

Report to COUNCIL

Constitutional Amendments – Procedural and Land and Property Protocol

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Reason for Decision

- To provide consistency across all committees and District Executives in relation to public question time.
- To enable motions to be submitted without a signature.
- Amendments are required to the Land and Property Protocol to clarify the legal position in relation to the sale of land.

Recommendations

That Council approves;

1. The time limit of public question time for all Committees and District Executives be 30 minutes.
2. Each public question asked to be no longer than 2 minutes.
3. Motions can be submitted without a signature.
4. Public questions to be submitted two working days before the date of the meeting.
5. The proposed amendments to the Land and Property Protocol in Part 5 of the Council's Constitution (Codes and Protocols).

Land and Property Protocol

1 Background

- 1.1 Full Council must approve all changes to the Constitution. Proposed changes have been considered by the Constitutional Working Group and recommended to Council.

2 Current Position

2.1 Procedural Changes

Public Question Time

Public question time for Committees and District Executives is not consistent. There are no timings currently for the duration of time members of the public may ask questions for and there are differences in the deadline for submission of questions. To achieve consistency across all Committee meetings and District Executives, it is proposed to have standard timings for public question time and deadline for submission of questions. (amendments to Part 3 p.32, Public Question Time, to read 'Public questions can be submitted to Constitutional Services by noon up to two working days before the day of the meeting' and to Part 8 Appendix 1 – Public Access to Information).

Motions

Written/electronic notice of every motion signed by at least one Member must be delivered to the Chief Executive no later than 12 noon, seven working days before the meeting of Council.

As motions are now delivered by email, it is suggested that a physical signature is no longer required and the sending of the email by the relevant mover and seconder is proof of intention. (Amendment to Part 4 – Council Procedure Rules, 8 Notice of Motion remove '...signed by at least one Member.').

2.2 Land and Property Protocols

In recent years there have been a number of legal challenges in relation to sale of land by public authorities which have resulted in seminal case law.

These legal cases have revolved around the distinction between disposals of land per se and sales of land where a public authority imposes specific requirements/obligations on the purchaser which have the effect of converting a sale of property into a "works contract" within the definition of the law. In such circumstances, the proposed transaction becomes a procurement which requires an open and transparent process following the requirements of an EU Procurement Directive and the Public Contracts Regulations 2015. The amendments proposed in the Appendix to this report seek to clarify the position for officers, so that sales of Council property, which are exempt from the Council's Contract Procedure Rules, remain disposals of land and do not stray into the field of procurement law.

All of the proposed amendments are set out in the table appended to this report which provides details of the existing wording in the Protocol, the justification for the amendment and the proposed new wording.

3 Options/Alternatives

- 3.1 Option 1 – Approve the proposed amendments to the Constitution

Option 2 – Do not approve the proposed amendments. This would not provide consistency in the procedural rules and The Land and Property Protocols would not be in line with seminal case law.

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- 4 **Preferred Option**
- 4.1 The preferred option is to approve the proposed amendments.
- 5 **Consultation**
- 5.1 Not applicable
- 6 **Financial Implications**
- 6.1 None
- 7 **Legal Services Comments**
- 7.1 The Council has power to make these amendments and any consequential updates to the Land and Property Protocol in line with up to date case law.
8. **Co-operative Agenda**
- 8.1 Not applicable
- 9 **Human Resources Comments**
- 9.1 Not applicable
- 10 **Risk Assessments**
- 10.1 The changes to the rules are considered appropriate to reduce the future risk relating to a sale of property by the Council.
- 11 **IT Implications**
Not applicable
12. **Property Implications**
Not applicable
- 13 **Procurement Implications**
Not applicable
- 14 **Environmental and Health & Safety Implications**
Not applicable
- 15 **Equality, community cohesion and crime implications**
Not applicable
- 16 **Equality Impact Assessment Completed?**
Not applicable
- 17 **Key Decision**
No
- 18 **Key Decision Reference**
n/a
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19 **Background Papers**

- 19.1 Oldham Council Constitution
 EU Procurement Directive and the Public Contracts Regulations 2015

20 **Appendices**

- 20.1 Extract from Land and Property Protocol

Appendix 1

	Existing	Reason for Proposed Amendment	Proposed Amendment
3.6	<p>Application of the EU Public Procurement Regime</p> <p>Certain disposals of land may fall within the definition of “works” contained within the Public Contracts Regulations 2015, which give effect to European law on public procurement. This will need to be considered, for example, where the Council is providing land within a development scheme or is imposing obligations on a developer in order to meet its regeneration objectives, whether through the use of a Section 106 agreement or development agreement.</p> <p>This remains a complex area of law and legal advice should be sought at an early stage to determine whether any proposed disposal to a developer should be advertised under the Public Contracts Regulations</p>	<p>Update legislation. Clarify the legal position with regards to the potential for inadvertently creating a works contract when disposing of land and providing examples to illustrate the risks.</p>	<p>Application of the EU Public Procurement Regime</p> <p>Certain disposals of land may fall within the definition of a “works” contract within the scope of the Public Contracts Regulations 2015, which give effect to European law on public procurement. This will need to be considered, for example, where the Council is providing land within a development scheme or is imposing obligations on a developer in order to meet its regeneration objectives, whether through the use of a Section 106 agreement or development agreement</p> <p>Care and advice needs to be taken prior to Heads of Terms stage and advertisement so as to ensure that the Regulations are not inadvertently triggered by for example: the exercise of a decisive influence over the type or design of the works; or, works carried out from which the Council either derives an immediate economic benefit; or imposes a legally enforceable obligation to undertake the works (rather than allowing the other party the option of not carrying out or completing the works even if the consequence of that is the loss of the deal).</p>

		<p>There are no provisions giving guidance as to the communications which officers of the Council can engage in with potential bidders post advert and pre-award</p>	<p>Officers of the Council should not discuss the details of an individual bid with a prospective bidder before the decision to award the Contract is made. Any discussions as to a potential bidder's proposals for the site could prejudice the decision making for the award of the Contract. Therefore, any communications should be limited and restricted to writing and all communications should be made with the principles of proportionality, transparency and fairness borne in mind. If the Council wants to test the market for a site to understand what is the best value for money use for the site would be, Officers should look to undertake soft market testing, before advertising the site for sale.</p> <p>This remains a complex area of law and legal advice should be sought at an early stage to determine whether any proposed disposal to a developer should be advertised under the Public Contracts Regulations.</p>
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