

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Deputy Leader of the Council and Portfolio Holder – People, Places & Corporate, and Executive Manager – Governance (Deputy Monitoring Officer)

To: South Holland District Council Wednesday, 28 April 2021

(Author: Jacqui Berridge Lawyer
Mark Stinson - Executive Manager - Governance)

Subject Constitution and other matters

Purpose: To consider:
(a) variations to the Constitution relating to (i) the Council's decision to bring the shared management arrangements between South Holland District Council and Breckland District Council to an end; (ii) virtual meetings; (iii) delegation arrangements for determining planning applications; (iv) future structure reviews; (v) special Council meetings; (vi) Standing Order no. 29; (vii) independent persons; (viii) Full Council terms of reference; and (ix) Public Sector Partnership Services Limited amendments; and
(b) the designation of Statutory Officers and Proper Officers.

Recommendations:

Variations to the Constitution arising from the decision bring the shared management arrangements between South Holland District Council and Breckland District Council to an end:

(1) That, following the decision by Full Council at its meeting on 24 February 2021 to terminate the Memorandum of Agreement entered into by South Holland District Council and Breckland District Council and to approve an interim staffing structure, the Constitution be amended as follows with effect from 1 May 2021:

(a) reference to the Council's joint arrangements with Breckland District Council be removed as detailed in Appendices A and B to this report; and

(b) a new joint Committee, called the "Shared Memorandum of Agreement Committee" be appointed in order to deal with any disputes submitted to it in accordance with sections 8 (termination and review of joint arrangements) or 11 (dispute resolution) of the Memorandum of Agreement dated 1 April 2011, with terms of reference as detailed in Appendix C to this report, and the Constitution be further amended to take this into account, as also shown in Appendix C; and

(c) the terms of reference of the Appeals Panel be amended as shown in Appendix D to this report; and

(2) That, until such time as the Council appoints a further independent person for the purposes of attending any committee that considers the proposed dismissal of the Head of the Paid Service, Monitoring Officer, or the Section 151 Officer, the Council continues to use the independent person appointed by Breckland District Council, as reflected in Appendix B to this report; and

(3) That the following statutory designations be formally made to apply with effect from 1 May 2021:

- Head of Paid Service – Nathan Elvery (on an interim basis until such time as the Council designates or appoints a permanent Head of Service)
- Monitoring Officer - Mark Stinson - Assistant Director Governance
- Section 151 Officer - Christine Marshall - Executive Director Strategy and Resources

and the Glossary of Terms (Definitions Relating to Staff) be amended accordingly; and

(4) That the existing Proper Officer appointments be amended as shown in the final column of the table at Appendix E; and

(5) The reference to "Senior Legal Officer" in the Glossary of Terms (Definitions Relating to Staff) be amended to refer to the Assistant Director Governance; and

(6) That the Strategic Finance and Compliance Manager be appointed as the Senior Information Risk Officer and paragraph 6.3 of Part 3 Section F3 of the Constitution be amended accordingly; and

(7) That:

(a) the Heading to Part 3 Section F4 of the Constitution be amended to read as follows:

Delegations to Senior Legal Officer, Solicitor to the Council and the Service Manager responsible for legal services.

(b) the Heading to Part 3 Section F5 of the Constitution be amended to read as follows:

Delegations to the Assistant Director responsible for strategic growth

Issues Arising from Covid

(8) That the amendments to the Council's Standing Orders and Access to Information Procedure Rules, approved by Full Council at its meeting on 13 May 2020 to allow virtual meetings to be held, remain within the Constitution unless and until (if applicable) the law is clear that virtual meetings can no longer lawfully be held, at which time the Senior Legal Officer be authorised to remove such amendments from the Constitution (with the exception of Standing Order 14.1 the amendment to which will remain) without the need for a further report; and

(9) That the temporary delegation arrangements for determining planning applications approved at Full Council on 13 May 2020 and extended by Council on 25 November 2020 be further extended to apply until the Council meeting to be held on 24 November 2021 (or the next Council meeting after that date if that meeting is, for any reason, cancelled) subject to the amendments shown in Appendix F to this report; and

Future Structure Reviews

(10) That, with a view to reducing the necessity for multiple Constitutional amendments following any future structure reviews, the Constitution be amended as follows:

(a) the amendments shown in Appendix G be approved in order to clarify when officers can make minor changes to the Constitution which are essentially administrative; and

(b) statutory officer references at paragraph 1.4 of Article 11 of the Constitution be amended in accordance with the details included in Appendix H to this report; and

(c) the following generic definitions be added to the Glossary of Terms (Definitions Relating to Staff) :

- "Directors" means tier 2 officers (immediately below the post of Chief Executive, whether or not a Chief Executive is actually in post). Currently the Executive Directors.
- "Assistant Directors" means tier 3 officers (immediately below the Directors). Currently the Assistant Directors.
- "Service Managers" means tier 4 officers (immediately below the Assistant Directors) who manage each service unit. Currently the Service Managers.

(d) all references to "Executive Directors(s)" within the Constitution be amended to read "Director(s)"; and

(e) all references to "Executive Manager(s)" within the Constitution be amended to read "Assistant Director(s)"; and

(f) all references to "Senior Managers" within the Constitution be amended to read "Service Manager(s)"; and

(11) That, for clarification, the following definitions be added to the Glossary of Terms (Definitions Relating to Staff):

- "Electoral Registration Officer" means the officer appointed under section 8 of the Representation of the People Act 1983. The Electoral Registration Officer is currently Christine Marshall - Executive Director Strategy and Resources.
- "Returning Officer" means the officer appointed under section 35 of the Representation of the People Act 1983. The Electoral Registration Officer is currently Christine Marshall - Executive Director Strategy and Resources.

(12) That Rule 2.2.1 (j) of the Contract Procedure Rules be amended to refer to the Senior Legal Officer in place of the Executive Manager Governance; and

Other Proposed Amendments to the Constitution

(13) That the Constitution be amended to clarify the four types of Full Council meetings in accordance with the details shown at Appendix I of this report; and

(14) That Standing Order No. 29 (conflict between Council and Executive) be deleted as the issue is repeated more fully in Standing Order no. 63 and 64, and that Standing Order no. 29A be renumbered No. 29; and

(15) That statutory Standing Order no. 60A relating to independent persons be added, and the terms of reference of the Appointments and Disciplinary Committee be amended so as to refer to Standing Order no. 60A, as detailed in Appendix J; and

(16) That paragraphs (e) and (f) of term of reference number 3 of the Full Council at Part 3 of the Constitution be deleted; and

(17) That the Constitution be amended as shown in Appendix K following the extension of the partnership arrangements which comprises Public Sector Partnership Services Limited to include Boston Borough Council.

1.0 BACKGROUND

1.1 The Full Council at its meeting on 24 February 2021 agreed to activate clause 8 of the Memorandum of Agreement entered into by South Holland District Council and Breckland District on 1 April 2011. This will end the relationship between the two authorities. The Council also approved a proposed amended structure to apply following termination of the shared arrangements. It is currently anticipated that the shared arrangements will officially terminate on 1 May 2021.

1.2 This report seeks Full Council approval for:

- a number of variations to the Constitution arising from the Council's decision to activate clause 8 of the Memorandum of Agreement;
- the designation of statutory officers and proper officers, which will take effect on the date of termination of the existing shared arrangements; and
- other issues arising from the decision.

1.3 In addition,

- it is necessary to consider existing amendments which were made to the Constitution to deal with Covid, including virtual meetings and planning officer delegations; and
- this report considers a number of other variations to the Constitution which have come to light during the above process.

2.0 PROPOSED VARIATIONS TO THE CONSTITUTION ARISING FROM DECISION TO ACTIVATE CLAUSE 8

References to Joint Arrangements (Appendices A and B refer)

2.1 There are several references to the joint arrangements within the Constitution which need to be removed, as detailed in Appendix A to this report.

2.2 The terms of reference of the existing Joint Appointments and Disciplinary Committee, and the Joint Appointments and Disciplinary Appeals Committee also need to be amended so that they refer only to officers of South Holland District Council, as detailed in Appendix B.

Independent Persons

2.3 In accordance with the Local Authority (Standing Orders) (England) Regulations 2001 (as amended), at least 2 independent persons must be present at any committee that considers the proposed dismissal of the Head of the Paid Service, the Monitoring Officer and the Section 151 Officer. Independent persons must be appointed in accordance with the following priority order:

- A person who has been appointed by the Council and who is a local government elector
- Any other person who has been appointed by the Council
- A person who has been appointed by another authority or authorities

2.4 As part of the shared arrangements, South Holland District Council and Breckland District Council agreed that the 2 independent persons should comprise, where possible, 1 independent person appointed by SHDC and 1 independent person appointed by

Breckland District Council. Each Council therefore currently has only has 1 appointed independent person.

- 2.5 Until such time as it is possible for the Council to appoint a further independent person it is recommended that each Council continues to use the independent person appointed by the other Council. This arrangement is reflected in Appendix B. Breckland District Council approved this at its Full Council meeting on 8 April 2021.

Memorandum of Agreement - Disputes (Appendix C refers)

- 2.6 One of the terms of reference of the existing Joint Appointments and Disciplinary Committee is to consider and report to each Council on any disputes submitted to it in accordance with section 8 (termination and review of joint arrangements) or section 11 (dispute resolution) of the Memorandum of Agreement dated 1 April 2011. It will be necessary to retain reference to this mechanism until such time as any potential historical disputes under the Agreement are beyond the point of challenge.
- 2.7 For this purpose it is proposed to appoint a separate Committee, called the "Shared Memorandum of Agreement Committee", which will have only one term of reference, and which will automatically dissolve once all outstanding matters have been dealt with, as detailed in Appendix C. Other amendments to the Constitution to take account of this proposal are also included at Appendix C. Breckland District Council approved this at its Full Council meeting on 8 April 2021.

Appeals Panel (Appendix D refers)

- 2.8 Minor variations will be required to the Appeals Panel as shown in Appendix D.

Statutory Officers - Appointment of

- 2.9 The Council is required by law to designate one of their officers as:
- Head of the Paid Service (section 4 Local Government and Housing Act 1989)
 - Monitoring Officer (section 5 Local Government and Housing Act 1989)
 - Section 151 Officer (section 151 Local Government Act 1972)
- 2.10 In view of the restructure it is recommended that the following designations be formally made with effect from the date of termination of the existing shared arrangements. It should be noted that Christine Marshall is already the duly designated Section 151 Officer (in her capacity as a shared officer employed by Breckland Council) and the designation forms part of her contract of employment. It should be further noted that Nathan Elvery's designation as Head of Paid Service is intended to be a temporary arrangement until such time as the Council is in a position to identify a permanent Head of Paid Service.

Head of Paid Service (Interim)	Nathan Elvery - Strategic Advisor
Monitoring Officer	Mark Stinson - Assistant Director - Governance
Section 151 Officer	Christine Marshall - Executive Director Strategy and Resources

Proper Officers (Appendix E refers)

- 2.11 Many statutes and regulations refer to functions being carried out by the relevant "Proper Officer". Proper Officer appointments are made as follows:

- some appointments are specifically included within the Constitution
- under Part 3 Section F2 of the Constitution (delegations to the Chief Executive) the Chief Executive has delegated authority to appoint appropriate officer(s) to act as Proper Officers where necessary for functions which come within the jurisdiction of that officer, except that the Chief Executive does not have authority to appoint him or herself as a Proper Officer
- Full Council has power to appoint Proper Officers for any purpose where such appointments have not been made by the Chief Executive under Part 3 Section F2.

2.12 The former Chief Executive appointed various Proper Officers. Following the resignation of the Chief Executive, the Full Council at its meetings on 8 October and 25 November 2020 agreed to appoint the 3 Directors as Proper Officers for various functions under the Local Government Act 1972. All details are included at Appendix E.

2.13 It is now proposed to amend the existing Proper Officer appointments to take into account the proposed amended structure, but in such a way that further amendments should not be necessary if the establishment is amended further at any later date. It is therefore recommended that the amended Proper Officer appointments detailed in the final column of Appendix E be approved.

Senior Legal Officer

2.14 The Constitution refers to the Senior Legal Officer in a number of places, and various delegations apply to this post. The Executive Manager - Governance is currently the Senior Legal Officer but following the restructure that post will become the Assistant Director - Governance. It is therefore recommended that the Glossary of Terms (Definitions Relating to Staff) be amended accordingly.

Senior Information Risk Officer

2.15 Part 3 Section F3 (Delegations to Executive Directors) states as follows:

6.3 The Shared Executive Manager Information is the Senior Information Risk Officer (SIRO) for the purposes of taking overall ownership of the Council's information management framework, including its information risk policy."

2.16 The post of Shared Executive Manager Information is being merged with the post of Assistant Director - Governance. The Assistant Director - Governance is the Data Protection Officer and best practice requires the responsibilities of the Senior Information Risk Officer and the Data Protection Officer to be separated. It is therefore recommended that Sam Knowles, Strategic Finance and Compliance Manager, be appointed as the Senior Information Risk Officer and that the above paragraph be amended accordingly.

Part 3 Section F4 - Delegations to Senior Legal Officer, Solicitor to the Council and the Legal Services Manager.

2.17 Part 3 Section F4 of the Constitution contains delegations to the Senior Legal Officer, Solicitor to the Council and the Legal Services Manager. Changes to post titles are likely as a result both of the split from Breckland and potential future changes should a new shared structure be agreed with another local authority. In order to avoid having to amend the titles following any future restructure it is also recommended that the heading be amended to read as follows:

"Delegations to Senior Legal Officer, Solicitor to the Council and the ~~Legal Services Manager~~ **Service Manager responsible for legal services.** "

Part 3 Section F5 - Delegations to the Executive Manager Growth

- 2.18 Part 3 Section F5 of the Constitution contains delegations to the Executive Manager Growth. The post will become Assistant Director - Strategic Growth, but in order to avoid having to amend the title following any future restructure it is recommended that the heading to that section be amended to read as follows:

"Delegations to the ~~Executive Manager Growth~~ Assistant Director responsible for strategic growth"

3.0 CONSTITUTIONAL ISSUES ARISING FROM COVID

Virtual Meetings

- 3.1 Full Council at its meeting on 13 May 2020 agreed a number of amendments to the Council's Standing Orders and Access to Information Procedure Rules to allow virtual meetings to be held. The amendments (with the exception of the amendment to Standing Order no. 14.1 - disturbance by member of the public - which will remain) were approved to apply up to, but not including 7 May 2021 (being the date on which the virtual meeting regulations are due to expire), or such longer period as the law allowed virtual meetings to be held, the amendments then to be removed from the Constitution without a further report.
- 3.2 At the time of writing this report the situation regarding virtual meetings is as follows:
- whilst virtual meetings have been held courtesy of regulations, the Government considers that primary legislation will be required to make similar provision to that contained in the Regulations due to expire, and that there is insufficient time to do this;
 - an application has been made to the High Court by the Association of Democratic Services and Lawyers in Local Government for a declaration that existing legislation (the Local Government Act 1972) can be used to regularise the situation to allow virtual meetings to continue. The hearing will be held on 21 April but it is not currently known when the High Court's declaration will be issued. The Government is supporting the case being made for the continuation of virtual meetings under existing legislation; and
 - the government has received representations from individual local authorities and sector representative organisations making the case for permanent express provision for remote meetings and has therefore issued a call for evidence about the pros and cons of making such arrangements permanent in England.
- 3.3 It is recommended that the amendments to the Council's Standing Orders and Access to Information Procedure Rules remain within the Constitution unless and until (if applicable) such time as the law is clear that virtual meetings can no longer lawfully be held, at which time the Senior Legal Officer be authorised to remove from the Constitution the amendments approved by Full Council on 13 May 2020 (with the exception of Standing Order no. 14.1). This will then allow the existing amendments to be used as and when the law permits.

Determination of planning applications (Appendix F refers)

- 3.4 On 13 May 2020, at the height of the first lockdown, the Council agreed temporary delegation arrangements for determining planning applications, as shown in Appendix F. The delegation was initially drafted before planning committee meetings were held virtually, and was intended to ensure that, during a very difficult time, as many planning applications

as possible could be determined in a timely manner whilst maintaining member oversight. Whilst the delegations aimed to reduce the number of applications that might need to be submitted to Planning Committee, they supplemented but did not reduce or remove any of the powers of the Planning Committee to determine any application. The arrangements were intended to last for 6 months.

- 3.5 Full Council at its meeting on 25 November 2020 was advised that, whilst virtual Planning Committee meetings had been held successfully, the temporary delegations had provided flexibility that had allowed planning performance against national indicators with respect to timeliness of decision making to be maintained. In the context of a second national lockdown, Full Council approved the extension of the temporary delegations to enable this flexible approach to continue, with a view to officers bringing forward a revised set of permanent delegations for Council consideration at the AGM in May 2021.
- 3.6 Clearly, the situation remains uncertain given that social distancing requirements remain in place and given that we do not know whether virtual meetings will be possible after 6 May. The Chairman of the Planning Committee has agreed that an additional virtual Planning Committee meeting will be held in late April, with no further meetings likely to be scheduled before 21 June, when social distancing requirements are expected to ease, unless virtual meetings can continue. In that situation, it is anticipated that the Council will rely on the amended officer delegations, and in the circumstances it is now recommended that the temporary arrangement be further extended to the Council meeting to be held on 24 November 2021 (or the next Council meeting after that date if that meeting is, for any reason, cancelled). By that time the situation should, hopefully, be clearer and officers may be in position to consider a more permanent way forward.
- 3.7 It is also recommended that the delegation also be amended, as shown in Appendix F, to reflect the amended staffing/management structure.

4.0 FUTURE STRUCTURE REVIEWS

- 4.1 Whilst considering the amendments necessary to reflect termination of the shared arrangements, it has become clear that a number of amendments can be made to the Constitution which will reduce the necessity to seek approval for multiple Constitutional amendments following any future structure reviews, as follows:

Glossary of Terms (Definitions Relating to Staff) (Appendix G refers)

- 4.2 There are a number of definitions within the glossary of terms where reference is made (for example) to a definition of an officer post, and then the glossary explains which officers currently fill that post. This is done so that future management changes require only minor amendments to the glossary of terms rather than numerous changes within the main body of the Constitution.
- 4.3 There are various authorisations within the Constitution allowing the Monitoring Officer and/or the Senior Legal Officer to amend the Constitution in defined circumstances. None of these circumstances include amending the glossary in the circumstances anticipated in the previous paragraph, where the changes are essentially administrative. In addition, some further clarity is needed in respect of the existing authorisation. In order to clarify these issues it is recommended that the Constitution be amended to allow changes to be made to the Constitution which are essentially administrative, as shown in Appendix G.

Article 11 - Statutory Officers (Appendix H refers)

- 4.4 As detailed above, the Council is required by law to designate officers as:

- Head of the Paid Service (section 4 Local Government and Housing Act 1989)
- Monitoring Officer (section 5 Local Government and Housing Act 1989)
- Section 151 Officer (section 151 Local Government Act 1972)

4.5 These are known as "statutory officers" and are referred to in Article 11 of the Constitution. Paragraph 1.4 of Article 11 currently includes a table which states which officers are designated as the 3 statutory officers. This table is misleading as the statutory designations do not attach to any specific posts; rather, it is for Full Council to determine which officers are designated. It is therefore proposed that the table be removed from Article 11, and that paragraph 1.4 of Article 11 be amended as detailed in Appendix H. It should be noted, however, that the Section 151 Officer designation forms part of the contract of employment of the current incumbent, Christine Marshall.

Chief, Deputy Chief and Service Manager Posts

4.6 The Constitution currently refers throughout to "Executive Directors" and "Executive Managers", however the structure approved by Full Council at its meeting on 24 February 2021 refers instead to "Executive Directors" and "Assistant Directors". The Constitution also refers variously to Senior Managers and Service Managers, where both references relate to the same tier of officers.

4.7 It is proposed to refer to these posts generically within the glossary of terms so that any future amendments to the post titles can be dealt with by amending the glossary only as follows:

- "Directors" means tier 2 officers (immediately below the post of Chief Executive, whether or not a Chief Executive is actually in post). Currently the Executive Directors.
- "Assistant Directors" means tier 3 officers (immediately below the Directors). Currently the Assistant Directors.
- "Service Managers" means tier 4 officers (immediately below the Assistant Directors) who manage each service unit. Currently the Service Managers.

4.8 It is then proposed that:

- All references to "Executive Directors(s)" within the Constitution be amended to read "Director(s)"
- All references to "Executive Manager(s)" within the Constitution be amended to read "Assistant Director(s)"
- All references to "Senior Managers" within the Constitution be amended to read "Service Manager(s)".

4.9 It is also recommended that, for clarity, the following definitions be added to the Glossary of Terms (Definitions Relating to Staff) in order to define posts which are referred to within the Constitution:

- "Electoral Registration Officer" means the officer appointed under section 8 of the Representation of the People Act 1983.
- "Returning Officer" means the officer appointed under section 35 of the Representation of the People Act 1983.

- 4.10 Both posts are currently held by Christine Marshall, Executive Director Commercialisation (which will become Executive Director Strategy and Resources).

Contract Procedure Rule 2.2.1

- 4.11 Rule 2.2.1 (j) of the Contract Procedure Rules currently states that Chief Officers/Deputy Chief Officers will "ensure original contract documents are forwarded to the Shared Executive Manager Governance for safekeeping."
- 4.12 In order to "future proof" the Constitution this should refer to the Senior Legal Officer and it is recommended that the Rule be amended accordingly.

5.0 OTHER PROPOSED AMENDMENTS TO THE CONSTITUTION

- 5.1 Whilst considering the amendments necessary to allow the shared arrangements to terminate, a number of other issues have arisen which are explained below.

Full Council Meetings (Appendix I refers)

- 5.2 There are essentially 4 types of meetings of the Full Council as follows:
- meetings which must be held by law ie the annual meeting
 - meetings which are held in accordance with the timetable of meetings fixed by the Council
 - meetings which are called by the Chairman, or by 5 members of the Council upon requisition, in accordance with Schedule 12 to the Local Government Act 1972. These are called extraordinary meetings
 - meetings which are otherwise called for a special and particular purpose. These are called special meetings.
- 5.3 There are a number of references within the Constitution to the various types of meeting, but the references are not consistent. It is therefore recommended that the Constitution be amended in accordance with the details shown in Appendix I.

Standing Order No.29

- 5.4 Standing Order no. 29 details the process that must be followed when any policy that comprises part of the Policy Framework, or any element of the budget, is submitted by the Cabinet to Full Council for approval, but Full Council objects. This Standing Order is not necessary as it is dealt with more fully in Standing Order nos. 63 and 64 which are statutory Standing Orders (ie required by law).
- 5.5 It is therefore recommended that Standing Order No. 29 be deleted, and that Standing Order no. 29A be renumbered No. 29.

Statutory Standing Order relating to independent persons (Appendix J refers)

- 5.6 One statutory Standing Order does not currently appear within the Constitution. This is contained at Schedule 3 paragraph 9 of the Local Authorities (Standing Order) (England) Regulations 2001 (as amended) and states as follows:

"Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."

5.7 It is recommended that this be incorporated within the Constitution as shown in Appendix J.

Part 3 - Full Council terms of reference

5.8 The terms of reference for the Full Council include the following:

"3. Except for Executive Functions the following are reserved to Full Council:

(a) to (d) ..

(e) action which so expands or reduces the scope of an existing service as to make it materially different as a whole from that which the Council has previously provided or approved

(f) the approval of any scheme or formal proposals affecting the district as a whole or any of the Council's services and the substantial variation or the revocation of any such scheme or proposals

5.9 Items (e) and (f) are not correct. The only issues which come within the jurisdiction of the Full Council are those matters set out at law, primarily the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Issues which come under items (e) and (f) are matters for the Cabinet except in relation to any necessary staffing amendments and any necessary budget amendments which are Full Council functions, and any specific issues which must, by law, have Full Council approval and which are already referenced within the terms of reference. Paragraphs (e) and (f) can therefore be deleted.

5.10 It is possible for the issues referred to at (e) and (f) to go through a process which requires Full Council to be consulted, and officers can submit a further report with proposed structure for such a procedure if members so require.

Part 1 - Merged Services Organisations (Appendix K refers)

5.11 Decisions of the Council on 20 January 2021 and the Leader on 29 January agreed the extension of the partnership arrangements which comprises Public Sector Partnership Services Limited to include Boston Borough Council. The Constitution now requires amendment as shown in Appendix K.

6.0 OPTIONS

6.1 Members have the option to approve or not approve the appointments and variations, or to require alternative appointments and variations.

7.0 REASONS FOR RECOMMENDATION(S)

7.1 It is necessary to amend the Constitution to take account of the Council's decision to end the shared arrangements between South Holland District Council and Breckland Council, and reflect the amended staffing structure. It is also necessary to ensure that statutory designation are formally made to apply with effect from the date of termination of the existing shared arrangements.

7.2 It is necessary to deal with issues arising from Covid until the situation becomes clearer.

7.3 Further proposed variations are recommended which are designed to ensure that fewer variations to the body of the Constitution will be necessary following any future structure changes.

7.4 The need for other minor variations has become clear during the current full review of the Constitution.

8.0 EXPECTED BENEFITS

8.1 The Constitution will be fit for purpose following termination of the shared arrangements and during Covid. The further minor amendments proposed will ensure that fewer variations are required following any further structure changes and will address inconsistencies within the Constitution.

9.0 IMPLICATIONS

9.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

Constitution & Legal

9.2 Any legal implications are set out in the relevant paragraphs. Amending the Constitution is a function reserved to Full Council.

10.0 WARDS/COMMUNITIES AFFECTED

10.1 None

11.0 ACRONYMS

11 There are acronyms in Appendix D which are explained at the end of that Appendix.

Background papers:- The Council's Constitution which can be found online

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Key Decision: N

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

APPENDIX A Proposed amendments to the Constitution to remove reference to joint arrangements with South Holland District Council.

APPENDIX B Proposed amendments to the terms of reference of the Joint Committees

APPENDIX C Proposed Shared Memorandum of Agreement Committee and other proposed amendments to the Constitution relating to this Committee

APPENDIX D Proposed amendments to the Terms of Reference of the Appeals Panel (SHDC only)

- APPENDIX E Proposed amended Proper Officer appointments
- APPENDIX F Proposed amendments to previously approved protocol/delegations to officers relating to determination of planning applications
- APPENDIX G Proposed amendments to clarify when the Constitution can be amended by officers
- APPENDIX H Proposed amendments to Paragraph 1.4 of Article 11
- APPENDIX I Proposed amendments to clarify issues regarding special Council meetings
- APPENDIX J Proposed amendments to include reference to the statutory standing order relating to independent persons
- APPENDIX K Proposed amendments arising from the joining of Boston Borough Council to Public Sector Partnership Services Limited

APPENDIX A - Proposed amendments to the Constitution to remove reference to joint arrangements with South Holland District Council.

Amendment 1

Article 10

1.2 The Council works with a number of other authorities including ~~operating joint management arrangements with Breckland District Council~~, joint back office functions with East Lindsey District Council and Boston Borough Council (PSPSL) and joint development plan arrangement with Boston Borough Council and Lincolnshire County Council (South East Lincolnshire Joint Strategic Planning Committee).

Amendment 2

Part 3 Section D - Delegations to Committees

1.1 The quorum of meetings of the Cabinet shall be 3. ~~The quorum of the Joint Appointments and Disciplinary Committee shall be 6 consisting of 3 members from South Holland District Council and 3 members from Breckland District Council. The quorum of the Joint Appointments and Disciplinary Appeals Committee shall be 4, consisting of 2 members from South Holland District Council and 2 members from Breckland Council. Except that when either Joint Committee is meeting to consider the appointment or dismissal of, or disciplinary action in relation to, any Chief Officer or Deputy Chief Officer who is not jointly appointed the quorum shall be 3.~~

1.6 Substitution of members is also permitted for:

-
- The **Joint Appointments and Disciplinary Committee** where ~~each Council shall appoint~~ 3 named members ~~who~~ may act as substitute.

1.7 Substitutions are not permitted for:

-
-
- ~~Joint~~ Appointments and Disciplinary Appeals Committee
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Amendment 3

Part 3 Section F1 - Delegations to officers - paragraph 15(l)

Appointment and Dismissal of Staff	
Except for matters reserved to the Joint Appointments and Disciplinary Committee and the Joint Appointments and Disciplinary Appeals Committee and matters dealt with under Standing Orders relating to Staff:	

Amendment 4

Reference to the word "joint" be deleted, and all references to both Councils be amended so as to refer to only one Council, in:

- Standing Order no. 32
- Standing Order no, 37.2

- Standing Order no. 40
- Standing Order no. 42.6(b)
- Standing Order no. 57 (see also below)
- Standing Order no. 60 (see also below)
- Standing Order no. 61 (see also below)
- All references to the Chief Executive, Chief Officers, Deputy Chief Officers, Executive Directors and Executive Managers

Amendment 5 - Standing Orders

STANDING ORDER NO. 38

~~38.3 The quorum of the Joint Appointments and Disciplinary Committee shall be 6 consisting of 3 members from South Holland District Council and 3 members from Breckland District Council. The quorum of the Joint Appointments and Disciplinary Appeals Committee shall be 4, consisting of 2 members from South Holland District Council and 2 members from Breckland Council. Except that when either Joint Committee is meeting to consider the appointment or dismissal of, or disciplinary action in relation to, any Chief Officer or Deputy Chief Officer who is not jointly appointed the quorum shall be 3.~~

STANDING ORDER NO. 57

~~In Standing Orders Nos. 57 to 61~~

~~"Councils" means both Breckland District Council and South Holland District Council~~

~~"Joint" means appointed jointly for both Breckland District Council and South Holland District Council.~~

STANDING ORDER NO. 58

58.1 Appointment of the ~~Joint~~ Head of the Paid Service is subject to approval by the Full Councils following consideration of the recommendation of such an appointment by a ~~Joint~~-committee or sub-committee of the Councils. That committee or sub-committee must include at least one Cabinet Member. ~~of Breckland Council and at least one Cabinet Member of South Holland District Council.~~

58.2. The Full Councils may only make or approve the appointment of the ~~Joint~~ Head of Paid Service where no material or well-founded objection has been made by any Cabinet Member ~~or Cabinets of the Councils~~ in accordance with current regulations.

STANDING ORDER NO. 59

Appointment of other ~~Joint~~ Chief Officers and Deputy Chief Officers

59.1 A ~~joint~~-committee or sub-committee of the Councils will appoint all other ~~Joint~~-Chief Officers and ~~Joint~~ Deputy Chief Officers. That ~~Joint~~ committee or sub-committee must include at least one Cabinet Member. ~~of Breckland District Council and at least one Cabinet Member of South Holland District Council~~

59.2 An offer of employment as a ~~Joint~~ Chief Officer or ~~Joint~~ Deputy Chief Officer shall only be made after notice of the proposed appointment has been circulated to all Cabinet Members ~~of Breckland District Council and all Cabinet Members of South Holland District Council~~ and where no

material or well-founded objection from any Cabinet Members has been received in accordance with current regulations.

~~59.3 This Standing Order shall also apply to any other Chief Officers and Deputy Chief Officers who are not Joint and where this applies the matter shall also be submitted to the joint committee subject to the membership and quorum being amended as shown at Part 3 Section D (Delegations to Committees), and reference to "the Councils" shall be deemed to refer to the relevant employing Council.~~

STANDING ORDER NO. 60

60.2 A ~~Joint~~ committee or sub-committee of the Councils will make recommendations to ~~each~~ Full Council on any proposed disciplinary action, including issues relating to capability, against the ~~Joint~~ Head of the Paid Service, ~~Joint~~ Monitoring Officer and ~~Joint~~ Section 151 Officer and ~~both~~ Full Councils must approve any action before it is taken. Where dismissal is proposed Standing Order 60(3) will apply.

60.3 (iii) The Councils must appoint the panel at least 20 Working Days before the ~~first of the two~~ Council meetings which considers whether or not to approve a proposal to dismiss.

(Note at the end which should be renumbered (vi)) Notice of dismissal may only be made where no material or well-founded objection from any Cabinet Member ~~of Breckland District Council or the Cabinet of South Holland District Council~~ has been received in accordance with current regulations.

STANDING ORDER NO. 61

61.2 Notice of dismissal may not be made until details of the proposed dismissal have been circulated to all Cabinet Members ~~of Breckland District Council and the Cabinet of South Holland District Council~~ and no well-founded objection from any Cabinet Member has been received in accordance with current regulations.

~~61.3 This Standing Order shall also apply to any other Chief Officers and Deputy Chief Officers who are not Joint and where this applies the matter shall also be submitted to the joint committee subject to the membership and quorum being amended as shown at Part 3 Section D (Delegations to Committees), and reference to "the Councils" shall be deemed to refer to the relevant employing Council.~~

~~61.4~~ **61.3** Except as required under sub-paragraph 12 of paragraph 15(l) of Section F of Part 3 (staffing functions delegated to Chief Officers) Councillors will not be involved in the dismissal of any officer below the grade of Deputy Chief Officer) except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

APPENDIX B - Proposed amendments to the terms of reference of the Joint Committees

NOTE: All references to "Councils" are amended to Council

Council body	Membership	Function/Terms of Reference
<p><i>Joint Appointments and Disciplinary Committee</i></p> <p><i>This Committee may also sit under Terms of Reference 2 and 3 in relation to "any other Chief Officer or Deputy Chief Officer" who is not jointly appointed subject to (i) the membership being restricted to the members of the appointing/ dismissing Council only; (ii) the quorum being amended to 3 including at least 1 Cabinet member; and (iii) all references to the Councils being deemed to refer to the appointing/ dismissing Council</i></p>	<p>6 Members 3 Members</p> <p>(3 Breckland Members & 3 South Holland Members in accordance with Local Government (Committees and Political Groups) Regulations 1990</p> <p>(Quorum 6 which must comprise 3 members from each authority including at least one Cabinet Member from each authority)</p> <p>Substitutions: see paragraphs 1.4 to 1.7 above.</p>	<p>Has executive powers in relation to terms of reference 2, 3, 5 and 6 below:</p> <ol style="list-style-type: none"> 1. The making of recommendations to the Full Councils on the appointment and dismissal of the joint Head of the Paid Service, or the taking of disciplinary action against him/her; When dealing with potential dismissal, or disciplinary action the committee will carry out the necessary disciplinary hearing and the report to the Full Councils will detail the opinions of each of the independent persons. 2. The appointment of any other joint Chief Officer or joint Deputy Chief Officer (this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of the Paid Service). 3. The dismissal of, or the taking of any disciplinary action against any other joint Chief Officer or joint Deputy Chief Officer except the joint Section 151 Officer and the joint Monitoring Officer (this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of the Paid Service); 4. The making of recommendations to the Full Councils on the dismissal of the joint Monitoring Officer or the joint Section 151 Officer, or on the taking of disciplinary action against him/her. When dealing with potential dismissal or disciplinary action the committee will carry out the necessary disciplinary hearing and the report to the Full Councils with will detail the opinions of each of the independent persons. <p>5. Considering and reporting to each Council on any disputes submitted to it in accordance with sections 8 (termination and review of joint arrangements) or 11 (dispute resolution) of the Memorandum of Agreement dated 1 April 2011.</p> <p>6 5. Approving staffing policies in respect of redundancy, early retirement, and discretionary compensation</p> <p>NOTE: In the exercise of these functions the Committee must act in accordance with Standing Orders relating to Staff and the Local Authority (Standing Orders) (England) Regulations 2001 (as amended) including:</p> <p>(a) Head of the Paid Service - No offer of appointment may be made until the proposed appointment has been</p>

approved by the Full Councils and until notice of the proposed appointment has been given by the proper officer to ~~each Council's~~ the Cabinet Members and the Leaders ~~have~~ has not objected within the time given for response. No notice of dismissal may be issued until the proposed dismissal has been approved by the Full Councils, taking into account the recommendation of a ~~joint~~ committee which must ~~comprise~~ include at least 2 independent persons, and until notice of the proposed dismissal has been given by the proper officer to ~~each Council's~~ the Cabinet Members and the Leaders ~~have~~ has not objected within the time given for response.

(b) Monitoring Officer and Section 151 Officer - No offer of appointment may be made until notice of the proposed appointment has been given by the proper officer to ~~each Council's~~ the Cabinet Members and the Leaders ~~have~~ has not objected within the time given for response. No notice of dismissal may be issued until the proposed dismissal has been approved by the Full Councils, taking into account the recommendation of a ~~joint~~ committee which must ~~comprise~~ include at least 2 independent persons, and until notice of the proposed dismissal has been given by the proper officer to ~~each Council's~~ the Cabinet Members and the Leaders ~~have~~ has not objected within the time given for response.

(c) Other Chief Officers and Deputy Chief Officers (this includes the Chief Executive where the post of Chief Executive is separate from the Post of Head of the Paid Service) – no offer of appointment may be made nor notice of dismissal issued until notice of the proposed appointment or dismissal has been given by the proper officer to ~~each Council's~~ the Cabinet Members and the Leaders ~~have~~ has not objected within the time given for response.

(When the Committee meets to make recommendations to the Full Council on the proposed dismissal of the Head of Paid Service, the S151 Officer or the Monitoring Officer, the Committee shall also include at least 2 independent persons appointed under section 28(7) of the Localism Act 2011 in accordance with the following priority order:

- 1. A person who has been appointed by the Council and who is a local government elector**
- 2. Any other person who has been appointed by the Council**
- 3. A person who has been appointed by another authority or authorities)**

(Breckland DC at its meeting on 8.4.21 and SHDC at its meeting on 21.4.21 agreed to continue to use the independent person appointed by the other Council until such time as each Council may have appointed its own additional independent person.)

(Note at end)

~~(SHDC at its meeting on 24.6.15 and Breckland DC at its meeting on 9.7.15 agreed that the 2 independent persons should comprise, where possible, 1 independent person appointed by SHDC and 1 independent person appointed by Breckland DC.~~

NOTE: The quorum for the Appointments and Disciplinary Appeals Committee will revert to 3 in accordance with Standing Order no. 38 which requires the quorum of each Committee and Sub-Committee to be three or one-third whichever is the greater. The previous quorum of 4 was set to ensure a balance of representation from each Council.

<p><i>Joint Appointments & Disciplinary Appeals Committee</i></p> <p><i>This Committee may also sit in relation to an appeal from any Chief Officer or Deputy Chief Officer who is not jointly appointed subject to (i) the membership being restricted to the members of the appointing/dismissing Council only; and (ii) the quorum being amended to 3 including at least 1 Cabinet member</i></p>	<p><i>8 Members</i> <i>4 Breckland Members & 4 South Holland</i></p> <p>4 Members in accordance with Local Government (Committees and Political Groups) Regulations 1990</p> <p><i>(Quorum-2 3 from each authority including at least one Cabinet Member from each authority)</i></p> <p>No member of the <i>Joint Appointments & Disciplinary Committee</i> shall be appointed to this <i>Joint Committee</i></p> <p>Substitutions: see paragraphs 1.4 to 1.7 above</p>	<p>Determining appeals from relevant persons in respect of decisions of the <i>Joint Appointments and Disciplinary Committee</i> relating to the appointment, dismissal or disciplinary action in respect of Chief Officers or Deputy Chief Officers (other than the Head of Paid Service, Monitoring Officer or S151 Officer)</p> <p>Note: In the exercise of these functions the Committee must act in accordance with the Local Authority (Standing Orders) (England) Regulations 2001 (as amended)</p>
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(note at and)

~~*When the Committee meets to make recommendations to the full Councils on the proposed dismissal of the Joint Head of Paid Service, the Joint S151 Officer or the Joint Monitoring Officer, the Committee shall also comprise at least 2 independent persons appointed under section 28(7) of the Localism Act 2011 in accordance with the following priority order:*~~

- ~~*1. A person who has been appointed by the Council and who is a local government elector*~~
- ~~*2. Any other person who has been appointed by the Council*~~
- ~~*3. A person who has been appointed by another authority or authorities*~~

~~*SHDC at its meeting on 24.6.15 and Breckland DC at its meeting on 9.7.15 agreed that the 2 independent persons should comprise, where possible, 1 independent person appointed by SHDC and 1 independent person appointed by Breckland DC.*~~

~~*NOTE: No member of this Joint Committee shall be appointed to the Joint Appointments and Disciplinary Appeals Committee.*~~

~~*Substitutions: Each Council shall appoint one named member who may act as a substitute.*~~

APPENDIX C - Proposed Shared Memorandum of Agreement Committee and other proposed amendments to the Constitution relating to this Committee

<p>Shared Memorandum of Agreement Committee</p>	<p>6 Members (3 South Holland Members & 3 Breckland Members in accordance with Local Government (Committees and Political Groups) Regulations 1990) (Quorum 6 which must comprise 3 members from each authority including at least one Cabinet Member from each authority) Each Council shall appoint three named members who may act as a substitute.</p>	<p>Considering and reporting to each Council on any disputes submitted to it in accordance with sections 8 (termination and review of joint arrangements) or 11 (dispute resolution) of the Memorandum of Agreement made between South Holland District Council and Breckland District Council dated 1 April 2011.</p> <p>This Committee shall dissolve and be removed from the Constitution upon the later of:</p> <p>(i) the date on which the Leaders of each Council jointly confirm that the period of dispute permitted by the Memorandum of Agreement has expired and that no disputes are outstanding; or (ii) the date on which the last of any outstanding disputes is resolved in accordance with the terms of the Memorandum of Agreement.</p>
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Further Amendment 1

Part 3 Section D - Delegations to Committees

(Already amended by Appendix A) **1.1 The quorum of meetings of the Cabinet shall be 3. The quorum of the Shared Memorandum of Agreement Committee shall be 6, consisting of 3 members from Breckland Council and 3 members from South Holland District Council.**

Further Amendment 2

STANDING ORDER NO. 38

38.3 The quorum of the Shared Memorandum of Agreement Committee shall be 6, consisting of 3 members from Breckland Council and 3 members from South Holland District Council.

APPENDIX D - Proposed amendments to the Terms of Reference of the Appeals Panel (SHDC only)

Council body	Membership	Functions/Terms of Reference
Appeals Panel (SHDC only)	<p>4 members (excluding any members involved in the original decision which is subject to appeal), not appointed in accordance with the Local Government (Committees and Political Groups) Regulations 1990</p> <p>(Quorum 3 (SO 38))</p> <p>Substitutions: see paragraphs 1.4 to 1.7 above</p>	<p>(Excluding (a) matters reserved to the <i>Joint</i> Appointments and Disciplinary Committee and the <i>Joint</i> Appointments and Disciplinary Appeals Committee and matters dealt with under Standing Orders relating to Staff and (b) appeals under the Job Evaluation scheme where an alternative appeals procedure exists).</p> <p>To consider and determine any appeals by employees on staffing matters (including but not limited to grading, disciplinary action, dismissal, termination of employment for any reason, redundancy, retirement and grievance) where the Monitoring Officer or Section 151 Officer considers it inappropriate for the matter to be dealt with under officer delegations.</p>

APPENDIX E - Proposed amended Proper Officer appointments

Statutory reference	Responsibility	Existing	Proposed
All legislation prior to Local Government Act 1972	Proper officer where earlier legislation refers to Clerk of the Council	CX and all Directors	no change
General	Appointment of any Proper Officer in relation to any matter where no Officer is specifically designated.	CX	no change
	All Chief Officers may appoint a person to act in their place to exercise any power as proper officer: <ul style="list-style-type: none"> • In the absence of the proper officer • When the proper officer is not available to exercise power at relevant time • In accordance with any general direction given by him or her 	All COs	
Local Government Act 1972	Officer designated to act as Parish Trustee with Chairman of Parish Meetings where no Parish Council exists	CX and all Directors	no change
S13(3) S83	To receive declarations of acceptance of office	CX and all Directors	no change
S84	Receipt of declaration of resignation	CX and all Directors	no change
S88	Convening of meeting of the Council to fill vacancy in office of Mayor (where such a casual vacancy exists)	CX and all Directors	no change
S89	Receipt of notice of casual vacancy from two local government electors	RO	no change
S100B(2)	Officers designated to exclude from agenda papers made available to public reports (or parts) likely to be taken in absence of public	CX and Director of Strategy & Governance	CX and Director responsible for democratic services and MO
S100B(7)(c)	Officers designated to supply copies of other documents	Director of Strategy & Governance	Director responsible for democratic services and MO
LS100C(2)	Officer designated to make a written summary in lieu of confidential minutes	Director of Strategy & Governance	Director responsible for democratic services and MO
S100(1)(a)	Officer designated to compile a list of background papers to a report	CX and Director of Strategy & Governance	CX and Director responsible for democratic

S100D(5)(a)	Officer designated to identify the background papers on which a report is based	CX and Director of Strategy & Governance	services and MO CX and Director responsible for democratic services and MO
S100F(2)	Officer designated to identify documents not available to Members under that section	Director of Strategy & Governance	Director responsible for democratic services and MO
S115(2)	Officer to whom all officers shall pay monies received by them and due to the local authority	Executive Director responsible for finance	Director responsible for finance
S146	Production of statutory declaration to secure change of name of the Council (where relevant) where securities are standing in the books of the company in the name of the Council	Executive Director responsible for finance	Director responsible for finance
S191	Officer designated to receive notices of Ordnance Survey in relation to ascertaining or locating local authority boundaries	Director of Strategy & Governance	Director and Assistant Director responsible for legal services
S210(6)&(7)	Officer designated to exercise any charity functions by officers of the "old" local authority where there is no holding of a corresponding office in the "new" local authority	CX and all Directors	no change
S212(1)&(2)	Officer designated to act as local registrar for Land Charges Act, 1925	Executive Director of Place	Director responsible for land charges
S225(1)	Officer designated to receive and give receipt for any document required to be formally deposited with the Council	Director of Strategy & Governance	Director and Assistant Director responsible for legal services
S228	Accounts of a local authority and of any proper officer of a local authority to be open to the inspection of any member of the authority, and any such member may make a copy of or extract from the accounts	Executive Director responsible for finance	Director responsible for finance
S229(5)	Authentication of documents – Officer designated to certify a photographic copy of a document in the custody of the Council	CX	CX, Director responsible for legal services and Assistant Director responsible for legal services

NOTES:

1. All CO's can also sign documents under s234 LGA 1972 in their respective areas of jurisdiction under Part 3 Section F1 para 15 of the Constitution

2. There is a general authorisation under

SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings

3. There are other authentication of documents appointments in this schedule

S234	<p>Authentication of documents – Power to sign formal notices, orders or other documents made or issued under any enactment by the Council</p>	<p>CX and all CO's in their respective areas of jurisdiction.</p>	<p>no change</p>
	<p>NOTES:</p> <p>1. There is a general authorisation under SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings</p>	<p>(For planning purposes) South Holland Place Manager</p>	<p>(For planning purposes)The Assistant Director (as defined in the Constitution) responsible for planning</p>
	<p>2. There are other authentication of documents appointments in this schedule)</p>	<p>(For planning purposes) Planning and Building Control Manager</p>	<p>(For planning purposes) The Service Manager (as defined in the Constitution) responsible for planning</p>
S236(9)&(10)	<p>Officer designated to send copies of all bye laws made by the Council to the Council of every Parish or Community to which they apply and to the County Council</p>	<p>Director of Strategy & Governance</p>	<p>Director and Assistant Director responsible for legal services</p>
S238	<p>Authentication of documents – Officer designated to sign the certificate on any printed copy of the byelaws authenticating such prints as a true and correct copy</p>	<p>CX</p>	<p>CX, Director responsible for legal services and Assistant Director responsible for legal services</p>
	<p>NOTES:</p> <p>1. All CO's can also sign documents under s234 LGA 1972 in their respective areas of jurisdiction under Part 3 Section F1 para 15 of the Constitution</p>		
	<p>2. There is a general authorisation under SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings</p>		
	<p>3. There are other authentication of documents appointments in this schedule)</p>		

Schedule 12	Issue and service of summons to meetings of Council and Committees thereof: receipt of formal notification from Councillors of address to which it is desired such summons to be sent	CX and all Directors	no change
Schedule 14 para.25(7)	Authentication of documents – Officer designated to certify copy resolutions NOTES: 1. All CO's can also sign documents under s234 LGA 1972 in their respective areas of jurisdiction under Part 3 Section F1 para 15 of the Constitution 2. There is a general authorisation under SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings 3. There are other authentication of documents appointments in this schedule)	CX	CX, Director responsible for legal services and Assistant Director responsible for legal services
Local Government Act 1974 s30	Publication of reports re Ombudsman investigations	Director of Strategy & Governance	Director and Assistant Director responsible for legal services
Representation of the People Act 1983			
S52	Officer to act in the event of incapacity of Electoral Registration Officer	Deputy ERO	no change
Part III	Officer for the purposes of legal proceedings following an election	RO	no change
Schedule 4	Officer for the purposes of election expenses and the keeping of the return and declaration	RO	no change
Local Government and Finance Act 1988 s116	Officer designated to notify auditor of date, time and place of meeting to consider s151 officer's S.114 report, and decision of such meeting	Director for Strategy & Governance and Director responsible for Finance	Director responsible for legal services and Director responsible for finance
Local Government and Housing Act 1989 s2	Officer charged with retaining a list of politically restricted posts	Director of Strategy & Governance	Director responsible for legal services (and Assistant Director responsible for

			legal services where there is no Director)
Local Authorities (Standing Orders) (England) Regulations 2001 – Schedule 1	Officer designated to notify the Executive of proposed appointments to and dismissals from senior posts	Director of Strategy & Governance	Director responsible for democratic services and MO
Local Government (Miscellaneous Provisions) Act 1976 s41	Authentication of documents – Certification of copies of resolutions, order, reports or minutes of the Council or any predecessor authority	CX	CX, Director responsible for legal services and Assistant Director responsible for legal services
	NOTES: 1. All CO's can also sign documents under s234 LGA 1972 in their respective areas of jurisdiction under Part 3 Section F1 para 15 of the Constitution 2. There is a general authorisation under SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings 3. There are other authentication of documents appointments in this schedule)		
Local Government (Committees and Political Groups) Regulations 1990	Officer to receive notice of constitution / membership / cessation of membership of political group/change of name of group or leader	Director of Strategy & Governance	Director responsible for democratic services and MO
regs 8, 9 and 10 Regs 13 and 14	Officer to accept wishes of political group re proportionality/officer to notify political groups of seats available	Director of Strategy & Governance	Director responsible for democratic services and MO
Local Authorities (Referendums) (Petitions) (England) Regulations 2011	Publication of verification number equal to 5 per cent of electors on electoral register	ERO	no change
Reg 4 and 5 Reg 7	Notifications to petition organiser of post-announcement petitions	ERO	ERO and RO
Reg 8	Amalgamation of petitions	ERO	ERO and RO
Reg 11	Procedures on receipt of petitions	ERO	ERO and RO
Reg 13 and 14	Publicity for valid and invalid petitions	ERO	ERO and RO

Local Authorities (Conduct of Referendums) (England) Regulations 2012	Publicity and other information in connection with referendum	Director of Strategy & Governance	ERO and RO
Reg 4 Schedule 3 Part 7	Proper officer for receipt of declaration of result	Director of Strategy & Governance	ERO and RO
Schedule 5 Part 7	Proper officer for receipt of declaration of result	Director of Strategy & Governance	ERO and RO
Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012	Exclusion of part of any report relating to a private meeting / documents to press and public	Director of Strategy & Governance	Director responsible for democratic services and MO
Reg 7 Reg 10	Duties relating to making of key decisions where publication of the intention to make a decision is impracticable	Director of Strategy & Governance	Director responsible for democratic services and MO
Reg 12	Written statement of meeting of decision-making body at which executive decision made	Director of Strategy & Governance	Director responsible for democratic services and MO
Reg 13	Written statement of executive decisions made by individual members	Director of Strategy & Governance	Director responsible for democratic services and MO
Reg 14	Making executive decisions available for inspection	Director of Strategy & Governance	Director responsible for democratic services and MO
Reg 15	Compilation of list of background papers	Director of Strategy & Governance	Director responsible for democratic services and MO
Reg 16 and 20	Documents not open for inspection due to containing exempt or confidential information or advice of political adviser	Director of Strategy & Governance	Director responsible for democratic services and MO
Local Government Finance Act 1992 - s68 and Local Government Finance Act 1988 – s139A	Proper officer for purposes of receipt of notice of Secretary of State requiring it to supply information to enable SOS to determine whether to exercise powers and how to perform functions	Director responsible for Finance	no change

Neighbourhood Planning (Referendums) Regulations 2012 -	Various	Director of Strategy & Governance	Director responsible for planning
Local Authorities (Members' Allowances) (England) Regulations 2003 Reg 13 and 32	Proper officer for purposes of receiving notices in writing from any person or member electing to forgo allowances	Director of Strategy & Governance	Director responsible for democratic services and MO
Local Elections (Parishes and Communities) (England and Wales) Rules 2006 Rule 5	Proper officer for purposes of receiving requests for an election to fill a casual vacancy	RO	no change
Local Elections (Principal Areas) (England and Wales) Rules 2006 Schedules 2 and 3	Proper officer for purposes of receiving results of contested and uncontested elections	Director of Strategy & Governance	RO

Appointment of proper officers which are not defined in s270 Local Government Act 1972

Public Health (Control of Disease) Act 1984

S48	Provision of certificate to justice of the peace for removal of body to mortuary or for immediate burial	Director of Strategy & Governance	Director responsible for public health
S59	Authentication of documents (also applies to any officer authorised in writing)	CX	CX, Director responsible for legal services and Assistant Director responsible for legal services

NOTES:

1. All CO's can also sign documents under s234 LGA 1972 in their respective areas of jurisdiction under Part 3 Section F1 para 15 of the Constitution

2. There is a general authorisation under SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings

3. There are other authentication of documents appointments in this schedule

S60	Proper officer for purposes of service of any notice, order or other document on the Council	Director of Strategy & Governance	Director responsible for public health
S61 and 62	Power to enter premises	Director of Strategy & Governance	Director responsible for public health
Health Protection Notification Regulations 2010	Proper officer for purposes of receiving and disclosing notifications of disease, infection or contamination	Director of Strategy & Governance	Director responsible for public health
Food Safety Act 1990	Authentication of documents	CX	CX, Director responsible for legal services and Assistant Director responsible for legal services
S49	<p>NOTES:</p> <p>1. All CO's can also sign documents under s234 LGA 1972 in their respective areas of jurisdiction under Part 3 Section F1 para 15 of the Constitution</p> <p>2. There is a general authorisation under SO 50 to MO, SLO, relevant CO and any officer authorised by MO or relevant CO to authenticate documents for legal proceedings</p> <p>3. There are other authentication of documents appointments in this schedule</p>		
Localism Act 2011 S33	Proper officer for purpose of receiving requests from members and co-opted members for dispensations where member has a pecuniary interest	Director of Strategy & Governance	Director responsible for democratic services and MO
Building Act 1984			
S35A	Legal proceedings – proper officer for purposes of justifying evidence and certification of evidence	Executive Director responsible for Planning	Director responsible for planning
S61	Proper officer and authorised officers have free access to works	Executive Director responsible for Planning	Director responsible for planning
S78	Officer designated to enforce Section 78 of the Building Act, 1984 in relation to Dangerous Buildings	Executive Director responsible for Planning	Director responsible for planning
S93	Proper officer for purposes of signing any notice, order, consent, demand or other document (also given to any officer	Executive Director responsible for	Director responsible for planning

authorised by them in writing

Planning

**Housing Act 2004
S4**

Proper officer for purposes of receiving complaint about the condition of any residential premises in the district, for inspecting the premises to see if category 1 or 2 hazards exist, and for making a report as necessary

Executive
Director
responsible for
Housing

Director
responsible for
housing

S239

Power of entry for carrying out survey or examination of premises in relation to an inspection under s4(2)

Executive
Director
responsible for
Housing

Director
responsible for
housing

S249

Certification of documents as proof of designation of an area as subject to additional licensing, or designation of an area as subject to selective licensing

Executive
Director
responsible for
Housing

Director
responsible for
housing

**Non Domestic
Rating (Collection
and Enforcement)
(Local Lists)
Regulations
1989 Reg 23**

Rating list proved in proceedings by production of copy list or part list certified by proper officer

Executive
Director
responsible for
Finance

Director
responsible for
finance

Acronyms:

CX – Chief Executive

CO – Chief Officers as defined in the Council's Constitution

RO – Returning Officer as defined in the Council's Constitution

ERO – Electoral Registration Officer as defined in the Council's Constitution

MO – Monitoring Officer as defined in the Council's Constitution

SLO – Senior Legal Officer as defined in the Council's Constitution

APPENDIX F - Proposed amendments to previously approved protocol/delegations to officers relating to determination of planning applications

PART 1 - TEMPORARY DELEGATION/PROTOCOL

Subject to paragraphs 1 and 2 below, the Executive Director ~~of Place (or during Covid19 response the Executive Director of Commercialisation)~~ **responsible for planning** and each of those officers listed immediately below are individually authorised to determine all planning applications during such time as any social distancing measures remain in place as a result of the coronavirus pandemic.

- a) ~~the Place Manager (South Holland)~~ **the Assistant Director responsible for planning**
- b) ~~the Planning and Building Control Manager~~ **the Service Manager responsible for planning**
- c) the Development Manager, and
- d) the Principal Planning Officer

1. Reference to Chairman's Panel prior to officer exercising delegated authority

a. The Chairman's Panel must be consulted, prior to an officer exercising his/her delegated authority, in the following cases:

- (i) where the officer intends to approve an application which is contrary to policy or which raises novel or contentious planning issues
- (ii) where the application is submitted by the Council or relates to land in which the Council has an interest
- (iii) where the application is submitted by a Member or Senior Officer (at the level of Service Manager or above) of the Council or involves a Member or Senior Officer interest
- (iv) where the ward member has requested that the application be subject to consultation with the Chairman's Panel prior to determination and the request clearly relates to material planning considerations
- (v) where the Officer concerned is not prepared to determine a planning application without first consulting the Panel

b. For each application referred to above, the Officer concerned shall prepare an officer report and shall send that report at least three days in advance to each member of the Panel and any other member who may attend the Panel meeting in their capacity as Ward Member

c. The Chairman's Panel shall give its view as to whether it considers the matter to be suitable for determination by the officer or whether it should instead be referred to the Planning Committee. The Officer shall give significant weight to the view of the Panel.

d. Where the advice of the Chairman's Panel under (c) above would ordinarily be to refer the matter to the Planning Committee, the Panel may in the alternative provide comments on the application to the Officer and to recommend that the officer determines the matter taking account of those comments. The Officer shall retain full authority to determine the matter (or not) but shall give significant weight to the view of the Panel.

e. The Panel may meet in any way that it considers appropriate including by exchange of email, telephone or video conference and any member of the Panel may be substituted by any other member of the Planning Committee as necessary at any time.

f. A member of the Democratic Services Team will take notes at each meeting of the Chairman's Panel.

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2. Further Conditions Applying to this Protocol

No officer or member with any interest in an application shall take any part in the administration or determination of that application.

Where any application referred to at paragraph 1(a) above is determined under this protocol by an Officer under delegated powers, that officer shall not also be the Case Officer for the application.

The Officers at all times retain the right not to determine an application.

APPENDIX G - Proposed amendments to clarify when the Constitution can be amended by officers

Amendment 1 - ARTICLE 14

2.0 Changes to the Constitution

2.1 Approval

~~2.1.1~~ **2.1** Subject to below, changes to the Constitution will only be approved by the Full Council. The Council may if it considers necessary appoint a special committee to make recommendations for that purpose. ~~Where the table of Chief Officers in Article 11 or the Management Structure section of the Constitution needs to be updated the Senior Legal Officer may make the necessary changes upon receipt of notification from the Chief Executive or Head of the Paid Service that he/she has made changes to these structures following Council or relevant committee approval of such changes.~~

3.0 Minor Changes

3.1 If, in the reasonable opinion of the Monitoring Officer, a change is:

- (a) A minor variation; or
- (b) Required to be made to remove any inconsistency or ambiguity; or
- (c) Required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

then the Monitoring Officer **or the Senior Legal Officer** may make such a change. Any such change made by the Monitoring Officer **or the Senior Legal Officer** shall come into force with immediate effect but shall (unless a minor typographical, referencing or numbering change) be referred to Full Council as soon as is reasonably possible and shall continue to have effect only if Full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of Full Council.

3.2 Changes required to the Constitution, **including the Log of Delegations to Officers**, as a result of a report already approved by Council, **including any approved review of the staffing structure**, shall come into immediate effect.

4.0 Legislative Change

4.1 Any part of the Constitution, **including the Log of Delegations to Officers**, may be amended by the Monitoring Officer **or the Senior Legal Officer** where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer **or the Senior Legal Officer** so decides or the legislation (where relevant) so provides. Such changes shall be reported to the next Council meeting **only where the changes constitute more than variations to statutory references.**

Amendment 2 - PART 3 SECTION F - OFFICER DELEGATIONS

9. In accordance with Article 14, the Council's Monitoring Officer **is** **and the Senior Legal Officer are** authorised to amend these delegations and the log of specific delegations as and when necessary in order to update the same in respect of staffing establishment changes (including changes to post titles) and changes to statutory references. Such amendments shall not require further authorisation.

APPENDIX H - proposed amendments to Paragraph 1.4 of Article 11

The following wording shall be deleted:

~~1.4.1 The Council will designate the following statutory posts as shown:~~

<i>Designation</i>	<i>Post</i>
Head of Paid Service	Chief Executive (except during any period where the Councils decide not to appoint a Chief Executive at which time a Head of the Paid Service will be appointed separately)
Monitoring Officer	Shared Executive Director Strategy & Governance
S151 Officer (Section 151 Officer)	Shared Executive Director Commercialisation

The following wording shall be added:

1.4.1 **The Council must, by law, designate one of their officers as:**

- **Head of Paid Service**
- **Monitoring Officer**
- **Section 151 Officer**

The Glossary of Terms (Definitions Relating to Staff) states which officers are currently designated.

APPENDIX I - Proposed amendments to clarify issues regarding special Council meetings

Amendment 1

Article 4

7.0 Council Meetings

7.1 There are ~~three~~ **four** types of Council meeting:

- the annual meeting;
- ordinary **scheduled** meetings; ~~and~~
- extraordinary meetings (**called under Schedule 12 to the Local Government Act 1972**); **and**
- **special meetings (called for a special and particular purpose)**

and they will be conducted in accordance with the procedural standing orders in Part 4 of this Constitution.

Amendment 2

STANDING ORDER NO 1

Meetings of the Council

1.1 The annual meeting of the Council and other **scheduled** meetings of the Council shall be held at such places, on such dates and at such times as may be fixed by the Council.

1.2 Extraordinary meetings of the Council may be called at any time, **in accordance with paragraph 3 of Schedule 12 to the Local Government Act 1972**, by:

(a) the Chairman of the Council, either on his/her own initiative or following receipt of a requisition from five members of the Council calling for an extraordinary meeting; or (b) by 5 members of the Council if the Chairman refuses to call a meeting after receipt of a requisition or if, without so refusing, the Chairman does not issue, within 7 days after the requisition has been presented, a notice and summons to a meeting.

~~alternatively by the Chief Executive or, in the absence of the Chief Executive, the Director responsible for Democratic Services if he/she receives request in writing for one to be held from five or more members of the Council.~~

1.3 Those listed below may call a special meeting of the Council after consultation with the Chairman of the Council, or instruct the Chief Executive or in his/her absence the Chief Officer responsible for Democratic Services after consultation with the Chairman of the Council, to call a special meeting of the Council:

- a) The Council by resolution;
- b) The Head of the Paid Service;
- c) The Monitoring Officer;
- d) The S151 Officer.
- e) The Leader

Amendment 3

STANDING ORDER NO.9

Minutes

9.1 Signing the Minutes:

The Chairman will sign the minutes of the proceedings at the next suitable meeting (including the annual meeting of the Council). The Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

At a virtual meeting the Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record and the minutes will be signed **at the meeting or** as soon as practicable thereafter. The only part of the minutes that can be discussed is their accuracy.

9.2 No requirement to sign minutes of previous meeting at extraordinary or special meeting.

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is **an extraordinary meeting or a special meeting** ~~called under paragraph 3 of Schedule 12 to the 1972 Act (an Extraordinary Meeting)~~, then the next following meeting (being **an ordinary or annual** meeting ~~called otherwise than under that paragraph~~) will be treated as a suitable meeting for the purposes of ~~paragraph 41 (1) and (2) of schedule 12 relating to~~ signing of minutes.

APPENDIX J - Proposed amendments to include reference to the statutory standing order relating to independent persons

The following Standing Order be added:

STANDING ORDER NO. 60A

Remuneration of independent person

In accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) any remuneration, allowances or fees paid by the Council to an independent person appointed to a committee to advise on matters relating to the dismissal of the Head of the Paid Service, the Chief Finance Officer (also called the Section 151 Officer) and the Monitoring Officer must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as an independent person under the Localism Act 2011.

The following wording be added to the bottom of the third column (function/terms of reference) of the Appointments and Disciplinary Committee:

(Any remuneration, allowances or fees paid to an independent person appointed to this Committee must comply with Standing Order no. 60A.)

APPENDIX K - Proposed amendments arising from the joining of Boston Borough Council to Public Sector Partnership Services Limited

Amendment 1

8.0 Merged Services Organisation

8.1 Acting in partnership with East Lindsey District Council **and Boston Borough Council** this Council has set up a separate company called Public Sector Partnership Services Ltd. that is wholly owned by ~~both~~ **the three** Councils to deliver back office support services which initially comprise:

- (a) Human Resources;
- (b) Information and Communications Technology;
- (c) Financial Services;
- (d) Customer Services;
- (e) Revenues; and
- (f) Benefits.

8.2 The Merged Services organisation has a Board of Directors which comprises the Managing Director together with a Chief Officer and two Councillors from each Council. The ~~two~~ respective Councils are sole shareholders of the Company which is therefore legally defined as a Local Authority Company.

8.3 The Articles of Association for the Company provide the regulations covering the relationships between the Shareholders and the Directors of the Company. Together with the Shareholders Agreement they form the Constitution of the Company.

Amendment 2

ARTICLE 10 – ARRANGEMENTS WITH OTHER PARTNERS

1.0 INTRODUCTION

1.1 There are a number of circumstances where the Council or the Cabinet is entitled to carry out certain functions jointly with another local authority.

1.2 The Council works with a number of other authorities including (wording here excluded by Appendix A) joint back office functions with East Lindsey District Council **and Boston Borough Council** (PSPSL) and joint development plan arrangement with Boston Borough Council and Lincolnshire County Council (South East Lincolnshire Joint Strategic Planning Committee).

Amendment 3

ARTICLE 10 - ARRANGEMENTS WITH OTHER PARTNERS

5.0 .0 Contracting Out

5.2 A Merged Service Organisation called Public Sector Partnership Services Ltd has been set up by East Lindsey and South Holland District Councils **and Boston Borough Council** to deliver initially back office support services:

- a) Human Resources;
- b) Information and Communications Technology;
- c) Financial Services;
- d) Customer Services;
- e) Revenues; and
- f) Benefits.

5.3 The Company was formally approved by **South Holland District Council and East Lindsey District Council** ~~both councils~~ on 28 July 2010 and came into being from 1 August 2010 at which point relevant staff were transferred to it from the councils under TUPE legislation. **Boston Borough Council joined on 1 April 2021**

5.4 Governance

5.4.1 Public Sector Partnership Services Ltd is a separate company wholly owned by the ~~two~~ **three** councils each of which owns a share the notional value of which is calculated in proportion to its relative size and financial turnover and reflects the initial funding it contributed to development of the project. However, irrespective of the notional value, each council has an equal vote and the company is a 'deadlocked' organisation which means that ~~both~~ **all** shareholders must agree on all issues to enable it to continue to function.

5.4.2 Because of this arrangement the Merged Services Organisation is a Local Authority Controlled company and ~~both~~ **the participating** councils can hand work to it without going through a tendering exercise under the so called Teckal exemption.

5.4.3 The company has its own Board of Directors which consists of the Chief Executive of East Lindsey District Council, and a Chief Officer or Deputy Chief Officer of South Holland District Council and two Councillors from each Authority, **together with two Directors appointed by Boston Borough Council.** This Board will control the activities of the company and whilst servicing thereon Councillors will represent the interests of the Company.

5.4.4 Decisions relating to the Merged Services Organisation will be taken at the Cabinet (if an executive function) or the Full Council (if a non-executive function) of each authority. The Articles of Association for the Company provide the regulations covering the relationships between the shareholders and the Directors of the Company. Together with the Shareholders Agreement they form the constitution of the Company.