

Subject:	Review of the Constitution – July 2019		
Date of Meeting:	11 July 2019 25 July - Full Council		
Report of:	Executive Lead Officer for Strategy, Governance & Law (Monitoring Officer)		
Contact Officer:	Name:	Elizabeth Culbert	Tel: 01273 291515
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Ward(s) affected:	(All Wards);		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report proposes changes to the Council's Constitution for approval by Policy, Resources & Growth Committee and (where relevant) Full Council. The proposals set out in the report have been considered by the cross party Constitutional Working Group and by Leaders Group.

2. RECOMMENDATIONS:

Policy, Resources & Growth Committee:

- 2.1 That the proposal in paragraph 4.8 of the report that elected members be encouraged to provide sufficient detail so that the nature and parameters of oral questions to Full Council are clear be noted;
- 2.2 That the principles relating to elected member working groups as set out at paragraphs 4.9 to 4.10, the list of permanent working groups as set out in Appendix 1 and the Terms of Reference as set out at Appendix 2 be agreed;
- 2.3 That the amendments to officer delegations as set out at paragraphs 4.16-4.18 and the approach to the inclusion of Brexit implications as appropriate in committee reports as set out in paragraph 4.19 be agreed;
- 2.4 That Full Council be recommended to approve the proposed changes to the Council's Constitution set out at paragraphs 4.1-4.4 (Planning Committee delegations); 4.5-4.7 (Written Questions); 4.11-4.13 (Committee Delegations); 4.20 (reporting by sub-committees to parent committees) 4.21 (External bodies reporting to Full Council); 4.22 (Alliances, Charters and Pledges); 4.23 (Council Procedure Rules – definition of Council meeting); and 4.26 (discontinuation of the Orbis Public Law Joint Committee.)
- 2.5 That the Executive Lead Officer for Strategy, Governance & Law be authorised to agree necessary modifications to the inter-authority agreement between Brighton & Hove, East Sussex County Council, Surrey County Council and West Sussex County Council

Full Council

- 2.6 That the proposed changes to delegations to Planning Committee as set out in paragraphs 4.1 to 4.4 of the report be approved;
- 2.7 That the proposal to clarify the mechanism for responding to written questions from elected members at Council Committees (and sub-committees) set out in paragraph 4.5-4.7 of the report be agreed;
- 2.8 That the review of Committee functions as set out at paragraphs 4.11 to 4.13 including the establishment of a new Tourism, Equalities, Communities & Culture Committee and the discontinuation of the Orbis Joint Committee (as set out in paragraph 4.26) be agreed;
- 2.9 That the changes to Council Procedure Rules to reflect the approach to reporting by sub committees to parent committees as set out at paragraph 4.20 of the report be agreed;
- 2.10 That it be agreed to invite both East Sussex Fire and Rescue Service and the Sussex Police and Crime Panel to present an Annual Report to Full Council as set out at paragraph 4.21 of the report;
- 2.11 That decisions to commit the Council to the principles or membership of alliances, charters and pledges should be reserved to Full Council and that this approach be kept under review and any impact on Council business assessed as set out at paragraph 4.22 of the report;
- 2.12 That the Council Procedure Rules be amended to ensure a consistent definition of "Council meeting" as set out at paragraph 4.23 of the report.

Policy, Resources & Growth Committee and Full Council

- 2.13 That the Chief Executive and Monitoring Officer be authorised to take all steps necessary or incidental to the implementation of the changes agreed by the Policy, Resources & Growth Committee and by Full Council, and that the Monitoring Officer be authorised to amend and re-publish the Council's constitutional documents to incorporate the changes;
- 2.14 That the proposed changes come into force immediately following their approval by Policy, Resources & Growth Committee or adoption by Full Council, as appropriate.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Council is required to keep its Constitution under review with a view to achieving efficiency, economy and effectiveness. The Cross-Party Constitutional Working Group (CWG) was set up to assist with this by considering proposals and advising the Council on proposed changes to the constitution. The current members of the CWG are Councillors Moonan (Chair), Littman and Wares . The proposals set out in the report were agreed by the CWG on 6th June 2019 and discussed by Leaders Group on 1 July 2019.

4. PROPOSALS

Planning Committee and Officer Delegations

- 4.1 The cross party Planning Working Group received a request from the Tourism, Development and Culture Committee in June 2018 to review the officer delegations in relation to Listed Building applications. This followed concerns that elected members were not always aware of planning applications relating to Listed Buildings in their wards.
- 4.2 Under current arrangements planning applications relating to Listed Buildings are determined by officers unless either:-
- a) 5 or more objections are received; or
 - b) A ward Councillor requests that the matter be determined by Planning Committee.
- 4.3 The Planning Working Group have proposed that these arrangements are strengthened and that any application relating to the following Council-owned buildings should be determined by Planning Committee rather than by officers:-
- Booth Museum, 194 Dyke Road
 - Brighton Bandstand, Kings Road
 - Brighton Corn Exchange
 - Brighton Dome Theatre, Church Street
 - Brighton Museum and Art Gallery
 - Duke of Yorks Cinema, Preston Circus
 - Hove Library, Church Road
 - Hove Museum and Art Gallery
 - Saltdean Lido
 - Royal Pavilion
 - Preston Manor
- 4.4 The Planning Working Group identified the above Council owned buildings on the grounds that they are Listed Buildings that attract significant public interest.

Written Questions from elected members to Council Committees

- 4.5 The proposal is to clarify the arrangements for dealing with written questions from elected members to Committees. At Committee the intention is that written questions are answered verbally at the meeting or, at the discretion of the Chair, by way of a written response circulated after the meeting. One supplementary question is allowed for written questions to Committees.
- 4.6 The current rules do not clearly reflect the intended approach and it is proposed to amend the wording specific to Committees to clarify the above arrangements.
- 4.7 Written questions from elected members to Full Council follow a different procedure and are required to be answered with a written answer and no supplementary question is allowed. No change is proposed to this arrangement for Full Council.

Oral Questions from elected Members at Full Council

- 4.8 A period of not more than 30mins is set aside for oral questions from Members at Full Council. Council Procedure Rule 9.7 requires notice of the 'subject matter' to be given. This was intended to enable a question and answer at a general policy level without officer briefings or going to technical detail. However the way it has worked in practice means Members to whom the question is asked at times feel the subject description is too vague and the questioner may feel the question is not addressed adequately. The CWG recommended that elected members should be encouraged to provide sufficient detail so that the nature and parameters of the question are clear.

Review of elected member Working Groups

- 4.9 A review of elected member working groups has been undertaken. It is proposed that a number that have completed their work will cease to operate. The remaining groups have revised and updated their terms of reference, using a consistent format. A list of the current elected member groups is attached as Appendix 1. Those that are proposed to cease are highlighted in Appendix 1.
- 4.10 The proposed principles governing elected member working groups are that they are established as either 'task and finish' or 'permanent' groups. Task and finish groups may be established on the following basis:-
- A cross party member working group that is established by either a service committee or by Audit and Standards Committee will be known as a 'task and finish' group;
 - They will be set up for 6 months with the possibility of an extension of up to a further 6 months;
 - They will be expected to report back to the committee which established them on a regular basis;
 - Their terms of reference will need to be agreed by the committee, using the Council's template;
 - The task and finish groups should include the Chairs or Deputy Chairs of the relevant committee to ensure oversight and a strong link to that committee.

Permanent groups must be established by Policy, Resources and Growth Committee. It is proposed that the Terms of Reference of all those permanent elected member working groups identified as continuing in Appendix 1 – as well as any new permanent elected member working groups agreed by PRG – be included in the Council's Constitution and that they are reviewed annually. PR&G is recommended to approve the terms of reference for the existing Working Groups as set out in Appendix 2.

Review of Committees and their Functions

- 4.11 The Council has an obligation to ensure that the decision making arrangements are streamlined and the number of committees and sub-committees is kept to the minimum necessary to discharge Council functions. With this in mind, a review of the current committee structure was undertaken, having regard to the volume of business and the avoidance of duplication as well as fragmentation of functions. Based on the findings, it is proposed to merge the Tourism, Economic Development & Culture Committee with the Neighbourhoods, Inclusion, Communities and Equalities Committee (NICE) to create a new merged Committee to be called the Tourism, Equalities, Communities and Culture Committee (TECC.)
- 4.12 In order to streamline the delivery of functions, the proposals include moving all housing functions relating to homelessness and rough sleeping from the NICE Committee to the Housing and New Homes Committee; the functions relating to customers and digital first and ward budgets from NICE to the PR&G Committee and the functions of major projects and economic strategy from the TD&C Committee to the PR&G Committee. A full list of the functions with the recommended destinations is set out in the structure charts in Appendix 3.
- 4.13 It is intended to retain all of the current functions of the NICE Committee relating to Communities, Equalities and Community Safety and for these to form part of the delegations to the new TECC Committee. The current arrangements for co-opting representatives of the community and voluntary sector and public services as invitees will continue in the new committee. The agenda of the new committee, ways of working and order of business will be organised so as to facilitate the input from the co-optees and ensure efficient despatch of business. A copy of the proposed Terms of Reference for the TECC Committee are attached as Appendix 4.
- 4.14 There has been ongoing discussions regarding the balance of power and volume of business between the service committees and Policy, Resources & Growth Committee. Under current arrangements:
- all business relating to a service committee always goes to the service committee, even if the final decision has to go to PR&G Committee;
 - All matters that have corporate policy or corporate budgetary implications and anything that involves the acquisition or disposal of property has to be referred to the PR&G Committee for decision; and
 - The Chief Executive and the Section 151 Officer are authorised to decide whether a proposal has corporate policy or corporate budgetary implications respectively where there is any ambiguity. They are also authorised to issue guidance on the application of the criteria. So far, no such guidance has been issued.
- 4.15 The Constitutional Working Group considered the arrangements and recommended that the Chief Executive and the Section 151 Officer issue guidance so that there is consistency and transparency in the application of the rules. The position can be reviewed again in the light of experience.

Officer delegations and report writing

- 4.16 The Corporate Debt Policy was recently agreed by PRG, with a recommendation that the Constitution Working Group consider the inclusion of a specific reference to the new policy within the delegations to the Executive Director Finance & Resources. The Constitution Working Group supported this proposal on the basis that the inclusion of accountability within the officer delegations would ensure that implementation of the new policy was monitored.
- 4.17 A proposal was supported by the CWG for the function of Safety at Sports Grounds to be transferred at officer level from the Executive Director of Environment, Economy and Culture to the Executive Director of Neighbourhoods, Communities and Housing as the most logical new home following retirement of a key manager.
- 4.18 The arrangements for managing applications in relation to Assets of Community Value at officer level have been reviewed. It is proposed to widen the pool of officers who are authorised to hear appeals as this is currently limited to the Head of Planning. The new proposed list of authorised officers for this purpose will be the Heads of Planning, Property, Major Projects and Legal Services or other officers designated by the Chief Executive.
- 4.19 In December 2018, PRG agreed to refer to the CWG the question of whether Brexit implications should form part of all reports. CWG considered a range of options and concluded that a proportionate and consistent approach was needed. On this basis the CWG recommended that an additional optional implications field under 'Other Significant Implications' within the report template be included, where Brexit implications can be inserted if appropriate.

Rules regarding Sub Committee reporting to Parent Committee

- 4.20 Sub-Committees are currently required to report to their parent Committee, but this does not consistently happen. The current Sub-Committees are: Personnel Appeals Panel; Licensing Panel; Standards Panel and any Urgency Sub-Committee. The CWG recommended that this requirement should be retained and clarified, to reflect a requirement for sub-committees to report once per year to their parent committee with a summary of activity and to enable an individual member of the Sub-Committee to request that a report be made to the parent Committee at any other time.

Annual Reports to Full Council from other bodies

- 4.21 The Council has received a request from East Sussex Fire and Rescue Service (ESFRS) that it should receive an Annual Report from ESFRS at Full Council. CWG were supportive of this request and also considered whether there was a general application to other external bodies to which BHCC Members are appointed. The CWG recommended that ESFRS and the Sussex Police and Crime Panel be invited to present an Annual Report to Full Council.

Commitment to Charters, Alliances and Pledges by the Council

- 4.22 A number of requests for the Council to 'sign up' to charters, alliances and pledges have been brought forward, including to Committees. The CWG considered whether there was a need to clarify who makes these decisions and whether they should be held corporately or by relevant policy committees. It was agreed by CWG that there is a need to ensure a consistent approach. CWG recommended that these decisions should be reserved to Full Council in order to ensure that all elected members were aware of them. CWG further recommended that this approach should be kept under review and any impact on Council business assessed.

Clarification of Council Procedure Rules

- 4.23 Currently the Constitution includes conflicting definitions of 'Council meeting'. It is proposed that this be amended so that it is clear whether a specific rule applies to all meetings of the Council, its Committees and Sub-Committees or only meetings of Full Council.

Orbis Public Law Joint Committee

- 4.24 Orbis Public Law was set up as a shared service between Brighton & Hove City Council and East Sussex, West Sussex and Surrey County Councils. The main purpose of the project was to increase resilience and deliver efficiencies through collaboration, integration of structures and processes and avoiding duplication. The partnership has been successful in developing joint training, joint procurement of external legal services, document bundling, work sharing and sharing expertise. The next phase of the development was intended to be integration of officer structures and finances.
- 4.25 While the above work was progressing, the partners were notified by Surrey County Council that, as they are going through a review of their internal arrangements, they would not be able to take part in the integrated structures and finances. This has made the plan to integrate the team undeliverable because on the increase in overheads and some of the underlying assumptions no longer being deliverable.
- 4.26 The Orbis Public law joint committee was set up with integrated finances and structures in mind. It was going to develop a joint budget and make recommendations to the 4 authorities. It was also intended to oversee the delivery of Orbis Public Law services. Given the developments mentioned in paragraph 4.25 above, the Committee can no longer serve the initial purpose it was set up to fulfil. It was therefore agreed, subject to the approval of each authority under its constitution, to discontinue the Joint Committee. The relevant Cabinet Members from the other authorities have passed the necessary resolution. In Brighton & Hove, as we run a committee system, the decision has to be taken by full Council and this recommendation will go to the full Council meeting on 25 July 2019.

- 4.27 The Orbis Public Law arrangements are operated under an inter-authority agreement that has detailed provisions for sharing costs, developing joint budgets etc. In view of the new development, these provisions will no longer be appropriate and it is proposed that the Executive Lead Officer for Strategy, Governance & Law be given delegated authority to agree necessary modifications to the agreement.
- 4.28 Although the planned structural and financial integration will not go ahead (which means we will operate as four legal practices rather than one fully merged team), the parties have agreed to continue aspects of the partnership that are not dependent on structural and financial integration. Some of the activities that will continue include:
- An inter-authority agreement to do work for each other at pre-agreed fees;
 - Continuing joint training;
 - joint procurement of external legal services (approved Counsel's chambers and firms of solicitors;)
 - Continue the joint case management systems, including the court bundling system;
 - General mutual support and collaboration

The partnership will therefore operate as an enhanced collaboration rather than an integrated service.

5. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 5.1 The Committee or Council can decide not to implement the changes set out in the report.

6. COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 The Cross-Party Constitutional Working Group have considered the proposals and make recommendations which are reflected in the report. Leaders Group have also considered the proposals set out in the report.

7. CONCLUSION

- 7.1 The proposals reflect the Council's ongoing efforts to review and streamline its processes so as to achieve increased efficiency. It is therefore recommended that they are pursued.

8. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 8.1 There are not expected to be any significant financial implications arising from this report but there will be a small saving from Special Responsibility Allowances resulting from the merger of the NICE and TD&C committees.

Finance Officer Consulted: Peter Francis
17/06/19

Date:

Legal Implications:

- 8.2 Policy Resources & Growth Committee and, where specified in this report, Full Council, have the authority to make the changes to the Council's Constitution as set out in the report. The intention is for the proposals to be implemented with immediate effect unless otherwise indicated.

Lawyer Consulted: Elizabeth Culbert

Date: 13.06.19

Equalities Implications:

- 8.3 The proposals are not considered to have adverse equalities implications. The changes to Committees that are proposed will preserve the current equalities functions that are decided at Committee and will ensure the continued representation by co-opted members in relation to equalities matters.

Sustainability Implications:

- 8.4 There are no sustainability implications in relation to the proposals contained in the report.

Any Other Significant Implications:

- 8.5 None

SUPPORTING DOCUMENTATION

Appendices:

1. List of elected Member working groups;
2. Terms of Reference for permanent elected Member working groups;
3. Tables with list of relevant Committee functions;
4. Proposed Terms of Reference for TECC Committee.

Background Documents

1. None