the overall proportionality calculation of other committees.

Appointments to seats

41. It will be the business of the planning committee to establish the sub-committees at its first meeting of the municipal year.
42. There is nothing to prevent an individual councillor sitting on both the strategic planning committee and a planning sub-committee or on more than one planning sub-committee.

Reserve members

43. In accordance with the committee procedure rules, the planning sub-committees would have a number of places allocated for reserve members. Political groups are entitled to reserve members on each sub-committee equivalent to one fewer reserve than the number of seats they have on the sub-committee (subject to a minimum of one).

Frequency of meetings

44. It is recommended that the planning sub-committees each meet on 6 week cycle (excluding the August break).

Planning committee – Roles and functions / matters reserved for decision

45. The community councils have taken planning decisions where the development proposed involves the creation of fewer than 50 housing units or less than 3500m² or commercial floor space or a mixed use development with less than 3500m² of floor space.
46. It was reported that the main committee/two sub-committee model would not be workable without a change in level of thresholds. In 2009 50 applications were considered by Planning Committee and 117 applications considered by community councils. In 2010 52 applications were considered by Planning Committee and 141 applications considered by community councils. In 2011 53 applications were considered by Planning Committee and 119 applications considered by community councils. This demonstrates that without a change in level of delegation a three committee structure would not be able to cope with the same level of applications, particularly as there appears to be no reasonable prospect of the number of applications for planning permission reducing.
47. As outlined in paragraph 36 it is necessary to adjust the thresholds so that the volume of member decisions can be accommodated in a two sub-committee, 6 week cycle. If revised thresholds are not introduced, the £92,238 savings which are required to be delivered in order to meet the budget savings agreed by council assembly on 29 February 2011 will not be achieved.
48. Officers have reviewed the thresholds and are recommending a revised Part 3F for planning committees as attached at Appendices 1 and 2 which is considered workable with one strategic planning committee (meeting on a 4-week cycle) and two planning sub-committees (meeting on 6-week cycles). Broadly this involves

retaining the current threshold for the strategic planning committee, i.e. of 50 or more housing units or more than 3,500m² of commercial floor space or a mixed use development with more than 3,500m² of floor space, and establishing a threshold of 10 - 49 housing units or 1,000 - 3,500m² of commercial floor space or a mixed use development with 1,000 - 3,500m² of floor space for a planning sub-committee. The level of objections required for an application to be considered at a committee of councillors has also had to be reviewed to achieve a manageable workload – it is recommended that this is raised to five. All other applications below these thresholds would be delegated to officers unless one of the specific exceptions set out in the revised Part 3F applied.

49. The review of thresholds has also looked at a revised referral mechanism to ensure the overall workload for the planning committee and planning sub-committees is manageable. It is suggested that the trigger for members to request an application is considered by the planning committee or one of the planning sub-committees is altered so that two councillors may request an application is considered by elected members, rather than a single ward member. Following discussion by the constitutional steering panel the recommendation is for the request to be considered by the chair of planning committee in consultation with the appropriate chief officer. The mechanism is set out in Appendix 2 and will determine if an application should be heard by the planning committee or a sub-committee. This change will also ensure a consistent approach to the type of applications considered by the respective committees.
50. It was noted that Southwark has one of lowest levels of decisions taken under delegated authority. The following kind of applications that currently go to community councils would be delegated to officers: single household changes/extensions, double glazing, extractor fans, ventilation systems, and advertising hoardings.
51. The commission recommended a strong consultative role for community councils to enable local people to influence local planning issues. This consultative role is already included in Part 3H of the constitution. Appendix 3 outlines some of the consultative/non-decisions making functions which it would be appropriate for community councils to retain including: commenting on the release of s106 funding over £100,000, consultation on supplementary planning documents and consideration of quarterly planning enforcement reports. The commission noted the role of community councils in developing planning policy e.g. some community councils have been successfully involved in the development of area actions plan such as the Canada Water Area Action Plan and Aylesbury Area Action Plan.

PART 3H: COMMUNITY COUNCILS

52. Appendix 3 sets out revisions to the role and functions of community councils to ensure the required savings agreed by council assembly on 29 February 2012 can be achieved as reflected in the recommendations of the Democracy Commission. This involves the deletion of delegated functions in relation to local planning applications and appointment of local education authority governors to local nursery and primary schools. The commission also recommended clarifying the delegated powers in relation to the community council fund. The commission noted the creation of a cleaner greener safer revenue fund which was agreed by council assembly as part of the 2012/13 budget process. This decision making function has been delegated to community councils by the leader of the council.

This delegation is included in revised Part 3H as a new provision to provide greater transparency.

53. Council assembly in February 2012 agreed that the school governor function will no longer be exercised by community councils as this generates savings of £10,895 and the commission noted that the decisions on school governors are taken in closed session which is inconsistent with the engagement roles of community councils. It is recommended that this function is transferred to the appropriate chief officer – it is important to note the saving will not be achieved if this function is transferred to another committee or panel of the council.

PART 3M: STANDARDS COMMITTEE

54. The changes to the standards regime were considered by the standards committee on Tuesday 24 April 2012. The background information on the changes is set out in this section of the report. The standards committee considered the issues affecting the standards committee and standards regime and asked for the information on the changes to the standards committee from 1 July 2012 to be included in the report to the annual meeting of the council assembly. Constitutional steering panel on 9 May 2012 considered the proposed changes to the constitution required by the new standards regime and the role of the new committee and recommended changes to the following areas of the constitution:

- Change to roles and functions/matters reserved of the standards committee
- Part 4 – Rules – Change to procedure rules of the standards committee
- Changes to scope of questions and deputations in the procedure rules for all meetings.

The proposed changes are set out in full in Appendix 4. These changes will take effect from 1 July 2012, except for the changes to clauses 6 and 14, which take immediate effect as they relate to legislative changes in the Localism Act 2011, relating to dispensations and exemptions of posts from political restrictions.

55. The Localism Act 2011 (“the Act”) provides for the abolition of the current standards regime including Standards for England, standards committees, the jurisdiction of the First Tier Tribunal over standards of conduct, and a nationally set code of conduct for councillors. Section 27 of the Act places a duty on the council to ensure that its members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members.
56. Although the Act does not make provision for a ‘standards committee’. Southwark has the power to form a ‘standards committee’ under the Local Government Act 1972. The standards committee has previously indicated that they would wish to recommend to council assembly that Southwark maintain a ‘standards committee’.
57. Council assembly may form such a committee and determine its terms of reference. This committee would be subject to the rules on proportionality. Standards committee have already indicated that retaining this committee with

the role of maintaining high standards of conduct is the best way of achieving the general duty to “promote and maintain high standards of conduct by members and co-opted members” of the authority.

58. The ‘new’ standards committee could undertake functions other than the conduct regime imposed by the Act.
59. The 1 July 2012 implementation date means that at the annual meeting two standards committees would need to be established. The current standards committee with an independent chair would operate up to 30 June 2012 and from 1 July the new standards committee would take effect with a councillor appointed as chair. The current standards committee is constituted as a separate committee under the Local Government Act 2000, which requires all political groups to be represented on it and under our current constitution must comprise between four and seven councillors.
60. As stated above, as an “ordinary committee” the new standards committee would be subject to the rules of proportionality. For the purposes of ordinary committees, this means proportionality is based on the total number of seats on all ordinary committees compared to the overall allocation of seats each political group has on the council. The principles for calculating proportionality require the majority group to hold a majority on each ordinary committee. Officers have considered the effect of this on the overall proportionality of ordinary committees, including the new standards committee. As a result officers would recommend that the committee comprises nine councillors, with the following allocation of places: five Labour, three Liberal Democrats and one Conservative. The increase in the size of the committee is necessary in ensuring that all political groups are represented on the committee. By comparison a smaller committee of seven members would mean only the majority group and the larger opposition group would have seats.

PART 3N: URGENCY COMMITTEE

61. At the annual meeting in May 2010, council assembly agreed that the role of the urgency committee between the municipal election and the annual meeting be reviewed in light of post-election period in 2010 and the new executive arrangements. Officers will be reviewing the urgency committee arrangements that existed prior to the election and will report in due course to ensure the council’s constitution makes the appropriate provision. The urgency committee only applies in the post-election period following a full municipal election; the next full elections are in 2014.

PART 4: COMMITTEE PROCEDURE RULES CONCERNING LICENSING AND PLANNING COMMITTEE

62. “Social media” is a collective term used to describe ways to create and publish on the internet. People generally use the term to describe how individuals and organisations share content – text, video and pictures – and create conversations on-line. Social media is changing the way that councillors and councils interact with the people they serve. Examples of social networking sites are Facebook, Twitter and MySpace.
63. The use of social media is increasingly becoming an important and legitimate part of the operation of a democratic society. It is an efficient, cost-effective and

enjoyable way for members to get in touch with constituents and discuss important issues with the community they represent.

64. Standards for England issued guidance to promote the positive role of social networking, which provided guidance on how the code of conduct for members would apply to social networking and gave some examples of tribunal cases that have dealt with the issues.
65. This guidance dealt with some governance issues around social media:

“Bias and Predetermination

If you are involved in determining planning or licensing applications, you should avoid publishing anything on your blog that might suggest you have already made up your mind about a matter you may be involved in determining. Otherwise, the decision runs the risk of being invalidated.”
66. Southwark changed the procedure rules of council assembly to allow the audio recording of proceedings, which the Democracy Commission recommended in order to enhance the possibility of citizen journalism involving social media, but did not mention use of social media by councillors during council assembly, cabinet or committee meetings.
67. Concerns have been raised about members who use social media when taking part during meetings. This is particularly worrying in planning and licensing meeting when it is done by members who are the decision makers.
68. Apart from the possibility of the use of social media leading to a decision being challenged in the court because of bias and predetermination in the way suggested by the Standards for England guidance, a decision may be challenged by way of judicial review if a decision maker took into account an irrelevant consideration, such a tweet from a third party. By using social media during the meeting a member would see information which other members have not seen or could be influenced by what is being said by third parties.
69. Using social media could also distract the member from the issue under discussion and therefore stop a member fully understanding the issues in a decision, stopping the member taking into account relevant considerations. Use of the internet to look up information about a decision could lead to a similar challenge. The communication protocol does not mention social networking.
70. The standards committee considered the issue at their meeting of 29 June 2011 and asked officers to revise the committee procedure rules to prevent members from using social media when considering licensing and planning decisions, while continuing to support its use generally as an important tool for engaging the public. On 23 April 2012 the panel considered whether to include a clause about the use of social media in the closed sections of meetings but having taken officer advice concluded that provisions on confidentiality were dealt with elsewhere in the constitution.
71. It is recommended that the following be added as a new rule 8 to the committee procedure rules as follows:

8. ADDITIONAL RULES APPLYING TO PLANNING COMMITTEE AND LICENSING COMMITTEE OR SUB-COMMITTEES

1. At any meeting of the planning committee or licensing committee if the committee is determining any application for an approval, consent, licence, permit or permission members should not access the internet, send or receive emails, texts, messages or tweets concerning the business of the committee when present as a voting member
2. At any meeting of the planning sub-committee or licensing sub-committee if the sub-committee is determining any application for an approval, consent, licence, permit or permission members should not access the internet, send or receive emails, texts, messages or tweets concerning the business of the sub-committee when present as a voting member.
3. For the purposes of this rule “meeting” includes any adjournments so in relation to the purpose of the meeting members should not access the internet, send or receive emails, texts, messages or tweets during any adjournment concerning the business of the committee.

PART 4: COUNCIL ASSEMBLY PROCEDURE RULES

Themed debate

72. The constitutional review provides an opportunity to review the rules on the themed debate based on the experience of the themed debates at council assembly since 6 April 2011 to date.
73. The themed section of the meeting commences with the relevant cabinet member introducing the theme. The cabinet member is allocated ten minutes in which to do this. Over the course of the year the meeting has for the last few meetings agreed to allow the shadow cabinet member to speak for five minutes, however this is not provided for in the procedure rules. Therefore council assembly may wish to include this entitlement in to the themed section of the meeting as set out below. In the final bullet point, the words “(maximum 30 minutes)” are recommended for deletion. This deletion clarifies how themed debates operate in practice since in rule 2.7(4) it states “the Mayor shall have the discretion to vary timings as appropriate”. The wording is therefore unnecessary.

A recommended constitutional change is set out below:

Council assembly procedure rule 2.7(3) – Themed debate

Order of debate

3. The order of business of the debate will be:
 - Cabinet member has 10 minutes in which to present the theme, plan or strategy
 - Shadow cabinet member has 5 minutes in which to reply
 - Public pre-submitted questions on the theme of the meeting (maximum of 15 minutes)

- Member's motions on the cabinet theme using present principles to allow sufficient political balance and for political groups to hold cabinet to account (~~maximum 30 minutes~~).

Council assembly procedure rule 2.11 (4) - Notice required for questions on reports

74. The current deadline for members' questions on reports is one clear working day before the meeting. There have been occasions when a large number of questions have been received and this has caused a number of unforeseen consequences. These include:
- reducing the number of members who can make a contribution during the debate
 - in some cases it duplicates the provision that already exists for members' questions time
 - requiring considerable additional officer resources, which are limited, to provide background information for written responses and compile the responses document for the meeting.
75. Therefore it is recommended that the deadline for members' questions on reports in CAPR 2.11(4) as set out below, could be extended to three clear working days before the meeting:

Notice required for questions on reports

4. Notice of all questions on reports shall be given in writing, signed by the member and delivered at least ~~one~~ three clear working day before the day of the meeting at which the motion is to be moved, at the office of the monitoring officer (i.e. by midnight of the Monday in the week of an ordinary Wednesday council assembly meeting). If a meeting is scheduled to commence before 7.00pm or is to be held at the weekend this deadline shall be delivered at least two clear working days before the day of the meeting. Each member is limited to one question per item of business.

Public question time

76. Currently there is no provision in public question time for a cabinet member or chair to refer a question to another cabinet member or chair if it is more appropriate for them to answer, in the same way there is for members' question time. Therefore it is suggested that a new clause 8 be included in CAPR 2.5 (6) on public question time. This change is for clarification.

A recommended constitutional change is set out below:

Deadlines

6. An application for a question to be considered shall be submitted in writing to the monitoring officer no later than three clear working days in advance of the council assembly.
7. The date and time of receipt of such requests will be recorded and a copy of the question will immediately be sent to the member to whom it is to be put. Rejected questions will include reasons for rejection.

8. Questions shall be addressed to the relevant cabinet member or committee chair who shall be responsible for the content of the answer. Cabinet members and committee chairs shall have discretion to refer a question to another cabinet member or committee chair if this is appropriate.

Members' question time – Questions on behalf of community councils

77. Questions on behalf of community councils was an idea of the Democracy Commission, which was introduced last year as a way of giving community councils an opportunity to raise issues on the council assembly agenda. Currently there is no process for deciding how or who decides what question is submitted to council assembly. CSP last year left this matter to chairs and vice-chairs of community councils and individual community councils to consider, however no definitive position was taken. Normally community council questions are submitted by the chair of the relevant community council, but on occasions another member of the community council has submitted a question in advance. On three occasions a member other than the chair has submitted a question. The constitution currently requires questions (other than questions to the leader) are listed in order of receipt. The panel considered clarifying the current situation to assist members and officers.
78. It is therefore recommended that any question submitted from a community council to council assembly should first be the subject of discussion at a community council meeting. The subject matter and question should be clearly noted in the community council's minutes and thereafter the agreed question can be referred to the constitutional team.
79. If the above proposal is agreed CAPR 2.9(2)(who can ask questions) will need to be amended along the lines outlined below. A new procedure rule would also need to be added to the community council procedure rules as a consequential change.

A recommended constitutional change is set out below:

Who can ask questions?

2. A member of the council may ask one question of:
 - the Mayor
 - a member of the cabinet
 - the chair of any committee or sub-committee or community council.
 - ~~• One councillor from each community council will be able to submit a question on behalf of their community council.~~
 - each community council may submit one question that has previously been considered and noted by the said community council.

Postponement / Cancellation of meetings

80. The community council procedure rules and committee procedure rules currently allow in exceptional circumstances changes to the date or venue of a meeting, however council assembly rules do not. Therefore it would seem prudent to include a similar provision in the council assembly procedure rule as last year it was necessary to abandon a council assembly meeting by obtaining cross party

agreement not to attend, thereby making the meeting inquorate. There could prove to be other circumstances when it might make it impossible for the meeting to be held as convened, for example a heavy snow fall makes it impossible for people to attend or heating system breakdown.

81. It is therefore recommended that the following be added to council assembly procedure rule 1.1:

New clause 1.1(5)

Postponement / Cancellation of meetings

The Mayor / Chair, in consultation with the monitoring officer, may in exceptional circumstances cancel a meeting, direct that an ordinary meeting of council assembly / committee be not called or change the date, time or venue of a meeting.

Rules of debate – Content and length of speeches

82. Currently CAPRs allow the mover of a motion or report to speak for five minutes and any other speeches are limited to three minutes. However, during their presentation of the annual budget report the relevant cabinet member will often require longer than the allocated five minutes in which to address the issues raised within the report, therefore it is recommended that CAPR 1.14(9) be amended as outlined below in order to allow the relevant cabinet member longer to present the annual budget report. It is also recommended that the relevant shadow cabinet member have an opportunity to reply for five minutes. This would also bring the presentation time in line with the themed section of a meeting when the presenting cabinet member has ten minutes in which to speak on the theme.

The recommended changes to the rule would read as follows:

Content and length of speeches

9. Speeches must be restricted to the matter under discussion or to a personal explanation or point of order. No speech by the mover of a motion may exceed five minutes without the consent of the Mayor. All other speeches may not exceed three minutes without the consent of the Mayor, except in the case of the relevant cabinet member when presenting the annual budget report at the council tax setting meeting. In this case, they will be allowed up to ten minutes in which to present the report and the shadow cabinet member shall have five minutes in which to reply.

Order of business at ordinary council meetings

83. This section of the report proposes making a more formal link on the order of business between the themed debates and those deputations relating to the theme, so these deputations are considered immediately prior to the debate. Any other deputations would be considered after the themed debate.
84. In the past year the number of deputations received by council assembly at ordinary meetings has shown a significant increase compared to previous years, with a particular focus on deputations relating to the themed debate.

The recommended changes to rules 2.2 h) and l) would read as set out below:

2.2 ORDER OF BUSINESS AT ORDINARY COUNCIL MEETINGS

Introduction and preliminary business

- a) elect a person to preside if the Mayor is not present and the Deputy Mayor is not chosen to preside
- b) receive any announcements from the Mayor, members of the cabinet or the chief executive, including matters which the Mayor has decided to add to the agenda as urgent. Wherever possible, cabinet member statements should be in writing and circulated at the start of the meeting
- c) receive any declarations of interest from members
- d) approve the minutes of the last meeting
- e) announcement of the guillotine

Time for residents to bring issues to assembly

- f) receive petitions
- g) receive questions from, and provide answers to, the public in relation to matters, which in the opinion of the person presiding at the meeting are relevant to the business of the meeting;
- h) deputations on the themed debate

Themed debates

- i) consider themed debates centred on a cabinet member's portfolio or plans, policies and strategies, including the annual state of the borough and budget meetings
- j) public pre-submitted questions on the theme of the meeting
- k) members' motions on the theme

Other deputations

Note: New l) and renumber subsequent sections

- l) other deputations (that do not relate to the themed debate)

Time for members to bring issues to assembly

- m) urgent questions by group leaders
- n) questions from councillors to the leader, other cabinet members and chairs of committees/community councils
- o) consider motions.

PART 4: RULES – OVERVIEW AND SCRUTINY COMMITTEE

- 85. At its budget setting meeting on 29 February 2012 council assembly agreed that savings should be made to the scrutiny function. Therefore, on 12 March 2012 the overview and scrutiny committee agreed that in 2012/13 the number of scrutiny sub-committees be reduced from five to three thereby resulting in a saving of £65,000 in the coming financial year. The committee also agreed to include the overview of regeneration within the terms of reference of overview and scrutiny committee.
- 86. The recommended changes to the overview and scrutiny procedure rules arising from these decisions are set out below:

1. Arrangements for overview and scrutiny

1.1 The council will appoint an overview and scrutiny committee. The overview and scrutiny committee will appoint ~~five~~ three scrutiny sub-committees and determine their terms of reference.

2. Membership of overview and scrutiny committee and its sub-committees

2.2 The overview and scrutiny committee will ~~consist of~~ include:

- a) a chair, appointed by council assembly
- b) a vice-chair, appointed by council assembly
- c) the chairs of the ~~five~~ three scrutiny sub-committees, provided that the proportionality rules are not compromised and provided that each political group is permitted to nominate non-cabinet members should this be necessary to maintain proportionality
- d) education representatives as set out at paragraph 4.

6. Terms of reference of the overview and scrutiny committee

6.1 The terms of reference of the overview and scrutiny committee will be:

- a) to appoint ~~five~~ three scrutiny sub-committees, including a sub-committee with responsibility for crime and disorder, agreeing the size, composition and terms of reference and to appoint chairs and vice-chairs
- k) to scrutinise matters in respect of:
 - the council's policy and budget framework
 - regeneration
 - human resources and the council's role as an employer and corporate practice generally
 - customer access issues, including e-government, information technology and communications
 - the council's equalities and diversity programmes.

PART 4: CONTRACT STANDING ORDERS

General advice on changes to contract standing orders

87. The contract standing orders (CSOs) are reviewed each year to reflect any statutory or procedural changes. Article 1 of the constitution provides that minor changes may be made by the monitoring officer and finance director to CSOs, but all other changes must be agreed by council assembly. It should be noted that other changes which may be agreed to the constitution by council assembly may have an impact on CSOs which would need to be picked up subsequently.

Substantive changes

88. Proposed substantive changes are set out below and are included in Appendix 6:

- New CSO 2.1h) Compliance with relevant statutory and corporate requirements – a new sub section is proposed to include a reference to the council's commitment to the London Living Wage, as confirmed by council assembly on 29 February 2012
- CSO 2.2 Consequences of non-compliance – this amendment would strengthen arrangements on reporting serious breaches of contract standing orders or of Procurement Guidelines
- CSO 4.4, 4.5 and 4.6 Decisions on procurement strategy, contract award and to allow variations – it is proposed to include references to 'insurance' within these sections. This would bring insurance decisions within those areas of activity for which the finance director has responsibility for decisions. It needs to be read in conjunction with a proposed amendment to financial standing orders as set out below
- New CSO 4.5.2g) Pension arrangements – a new section is proposed to address the need to have regard to the Admitted Bodies Policy, by making the finance director responsible for contract award decisions where the proposed contract includes pension arrangements terms which are different from those set out in that policy.

Other minor changes

89. A number of other minor changes are summarised below for information and are included in Appendix 6:

- CSO 2.1g) Compliance with relevant statutory and corporate requirements – updated terminology to make reference to the council's plan
- CSO 2.5 Record keeping – the requirement to record contracts on departmental and central contract registers is made explicit
- CSO 4.4.2, 4.5.2 and 4.6.2 Decisions on procurement strategy, contract award and to allow variations – it is proposed that references to CCRBs and DCRBs be amended to better reflect arrangements in place. The role of these boards is to provide quality assurance, with formal advice being provided through the concurrences provided by statutory officers and heads of relevant professional services
- CSO 4.5 Decision on contract award – changes are proposed to 4.5.3 and 4.5.4 in relation to delegated decisions to bring into line with the current strong leader arrangements
- CSO 4.6 Decision to allow Variations during contract term - this clarifies the requirement to take a decision after consideration of the report by relevant departmental contract review boards where a contract affects the budget of more than one directorate, in line with current procedures
- CSO 5 Requirements to obtain tenders or quotes depending on type of contract and levels of contract value – the need to refer to the Definitions section when estimating the value of a contract is made explicit

- Definitions – updated definitions of contract register to differentiate departmental and central registers and an amendment to definition of estimated contract value for greater clarity.

PART 4: FINANCIAL STANDING ORDERS

General advice on changes to financial standing orders

90. The financial standing orders (FSOs) are reviewed each year to reflect any statutory or procedural changes. Article 1 of the constitution provides that minor changes may be made by the finance director and monitoring officer to FSOs, but all other changes must be agreed by council assembly. It should be noted that other changes which may be agreed to the constitution by council assembly may have an impact on FSOs which would need to be picked up subsequently.

Substantive changes

91. The proposed substantive changes are summarised below and included in Appendix 7:

- New FSO 1h) Insurance – A new section is proposed to bring operational insurance decisions into the remit of the finance director, in line with his section 151 responsibility for the proper administration of the council's financial affairs. This is consistent with his responsibility for treasury management and pension scheme decisions and recognises the specialist nature of this area of activity, for example in relation to levels of cover and premiums. In line with this, a change to contract standing orders is also proposed, as set out above.
- New FSO 4d) Support for council tax – A new section is proposed to recognise the requirement on councils to introduce and maintain a local scheme for council tax support from 2013/14 onwards, as set out in the Local Government Finance Bill published in December 2011. This scheme will replace the current council tax benefit arrangements and it is expected that it will need to be in place by 31 January 2013.

Other minor changes

92. A minor change is summarised below for information and included in Appendix 7:

- FSO 2a) Planning process – updated references to key council documents to reflect the current position.

PART 5: CODE OF CONDUCT

93. As previously reported to the standards committee, the Localism Act 2011 (“the Act”) provides for the abolition of the current standards regime including Standards for England, standards committees, the jurisdiction of the First Tier Tribunal over standards of conduct, and a nationally set code of conduct for councillors.

94. Section 27 of the Act places a duty on the council to ensure that its members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members.
95. Section 28 of the Localism Act 2011 requires the council to adopt a code whose contents must be consistent with the seven 'Nolan' principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and must set out the rules that the authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests.
96. The authority will need to decide what code of conduct to adopt from 1 July 2012, when the new regime starts. The council has discretion as to what it includes within its new code of conduct, provided that it is consistent with the seven principles. The draft Code, attached as Appendix 5, is based on a version produced by the Local Government Association [LGA] and approved by Association of Council Secretaries and Solicitors [ACSeS] which has been shared with the LGA, and may yet be subject to change. This replaces the early ACSeS 'model code' which the standards committee have previously expressed a preference for adopting rather than trying to create a Southwark specific model.
97. This Code is based upon the "Nolan Principles – the seven principles of public life" and includes a number of the provisions from the current code.
98. Regulations will also be made under the Act to require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs). These will interact with the Code, but as the draft regulations have not been produced at the time of writing it is not clear precisely how.
99. Members may be interested to know that the Department for Communities & Local Government [DCLG] has published an "illustrative text" setting out what a council's code of conduct might look like under the incoming standards regime. Officers have considered this and consider there a number of deficiencies in this "illustrative text". Officers consider the LGA version to be a better vehicle to ensure the council's duty to promote and maintain high standards of conduct of members.
100. The standards committee on 24 April 2012 considered the proposed new code and made no comments. The proposed new code of conduct (see Appendix 5) was noted by the panel on 9 May 2012, as this will be a constitutional change. However, the code will need to be amended once the regulations on DPIs appear, so it cannot be agreed at the annual council. Instead it will be brought to the July council assembly.

PART 6: MEMBER AND OFFICER PROTOCOL AND COMMUNICATION PROTOCOL

101. Council assembly is invited to consider changes to the member and officer protocol (attached at Appendix 8) and the attached communication protocol at Appendix 9. The standards committee on Tuesday 24 April 2012 reviewed both documents and considered if it wished to make any comments. The comments of the committee are reported to this panel meeting.

102. The member and officer protocol and communication protocol were originally introduced in May 2004.
103. The standards committee have a role of advising the council on the revision of these protocols. The protocols will be further considered by the constitutional steering panel and considered by council assembly at constitutional council in May.

Member and officer protocol

104. The member and officer protocol is to be amended to reflect changes in the democratic services role and consequential amendments on room booking from the move to Tooley Street, the commissioning of Queens Road and the decommissioning of the town hall
105. Paragraphs 39 to 41 detail the arrangements for the use of council owned facilities, including interim arrangements for use of Cator Street until the new Queens Road facilities are available. The changes reflect priority to official council and committee business.
106. Further changes in paragraph 69 are a result of the closure of Standards for England. However with the changes in standards, members may wish to consider whether in certain cases referral to the standards committee could be appropriate in resolving disputes and promoting high standards of conduct. Other changes have been made to reflect current corporate advice on report writing.

The committee heard an introduction on the member and officer protocol and suggested the following amendments:

- Paragraph 17: Final line to read “Attacking an officer’s conduct in public can constitute bullying, as can undue pressure brought by either officers or members in private.”
 - Paragraph 20: First line to read “Officers should not leave confidential or sensitive information visible...”
 - Paragraph 44: Second line to read: “...the term ‘IT’ means computers and any systems used to create, store, print or exchange information electronically.”
107. The changes of the standards committee, together with the other changes are set out in a marked up copy of the proposed protocol attached as a Appendix 8.

Communication protocol

108. Members will recall that in 2011 a revised code of recommended practice on local authority publicity (“the Code”) came into force and the council reviewed the communication protocol to reflect the code. Use of the protocol has revealed that further revisions are required particularly concerning publicity during periods of heightened sensitivity, e.g. during elections.

109. The amendments in paragraphs 24 to 30 better reflect the code in this area. Members should also remember the monitoring officer produces specific guidance on elections which include publicity guidelines.
110. The addition of paragraph 23 concerning use of social media in certain meeting reflects concerns expressed by the committee in June 2011.
111. As with the member officer protocol and the changes in standards, members may wish to consider whether to include referral to the standards committee in certain cases, which could be appropriate in resolving disputes concerning the application of the communication protocol.
112. Having received an introduction on the communication protocol, the standards committee had no comments and noted the draft. A marked up copy of the proposed communication protocol is attached as Appendix 9.
113. Good relationships between members and officers are very important in aiding the decision-making process and helping to boost public confidence in the council. A protocol that defines each party's responsibilities creates certainty, which in turn leads to better decision-making and a more satisfied customer.

PART 6: MEMBERS' ALLOWANCES SCHEME

114. A separate report on consequential changes to the scheme as a result of proposals for planning sub-committee and standards committee is to be found elsewhere on this agenda..

CONSEQUENTIAL CHANGES

115. As a result of the changes suggested within this report officers will be required to update the constitution. Therefore council assembly is requested to authorise officers to undertake any necessary consequential changes.

OTHER IMPLICATIONS

Legal implications

116. This comment advises council assembly of the legal procedure relating to changes to the council's constitution.
117. Section 37 of the Local Government Act 2000 requires the council to "prepare and keep up-to-date" a constitution. Statutory guidance from the Department for Communities and Local Government states that constitutions "should be drafted as a flexible document" but leaves it up to local authorities to determine how and when the constitution is to be changed. It is also recognised that council constitutions cannot cover every eventuality.
118. Article 1 (1.5) (a) of Southwark's constitution states that any changes to the constitution which can only be approved by council assembly will require the prior consideration of the proposal by the constitutional steering panel. Changes to the constitution are generally agreed by council assembly, unless another body or individual is authorised to do so – see Article 1.5. Article 1.5 (b) provides for the leader to agree any executive function or local choice function to be discharged by the cabinet and therefore council assembly is only asked to note changes to the schemes of executive delegation.

119. Council assembly may approve any amendment to the constitution where the issue in general has previously been considered by the constitutional steering panel. Further, there is a distinction between changes to the constitution which clarify existing roles and functions and those which raise completely new matters which have not been considered in accordance with Article 1.

Resource implications

120. The budget for 2012/13 was set on 29 February 2012 and any changes to the constitution must be contained within the budget.

121. The constitution is produced in binder form with loose leaf pages and dividers. This means that any additional costs arising from the reproduction of small sections of the constitution are reduced compared to the reprinting of the whole constitution. Therefore, it is anticipated that the cost can be contained within existing budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark's Constitution.	Southwark Council, 160 Tooley Street, London SE1 5LZ	Lesley John 020 7525 7228
Constitutional steering panel	Southwark Council, 160 Tooley Street, London SE1 5LZ	Lesley John 020 7525 7228

APPENDICES

Appendix No.	Title
Appendix 1	Proposed changes to Article 8 – Community Councils
Appendix 2	Proposed changes to Part 3F – Planning Committee and Planning Sub committees
Appendix 3	Proposed changes to Part 3H – Community Councils
Appendix 4	Standards Committee – Constitutional changes to Part 3M and Procedure Rules
Appendix 5	Draft Code of Conduct
Appendix 6	Contract Standing Orders 2012/13
Appendix 7	Financial Standing Orders 2012/13
Appendix 8	Member and Officer Protocol
Appendix 9	Communication Protocol
Appendix 10	Constitutional changes from political groups considered by constitutional steering panel on 9 May 2012

AUDIT TRAIL

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Version	Final	
Dated	11 May 2012	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Included in body of report
Legal Governance Team	Yes	Included in body of report
Finance Director	Yes	Included in body of report
Head of Financial Governance	Yes	Included in body of report
Planning Department	Yes	Included in body of report
Cabinet Member	No	No
Date final report sent to Constitutional Team	11 May 2012	