

PART B:	RECOMMENDATIONS TO COUNCIL
REPORT TO:	POLICY AND RESOURCES COMMITTEE
DATE:	21 JUNE 2012
REPORT OF THE:	COUNCIL SOLICITOR AND MONITORING OFFICER ANTHONY WINSHIP
TITLE OF REPORT:	COMMUNITY GOVERNANCE REVIEW – FOSTON AND THORNTON-LE-CLAY PARISH COUNCIL
WARDS AFFECTED:	FOSTON AND THORNTON-LE-CLAY

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider and respond to a Community Governance petition which has been submitted under the provisions of Section 80 of the Local Government and Public Involvement in Health Act 2007 (The 2007 Act) requesting the District Council to conduct a Community Governance Review to increase the size of the Parish Council from five to seven Councillors.
- 1.2 Ryedale District Council has a duty under section 83 of the 2007 Act to respond to the petition using its powers to undertake a Community Governance Review under section 82 of the 2007 Act.

2.0 RECOMMENDATIONS

- 2.1 Council is recommended to:
1. Note the receipt of the request and its validity.
 2. Agree to undertake a Community Governance Review of the Parishes of Foston and Thornton-le-Clay.
 3. Agree the Terms of Reference of the review as detailed in Annex C, including the timeable and arrangements for public consultation.
 4. Agree that the review will be carried out by the Council Solicitor and Monitoring Officer, in consultation with the Chairman of Policy and Resources Committee.
 5. Note that further reports will be brought to Council in order that decisions may be made in respect of draft proposals and final recommendations of the Review.

3.0 REASONS FOR RECOMMENDATIONS

- 3.1 To comply with the statutory duty under section 83 of the 2007 Act to respond to a

Community Governance petition.

4.0 SIGNIFICANT RISKS

- 4.1 No significant risks have been identified in preparing this report – see Risk Matrix (Annex A).

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 Before the coming into force of the 2007 Act, District Councils had power to vary the numbers on local Councils by making an Order. Procedures were not prescriptive and numbers on Parish Councils, or other Parish electoral arrangements, could be varied easily and quickly. Unfortunately this is no longer the case and the procedures prescribed for Community Governance Reviews, set out in the 2007 Act, have to be followed even when the only issue to be considered is a variation in a Parish Council's numbers.
- 5.2 The Act allows for the public to petition for reviews in their areas. Reviews must be undertaken if petitions are received as follows:-
- § Area with fewer than 500 electors – at least 50% of the electors
 - § Area with between 500 and 2,500 electors – at least 250 of the electors
 - § Area with more than 2,500 electors – at least 10% of the electors
- 5.3 Furthermore, Regulation 3(7) of the Local Authorities (Committee System) (England) Regulations 2012 provides that making the Order to give effect to the recommendation of a Community Governance Review is a Council decision and cannot be delegated.
- 5.4 It should be noted that while Civic Parishes (carrying out Local Government functions) have their historic roots in Church of England Parishes, they are entirely separate from ecclesiastical (Church) Parishes.
- 5.5 A petition has been submitted under the provisions of Section 80 of the Local Government and Public Involvement in Health Act 2007. The petition requests the Council to conduct a Community Governance Review to increase the size of the Parish Council from five to seven Councillors.
- 5.6 There is no formal guidance on the size of Parish Councils, but the minimum number is five. The DCLG reports that, nationally, local Councils representing the following electorates have, typically, the number of Councillors stated:-
- § Less than 500 – between 5 and 8 Councillors
 - § Between 501 and 2,500 – between 6 and 12 Councillors
- 5.7 The Local Government Act 1972, as amended, specifies that each Parish Council must have at least five Councillors; there is no maximum number. The Electoral Commission has no reason to believe that this pattern of Council size to population has altered significantly since the research was conducted. Although not an exact match, it broadly reflects the Council size range set out in the National Association of Local Councils Circular 1126; the Circular suggested that the minimum number of Councillors for any Parish should be 7 and the maximum 25.

- 5.8 Foston and Thornton-le-Clay has 235 Local Government electors (Foston 74 electors and Thornton-le-Clay 161 electors). There have been more applicants for the position of Parish Councillor on the Parish Council than places during a recent exercise to appoint a co-opted Member. Allowing for the need to report to Council at the various stages of the review progress, it is estimated that the review will take 6-9 months to complete.
- 5.9 To be valid a petition requesting a Community Governance Review must contain the signatures of at least 50% of the electors for the area subject to the review whose names appear on the Register of Electors which is in force for the area the subject of the review at the time the petition is submitted. The petition must also define the area to which it relates and specify one or more proposals for consideration. The petition meets all of these criteria and is therefore valid.
- 5.10 Ryedale District Council has a duty under section 83 of the 2007 Act to respond to the petition using its powers to undertake a Community Governance Review under Section 82 of the 2007 Act. In doing so, the Council is required to have regard to Guidance on Community Governance Reviews issued by the Secretary of State for Communities and Local Government.
- 5.11 Under the legislation the District Council must aim to ensure that Community Governance in the area under review:-
- § Reflects the identities and interests of the community in that area
 - § Is effective and convenient
 - § Takes into account any other arrangements for the purpose of community representation or community engagement
- 5.12 When considering the above aims the Council should take into account a number of factors, including:-
- § The impact of Community Governance arrangements on community cohesion; and
 - § The size, population and boundaries of any new local community or parish
- 5.13 A review involves the following stages:-
- (1) Setting terms of reference of the Review (if the Committee recommends a review in Foston and Thornton-le-Clay, suggested terms of reference are set out in Annex C).
 - (2) Publicising the terms of reference (for the purposes of the Act, the review formally commences when the terms of reference are published).
 - (3) Undertaking consultations with the Local Government electors for the area and any other person or body (including the Parish Council) who appears to have an interest in the review.
 - (4) Considering representations.
 - (5) Preparing and publishing draft proposals.
 - (6) Undertaking consultation on the draft proposals.
 - (7) Considering representations.

- (8) Publishing recommendations.
 - (9) Making an Order to bring into effect any decisions arising from the review.
 - (10) A review must be concluded within 12 months of the publication of the terms of reference.
- 5.14 When undertaking a CGR a principal Council must have regard to guidance issued by the Secretary of State and the Electoral Commission. However, subject to this, it is for the Council to decide how to undertake the review.
- 5.15 In relation to the stages of a Community Governance Review a flowchart is attached at Annex B which gives an outline only of the procedure since it is not directly applicable to reviews relating to Town and Parish Council areas.
- 5.16 The review begins when the District Council publishes its terms of reference and ends when it publishes its recommendations – it has a maximum of 12 months to complete the process (Section 102(3) and (4) of the 2007 Act).
- 5.17 Section 93 of the 2007 Act sets out the duties the Council must comply with when undertaking a review. These include consulting with Local Government electors and those who might have an interest in the review, taking account of any representations received and the community identity and effective Local Government criteria.
- 5.18 However, subject to complying with these duties, Section 93 of the 2007 Act confers on principal Councils a wide discretion as to how they carry out the review. The District Council can carry out a further consultation exercise during the review period if it so wishes and in any such way that would assist with deciding what recommendations it should make. Once its recommendations are published, this concludes the Community Governance Review.
- 5.19 Following publication of the recommendations, it is then for the District Council to decide to what extent it will give effect to the recommendations. Once it has made that decision the District Council must publish that decision and its reasons for making the decision (see Section 96(2) of the 2007 Act).
- 5.20 Finally, the District Council gives effect to the recommendations by approving the making of a Reorganisation Order.
- 5.21 The Order would deal with the following matters:-
- (i) Numbers of Parish Councillors
 - (ii) Any other consequential matter

6.0 POLICY CONTEXT

- 6.1 The Council has a duty to respond to the petition.

7.0 REPORT DETAILS

- 7.1 A Community Governance Review (CGR) is a review of the whole part of a local authority's area. In this instance the review will be limited to the areas of Foston and Thornton-le-Clay Parish Council.

7.2 The Council is required to publish the terms on which the review is to be undertaken and the draft Terms of Reference (TOR) are attached as **Annex C**.

7.3 Members are advised that the District Council has a statutory duty under Section 93 of the 2007 Act to consult and take into account any representations received in connection with the review.

7.4 Section 93(3) of the 2007 Act provides as follows:-

“(3) The principal council must consult the following:--

- (a) Local Government electors for the area under review;*
- (b) Any other person or body (including a local authority) which appears to the principle council to have an interest in the review.”*

7.5 Local government electors for the area under review must be consulted as well as any other person or body which appears to have an interest in the review. It is considered that there are the following two ways of consulting local government electors:-

7.5.1 Conducting a local poll in the areas of Foston and Thornton-le-Clay pursuant to Section 116 of the Local Government Act 2003 which could be timed to coincide with the Local Government elections in May 2011

7.5.2 Write to each eligible elector in the review area with a copy of the TOR and a questionnaire seeking their views on their preferred option for Community Governance arrangements in Foston and Thornton-le-Clay.

7.6 Council has to consult with others who appear to have an interest in the review which might include local businesses and local public and voluntary organisations.

7.7 It is recommended that a press release be published and issued to invite any other interested persons or bodies to put forward their views. The TOR and questionnaire will also be available on the Council's website.

7.8 The District Council also needs to inform North Yorkshire County Council that a review will be undertaken and of the terms of reference of the review and to consult them.

7.9 Any representations received in connection with the review must be taken into account and the review must be concluded within the period of 12 months starting with the day on which the review begins.

7.10 Subject to the duties set out in the Act, it is for Ryedale District Council to decide how to undertake the review.

7.11 It is recommended starting the consultation by 19 July 2012 and asking that responses be submitted by 3 September 2012. The TOR includes a timetable for the remainder of the process.

8.0 IMPLICATIONS

8.1 The following implications have been identified:

a) Financial

Resources involved will be mainly employee time. It is possible to hold a local poll under Section 116 of the Local Government Act 2003. The estimated cost of the poll will be £1,000. It is estimated that the cost of printing and distribution of the consultation documents will be £500.

There is no specific budget for Community Governance Reviews and, therefore, all costs will have to be absorbed within the existing Democratic Services budget for 2012/13.

There is no power to re-charge the cost of the review to any other Council, except by agreement. This is because the statutory power to conduct the review rests with this Council.

b) Legal

Council has a duty to undertake a Community Governance Review and those duties are set out in the Local Government and Public Involvement in Health Act 2007.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

All local government electors within the parishes of Foston and Thornton-le-Clay will be consulted on the proposal and their views considered as part of the consultation process. The Council must have regard to the need to secure that the Community Governance arrangements for the area reflects the identities and interests of the community in the area and are effective and convenient.

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Council Solicitor**

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Background Papers:

Local Government and Public Involvement in Health Act 2007
Guidance on Community Governance Reviews published by DCLG and the Electoral Commission in April 2008
Parish and Town Councils in England (HMSO 1992) Research by the Aston Business School
Community Governance Petition
Circular 1126/1988 – Council Size published by the National Association of Local Councils.

Background Papers are available for inspection at:

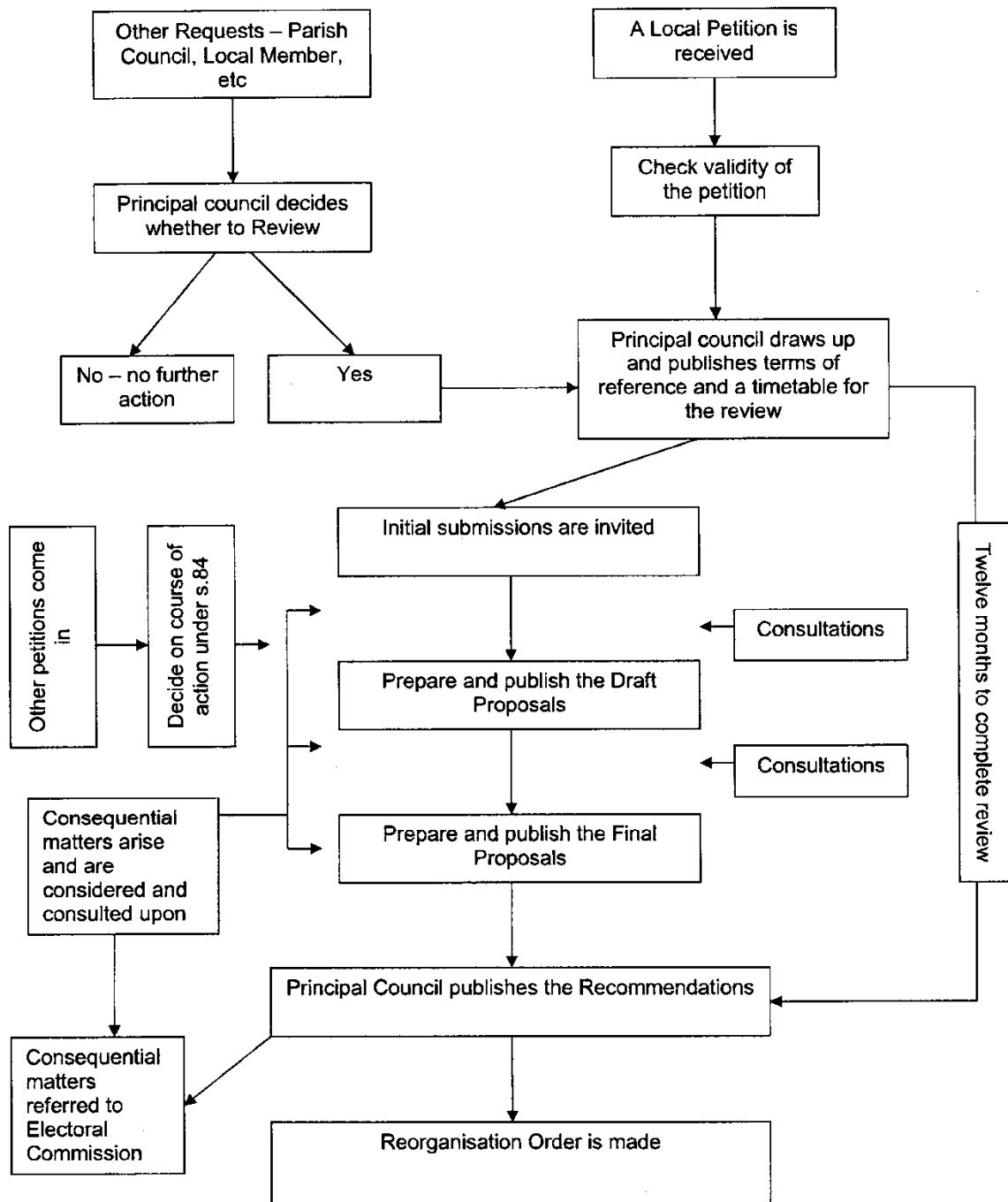
As above

COMMUNITY GOVERNANCE REVIEW

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
The District Council fails to comply with the statutory requirements relating to Community Governance Reviews in the 2007 Act.	Complaint and potentially a court order or mandamus.	2	B	There is no mitigation in this case	2	B

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

COMMUNITY GOVERNANCE REVIEWS - FLOWCHART



Ryedale District Council

Terms of Reference

For a Community Governance Review in response to a petition submitted under Section 80 of the Local Government and Public Involvement in Health Act, 2007.

Introduction

1. A petition has been submitted under the provisions of Section 80 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act). The petition requests the Council to increase the size of the Parish Council from five to seven Councillors:
2. To be valid a petition requesting a Community Governance Review must contain the signatures of at least 50% of the electors for the area subject to the review whose names appear on the Register of Electors which is in force for the areas of Foston and Thornton-le-Clay at the time the petition is submitted. The petition which has been submitted contains the required number of valid signatures.
3. The petition must also define the area to which it relates and specify one or more proposals for consideration. The petition meets all of these criteria and is, therefore, valid.
4. Ryedale District Council has a duty under section 83 of the 2007 Act to respond to the petition using its powers to undertake a Community Governance Review under section 82 of the 2007 Act.

In undertaking the review, the Council will be guided by Part 4 of the Local Government and Public Involvement in Health Act 2007, the relevant parts of the Local Government Act 1972, Guidance on Community Governance Reviews issued in accordance with Section 100(4) of the Local Government and Public Involvement in Health Act 2007 by the Department of Communities and Local Government and the Electoral Commission in April 2008, and the following regulations which guide, in particular, consequential matters arising from the review: Local Government (Parishes and Parish Councils) (England) Regulations 2008 (SI 2008/625); Local Government Finance (New Parishes) Regulations 2008 (SI 2008/626). Section 81 of the Local Government and Public Involvement in Health Act 2007 requires the Council to publish its Terms of Reference in a review.

5. The Council has the power to decide whether or not to increase the size of the Parish Council from five to seven Councillors. There is currently no provision for any appeal against any decision on a Community Governance Review made by the Council.

What is a Community Governance Review?

6. A Community Governance Review (CGR) is a review of the whole or part of a local authority's area to consider one or more of the following –
 - a. The creation, merger, alteration or abolition of parishes
 - b. The naming of parishes and the style of new parishes
 - c. The electoral arrangements for parishes including -
 - The ordinary year of election

- The number of councillors to be elected
 - The warding (if any) of the parish
7. A CGR should according to the last Government's White Paper *Strong and Prosperous Communities* published in October 2006 -
 - a. improve community engagement
 - b. provide for more cohesive communities
 - c. provide better local democracy
 - d. result in more effective and convenient delivery of local services

Parish Governance in Ryedale

8. In the District of Ryedale, there are 126 parishes. 86 have parish or town councils and the other 30 have parish meetings. The size of parish councils ranges from 5 to 12 Councillors. All parish councils are elected together in a four yearly cycle. The next elections are in May 2015.

Who will undertake the Community Governance Review

9. As the principal authority, the District Council is responsible for undertaking any Community Governance Review. The Council Solicitor will lead the review at officer level and the Policy and Resources Committee will make recommendations to Council for final adoption.

How the Council proposes to conduct consultations during the review

10. Under Section 93, the Council has a duty to consult –
 - a. Local government electors for the area under review
 - b. Any other person or body (including another local authority) which appears to have an interest in the review
11. The Council proposes to consult with Local government electors for the area by post.
12. The Council also has to consult with others who appear to have an interest in the review which might include local businesses and local public and voluntary organisations. It is recommended that press releases will be issued to invite any other interested persons or bodies to put forward their views. The Terms of Reference and questionnaire (**Appendix 3**) will also be made available on the Council's website.
13. The Council has a duty under Section 79 of the 2007 Act to inform North Yorkshire County Council that the review is to be undertaken and of the terms of the review. The Council will also consult with them on the options contained in the Terms of Reference and any proposals that are made as a result of the conduct of the review.
14. The Council will also publish the Terms of Reference of the review, the questionnaire, the options contained in the Terms of Reference and any proposals that are made as a result of the conduct of the review on its website – www.ryedale.gov.uk

15. The timetable for the conduct of the review including the consultation process is attached as **Appendix 1** to these terms of reference.

Electorate forecast to be used during the review

16. Section 95 of the 2007 Act requires the Council to make electoral recommendations when considering the establishment of any new Parish Council. It must take into consideration the number of Local Government electors on the register of electors at the time of the commencement of the review and the projected change to the number of electors in the five years beginning on the day the review starts. Foston and Thornton-le-Clay has 235 Local Government electors (Foston 74 electors and Thornton-le-Clay 161 electors). There are no large anticipated increases in the number of electors on the parish over the next five years.

The Present Structure of the Parish and the Electoral Arrangements

Present structure of the parish is:-

Foston		Ration of Electors to Councillors
Existing Number of Parish Councillors	2	1:37
Proposed Number of Parish Councillors		
Thornton-le-Clay		
Existing Number of Parish Councillors	3	1:53
Proposed Number of Parish Councillors		

Guidance on the optimum number of Town Councillors on Parish/Town Councils

17. In Guidance on Community Governance Reviews, the Electoral Commission advises that:

“In considering the issue of council size, the Commission is of the view that each area should be considered on its merits, having regard to its population, geography and the pattern of communities”

What considerations cover the number of Parish Councillors?

The Government has advised, and this Council concurs that “it is an important democratic principle that each person’s vote should be of equal weight so far as possible, having regard to other legitimated competing factors, when it comes to the election of Councillors”. Likewise, the Council notes that the number of Parish Councillors for each Parish Council shall be not less than five. There is no maximum number. The Aston Business School found the following levels of representation –

Electorate	Councillor Allocation
Less than 500	5 – 8
501 – 2,500	6 – 12
2,501 – 10,000	9 – 16
10,001 – 20,000	13 – 27
Greater than 20,000	13 – 31

The National Association of Local Councils (NALC) suggested that the minimum number of Councillors should be 7 and the maximum 25.

The Government's guidance is that "each area should be considered on its own merits, having regard to its population, geography and pattern of communities". This Council is prepared to pay particular attention to its existing levels of representation, the broad pattern of existing Council sizes, which have stood the test of time and the take up of seats at elections in its consideration of the matter.

It is recognised that the conduct of Parish Council business does not usually require a large body of Councillors. By law, the Council in this review must have regard to the following factors when considering the number of Councillors to be elected for the parish:-

- § The number of Local Government electors for the parish
- § Any change in that number which is likely to occur in the period of five years beginning with the day when the review starts

The Council will also take into account the following considerations:-

- § To ensure that the allocation of Councillors to parishes is equitable across the district, while acknowledging that local circumstances may occasionally merit variation
- § To appreciate that there are different demands and consequently different levels of representation are appropriate between urban and more rural parishes in the district.

Options for consideration

Establishing a single Parish Council for Foston and Thornton-le-Clay

18. The petition asks the Council to increase the size of the Parish Council from five to seven and the Council must consider this option.
19. **Appendix 4** lists what Parish Councils can do if they wish to. It is a brief summary of the discretionary powers and duties of a Parish Council.

Consequential matters

20. When all the required community consultation has been undertaken and the review completed the Council may make a Community Governance Order to bring into effect any decision that it may make. If the Council decide to take no action then it will not be necessary to make such an order.
21. If such an order is made it may be necessary to cover certain consequential matters in that order. These may include –
 - a. the transfer and management or custody of property
 - b. the setting of a precept (council tax levy) for any new parish or parishes
 - c. provision with respect to the transfer of any functions, property, rights and liabilities
 - d. provision for the transfer of staff, compensation for loss of office, pensions and other staffing matters.

22. In considering these matters the Council will be guided by the Local Government (Parishes and Parish Councils) (England) Regulations 2008.
23. The Council will also take into account the requirements of Regulation 3 of the Local Government Finance (New Parishes) Regulations 2008 when calculating the budget requirement of any new Parish Councils when setting the Council Tax Levy to be charged.
24. Elections for any Council that may be established would be held in the ordinary year of elections which in this case is 2015. However, as those elections are some four years after any Order could be made the District Council could, under the provisions of Sections 16(3) and 90 of the LGA 1972, resolve to hold the elections earlier with any Councillors elected at those elections serving a shortened term to allow the Parish electoral cycle to return to that of the District Council.

Adoption and Publication of Terms of Reference

25. The terms of reference were approved, adopted and published by Ryedale District Council at a meeting of the Council held on 12 July 2012.

Process Timetable

Action	When
Terms of Reference agreed by Policy and Resources Committee	21 June 2012
Terms of Reference agreed by Council and published	12 July 2012
First consultation period commences	19 July 2012
First consultation period closes	1 September 2012
Draft proposals prepared	By 21 September 2012
Draft proposals are agreed by Policy and Resources Committee and recommended to Council.	27 September 2012
Council to agree proposals for publication	1 November 2012
Second consultation period commences	8 November 2012
Second consultation Period closes	15 November 2012
Final proposals prepared	By 22 November 2012
Final proposals are recommended by Policy and Resources Committee	6 December 2012
Council to agree Final Proposals	10 January 2013
Final recommendations are published	By 17 January 2013
Review Order made	1 February 2013

Appendix 3

Community Governance Review

You are strongly advised to read the Terms of Reference for the review, or, at the very least, the summary as set out in the accompanying letter, before answering the following question:

Please put X in either the 'Yes' or 'No' column against the question to indicate your response.

	YES	NO
Do you support the increase in the numbers of Parish Councillors for Foston and Thornton-le-Clay Parish Council Parish Council from five to seven?		

Any comments you would like to make? Please continue on back if necessary

Appendix 4

What can a Parish Council do?

A Parish Council can, if it decides to do so, provide a number of services. These are summarised in the table below:

Service or Function	What can a Parish Council do?
Allotments	Provide allotments
Baths and Washhouses	Provide public baths and washhouses
Burial grounds, cemeteries and crematoria	Acquire, maintain and provide burial grounds, cemeteries and crematoria. Maintain monuments and memorials and contribute towards the expenses of cemeteries
Bus Shelters	Provide and maintain bus shelters
Bye Laws	Make bye-laws for pleasure grounds, cycle parks, baths and washhouses, open spaces, burial grounds, mortuaries and post-mortem rooms
Charities	Receive accounts of parochial charities
Clocks	Provide public clocks
Commons and common pastures	Enclose, regulate and manage commons and provide common pasture
Conference facilities	Provide and encourage the use of conference facilities
Community centres	Provide and equip buildings for use by athletic, social or educational clubs
Crime Prevention	Spend money on various crime prevention measures
Drainage	Deal with ponds and ditches
Education	Appoint school governors
Entertainment and the arts	Provide entertainment and support for the arts
Gifts	Accept gifts
Highways	Repair and maintain public footpaths and bridle-ways. Light roads and public places. Provide litter bins, parking places for vehicles, bicycles and motor-cycles, roadside seats and shelters, bus shelters, traffic signs and other notices. Plant trees and maintain roadside verges.
Investments	Participate in collective investment schemes
Land	Acquire, appropriate, dispose of and accept gifts of land
Litter	Provide litter bins
Lotteries	Promote lotteries
Mortuaries and post mortem rooms	Provide mortuaries and post mortem rooms
Nuisances	Deal with offensive ditches
Open spaces	Acquire and maintain land used for open spaces
Parish property and documents	Make decisions on the custody of parish property and documents
Public Conveniences	Provide public conveniences
Recreation	Acquire land for and provide recreation grounds, public walks, pleasure grounds and manage and control them. Provide gymnasiums, playing fields, holiday camps and boating pools.
Town and Country Planning	Be notified of planning applications in the parish and submit comments on them to the district council
Tourism	Contribute to organisations encouraging tourism
Traffic Calming	Contribute financially to traffic calming schemes
Transport	Spend money on community transport schemes
War memorials	Maintain, repair, protect and adapt war memorials
Water supply	Provide facilities for obtaining and utilising water from wells, springs or streams.