COUNCIL	Agenda Item 51
28 January 2010	Brighton & Hove City Council

Subject:		**Twelve Month Review of the Constitution**	
Date of Meeting:		**28 January 2010**	**Council**
		12 January 2010	Governance Committee
		14 January 2010	Cabinet
Report of:		**Director of Strategy & Governance**	
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Wards Affected:	**All**		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 On 7 July 2009 Governance Committee approved the methodology for a twelve month review of the Council's Constitution. This report presents the outcome of the consultation and makes proposals for amendments to the Constitution in response.

2. RECOMMENDATIONS:

2.1 That the Committee notes recommendations 4, 6 and 12 in the report and agrees recommendations 3, 7 and 11;

2.2 That the Committee agrees to recommend to Cabinet the proposals set out at paragraph 1, 2,5, 9, 10 and 14 of the report (see appendix 2);

2.3 **That the Committee agrees to recommend to Full Council the proposals for amendments to the Constitution set out at paragraphs 8 and 13 of the report (see appendix 1); and**

2.4 **That the Committee recommends the Cabinet and Council to authorise the Head of Law to make the necessary amendments to the Constitution to reflect the above proposals once approved by the relevant body (see appendices 1 and 2).**

3. RELEVANT BACKGROUND INFORMATION / CHRONOLOGY OF KEY EVENTS:

3.1 When the Council's new Constitution was approved by Full Council in May 2008 it was agreed to review how the arrangements were working, initially after six months and in more depth after the first year. The opportunity to examine the arrangements was considered important by Members in order to enable changes to be made, taking the experience of working under the new arrangements into account.

3.2 At the six month review stage a number of changes were approved, including:

- The extension of speaking rights and a seat at the table at Cabinet and Cabinet Member meetings to the Leader/Convenor of all opposition parties;
- Clarifying the procedure for special meetings;
- Adding Community Affairs and Inclusion as an item on the Cabinet agenda at least every 6 months;
- Improvements and guidance regarding Notices of Motion, Member and public questions at Council meetings;
- Changes to delegations and other technical amendments.

3.3 At the six month review stage Members also identified two in depth pieces of work which it was agreed should be taken forward as part of the twelve month review. These were a review of Overview and Scrutiny arrangements and a cross party working group to look at Member involvement in equalities issues. These have been progressed and are reported below.

3.4 The Governance Committee agreed the methodology for the twelve month review on 7 July 2009. The following steps have been taken to encourage the public, Members and officers to provide comments on the working of the Constitution at this 12 month stage and to provide suggestions as to how it could be improved:

- Two City News articles appeared in the July and September 2009 editions of the paper informing the public of the review and encouraging them to complete an online questionnaire;
- The Citizens Panel were sent a hard copy of the questionnaire in September 2009;
- All Members were sent an invitation to feed in their comments In September 2009. This was repeated in October 2009;
- Questionnaires were also sent to officers (all first, second and third tier managers);
- Partner organisations received a personal letter explaining that the review was taking place and seeking their views.

Summary of Responses and Recommendations

Public Responses

3.5 There were 815 responses from members of the public who completed the Citizens Panel and online questionnaires. An analysis of the public responses is attached at Appendix 3, including the full text of the responses to open questions. Whilst a range of views were expressed it is possible to draw out the main themes:

- **Listening, consulting and responding to the public –** there were a number of comments that the Council does not listen to public views or involve the public adequately in decision making.

- **Communication and publicity –** many of those who responded wished to see increased publicity about how to get involved in Council decision

making, including more publicity about what is being discussed at Council meetings and how to influence decisions.

- **The Leader and Cabinet system –** the public responses included comments that the current system is undemocratic and less representative than the old system. There were a number of comments that the Cabinet should not be single party. There were also a small number who suggested an Elected Mayor model would be preferable.

- **Accessing information - a** further theme that emerged was that it was felt that information should be made available to the public in a variety of ways rather than relying on people being able to access information online.

- **More local referenda –** there were a number of comments that more local referenda should be held on issues.

- **Improve efficiency -** respondents commented that decision making should be speeded up and bureaucracy reduced.

- **More public attendance at meetings -** public responses included comments that there should be greater public involvement in meetings and a wider cross section of the community should be involved

Recommendations in relation to public responses

3.6 The public responses which stated that public opinion is not heard or responded to, and that it is difficult to find out what is going on, reflect similar concerns that emerged through The Place survey. The Council has prioritised action to address these issues, including the steps set out below.

3.7 On 21 November the Council launched the "Get Involved" campaign. The campaign seeks to address directly the problems of members of the public not feeling connected to the Council by hosting a series of events and awareness raising campaigns to highlight the opportunities to "have your say" and how to access decision making.

3.8 An e-petitions facility was also launched on 21 November and has already attracted petitions from the public. The facility is a further step the Council is taking to increase direct access for the public to decision makers in the Council.

3.9 In relation to the ability of the public to engage with the Council at meetings, the proposals in relation to Full Council meetings at paragraph 3.27 below are intended to enable more people to attend Full Council meetings and to make them a focus for people to come, or watch, to understand the business of the Council.

3.10 **<u>Recommendation 1.</u> It is recommended that City News should include a clear explanation in the section on forthcoming meetings that states where the Forward Plan and meetings agendas can be obtained. A hard copy of the Forward Plan should be made available in the libraries and public offices. The Forward Plan is published monthly but updated more**

frequently so it should be made clear on the hard copy where the most up to date version can be found.

3.11 **<u>Recommendation 2.</u> To make the Forward Plan itself a more helpful tool to understanding the business of the Council, there needs to be a stronger 12 month projection of decisions (as opposed to focusing on the next 2-3 months). It is recommended that the Cabinet Support Team proactively produce a 12 month programme of key decisions for inclusion in the Forward Plan.**

3.12 **<u>Recommendation 3.</u> It is recommended that Governance Committee should keep the above initiatives under review and instructs officers to report back to Committee on progress within six months of this report.**

Responses from Partners and other Organisations

3.13 The list of Partners contacted is set out in full at Appendix Four, together with the text of the consultation letter. The issues raised and recommendations are set out below:

Older Peoples' Council

3.14 The Older People's Council (OPC) stated that it valued the opportunities it has been given to represent the views of older people, in particular through:

- Regular meetings with the Council Leader;
- Formal representation on a range of Committees and forums;
- Invitations to contribute to strategies, scrutiny panels, the Care
- Quality Commissioning Review of Adult Social Care and the Stakeholder Panel assessing candidates for an Adult Social Care post.

3.15 The OPC identified that the high level of activity means that it is struggling be involved as effectively as it would like with the current resources and requested a dialogue with the Council to consider an increase in financial and administrative support.

3.16 **<u>Recommendation 4.</u> That the Committee notes that the Director of Adult Social Care and Housing will meet with the Chair of the OPC to discuss support arrangements.**

Hollingbury Community Groups

3.17 Hollingbury Community Groups responded to the consultation and explained that they feel that they have benefitted a great deal from the Cabinet arrangements, and that they feel that the processes have worked extremely well to deal positively with the many issues to arise in Hollingbury. They also commented that every area across the City would benefit from Community Development and that the Local Action Team in particular has benefitted the area. They urge the Council to make more use of Local Action Teams across the City to raise local participation, consultation and local involvement.

3.18 The issue of LATS was raised in a notice of motion at council on 30 April and subsequently considered by the Cabinet. The Cabinet member for Community

Affairs, Inclusion and Internal Relations referred to the information pack for LATs on how to engage with the wider structures which was being developed in addition to a guidance documents acknowledging and defining the role of LATs. A second event bringing together the chairs of all LATs to ensure their engagement and involvement was held since. Given the steps that have already been taken and recognising the main role of LATS, it is recommended as follows;

3.19 **<u>Recommendation 5.</u> That the Committee agrees that the Research and Consultation Team should include Local Action Teams, where appropriate, in all consultations relating to community safety/crime and disorder that affect a community for which a Local Action Team is in place.**

Eco-logically

3.20 Eco-logically environmental consultants also responded to the consultation. They expressed disappointment that there has been no improvement in their ability to interact and have a dialogue with the Council and in particular raised concerns about difficulties they had experienced in obtaining copies of consultation documents.

3.21 **<u>Recommendation 6.</u> That the Governance Committee notes that the Chair of Governance Committee has set up a meeting with Eco-logically to go through with them their concerns in person.**

Summary of responses from Officers

3.22 Feedback from Officers has been collated from returned questionnaires and other comments received since the six month review.

3.23 The key issues that have been raised are:

- Overview and Scrutiny is improving and grasping real issues
- The Audit Committee is starting to show its value
- The uncertainty that no overall control brings is reduced
- Monthly Cabinet meetings produce helpful cycles
- There is not enough business on some Cabinet Member Meetings
- There are too many Cabinet Member Meetings
- There is a need to review Full Council working to make it more focused and relevant
- Extend delegations for Cabinet Member for Central Services to include Customer Services to tie in with other Central Services delegations.

3.24 In addition officers have raised a number of technical amendments which are included as recommendations at the conclusion of this report.

Summary of responses from Members

3.25 Individual Member responses raised the following issues:

- There are too many meetings – although some are shorter they are more frequent and can overlap or it is simply not possible to attend them due to the volume;

- A request for more clarity about the procedure and scope for Notices of Motions;
- The role of Political Assistant is not clear;
- Measures should be taken to ensure that scrutiny is non-political and the role of Head of Scrutiny should be on a higher grade and carry more weight than at present;
- Scrutiny does not provide an equal balance to the Executive and needs to be improved;
- There should be separate Scrutiny Committees for Community Safety & Culture, Enterprise & Tourism and Adult Social Care & Housing;
- There should be separate Scrutiny Committees for Environment and Community Safety;
- There should be more neighbourhood working/neighbourhood-based decision –making and Participatory Budgeting;
- The Forward Plan remains inaccessible and hard to follow;
- Questions at Council should be written and receive a written answer and not a verbal answer;
- Scrutiny Chairs and deputies should be proportional to proportion of political parties on the council;
- There should be odd numbers on scrutiny committees;
- There should be a specific responsibility for Cabinet to accept or dismiss scrutiny recommendations and explain their reason for doing so;
- There should be structures to ensure that Notices of Motion are followed through and not overturned or ignored at the relevant subsequent Cabinet or Scrutiny Committees;
- Members should be allowed to sign petitions ;
- Urgent decisions should not be exempt from call-in;
- The Council's AGM should be held separately to the annual Mayor-making;
- There is no easy access to a forum for members of the public to raise equality issues. A CMM should be held for Community Affairs and Internal Relations or another structure established. Members have no information of what activities are taking place in this area;
- The issue of the party or parties of Official Opposition needs to be clarified so that, in the case of more than one party sharing the equal highest number of elected councillors, then the Leader/Convenor of each party will become the Joint Leaders of the Official Opposition;
- Pleased that all Members now have speaking rights;
- Scrutiny ad-hoc panels doing some very good work;
- Decisions can get made more quickly;
- There is greater inclusion of the community.

3.26 In addition to individual Member questionnaires, officers received some collective proposals from Groups which are summarised below:

- There should be a limit of 2 Notices of Motion per Group;
- The limit on the length of time the mover of the Notice of Motion or presenter of a report has to speak should be reduced from 10 minutes to 5 minutes and those speaking in support or otherwise should be limited to 3 minutes;
- Members' questions should be directed to the right decision making forum and should be referred to CMM or Cabinet where the issue falls squarely within the decision making remit of one of those meetings;

- Members questions should be limited to 2 questions per Member per meeting;
- There should be a requirement that the executive response should be prepared and a decision made by Cabinet as to whether to accept the recommendations or not within 4 weeks of receiving the scrutiny report;
- Strategic and significant matters should be taken to CMMs. The CM for Community Affairs, Inclusion and Internal Relations should hold CMM's;
- Cabinet members should not be members of the Audit Committee;
- Pre-meets should not be held before Planning Committee;
- Given the growing workload of the scrutiny team, the number of the people in the team should be reviewed.

Recommendations in relation to responses from Members and Officers

3.27 **Full Council**

<u>Recommendation 7</u>. The Committee requests a paper be brought to its meeting on 9th March 2010, specifically addressing proposals in relation to Full Council meetings.

3.28 In relation to the proposal for a mechanism to ensure that Notices of Motions agreed at Council are acted on, this would not be possible to take forward as the Functions and Responsibilities Regulations 2000 create a split between executive and council functions. Where a Notice of Motion taken at Council relates to executive functions, Full Council has power only to recommend action to Cabinet or CMMs – the Council recommendation cannot bind the Executive.

3.29 In response to the proposal that the Council's AGM should be held separately to the annual Mayor making, the debate takes places at the time the Mayor Elect is decided which is in December and is already separate from the Council's AGM.

3.30 In respect of the role of Official Opposition, it is not proposed that the current arrangements are changed as it is appropriate to continue with the incumbent Official Opposition where there is a change mid year and review this annually at the Council's AGM.

Overview and Scrutiny

3.31 At the six month review of the Constitution, it was agreed that there should be a more in-depth review of Overview and Scrutiny arrangements. This has been done and was reported to Governance on 17 November 2009. The recommendations in that report included proposals to embed the quarterly tripartite meetings between the Chair of the Commission/Committee, the Cabinet Member and the relevant Director and for the Commission to produce a medium and long term work programme for the panels and select committees.

3.32 The Head of Overview and Scrutiny has also recently put in place new arrangements for working with officers in relation to scrutiny recommendations and these will be monitored to ensure that the required timetables are met.

3.33 A further mechanism to ensure timely responses to scrutiny reports has been agreed with the executive and is set out at recommendation 8 below. This

complies with the most recent legislative requirements in relation to Overview and Scrutiny arrangements.

3.34 **<u>Recommendation 8</u>. It is recommended that the Overview and Scrutiny and Cabinet Procedure Rules be amended to require an executive response to scrutiny reports to be published by the executive within 2 months of receiving the scrutiny report.**

3.35 It is not recommended at this stage to review the staffing arrangements for scrutiny in view of the new ways of working reported to the 17th November Governance Committee and the proposals above which will need time to bed in. The current arrangements in relation to the number of panels were agreed following consultation at the six month review stage and it is not proposed to separate further their remits.

3.36 In relation to the issue of chairing and numbers on Scrutiny Committees it is not proposed to change the arrangements. The Committees are intended to work collaboratively and on a non-political basis. All Chairs pre-meets have now become cross-party to reflect this aim. If the proportionality rules were to be applied to the Chairing of the Overview and Scrutiny Committees this would not result in a change to the political representation of the Chairs that would increase the number of opposition chairs in any event. The result would be the opposite.

3.37 In response to the request that urgent decisions should not be exempt from call-in, it is not proposed that the current arrangements should change as this provides an important mechanism to enable the Council to take decisions in cases of real urgency. There are safeguards in place to ensure that the mechanism is operated responsibly – reasons are required to be given in the report itself and an annual report to Full Council is required setting out the occasions when this power has been used. From the records it is clear that there is no evidence that this system is being abused.

Cabinet Member Meetings

3.38 In relation to Cabinet Member Meetings, in recognition of the concerns raised by both officers and Members on this issue, it is recommended that Cabinet Members Meetings are streamlined. The business coming through the Central Services and Finance CMMs is low because many of the decisions that fall within these areas are taken at Cabinet. The Finance CMM itself does not have a decision making remit. Looking at this against the resource implications of running the meetings, it is recommended that these two CMMs no longer meet and that the matters that would have been taken to those meetings are taken to Cabinet.

3.39 **<u>Recommendation 9.</u> That Finance and Central Services matters that would have been taken to CMM are taken at Cabinet in place of separate CMMs for those areas.**

3.40 **<u>Recommendation 10</u>. That Cabinet will encourage ongoing CMMS to ensure that they make full use of the meeting by taking discussion papers and updates as well as decision making reports and will review the position in six months.**

Neighbourhood working

3.41 **<u>Recommendation 11</u>. That the Committee notes the comments regarding neighbourhood working and requests that this issue be picked up at Governance Committee within the report on the Local Democracy, Economic Development and Construction Act 2009 at its March meeting.**

Cross party working group on equalities issues

3.42 At the six month review stage Members agreed to set up a cross party working group to look at Members' involvement in equalities issues and for the outcome of that review to feed in to the 12 month review.

3.43 The cross party working group met on two occasions. A note setting out the issues and recommendations agreed by the group are attached in full at Appendix 5.

3.44 **<u>Recommendation 12.</u> That the Committee notes that an informal equalities group will be set up and Chaired by the Cabinet Member for Community Affairs, Inclusion and Internal Relations with equal representation from all parties and which will meet on a six weekly basis. The group will not be a decision making body but an informal meeting for Members with the aim of improving communication and engagement with elected members on equalities issues.**

Technical amendments

3.45 Officers have provided feedback on a number of technical issues and proposals to amend and clarify aspects of the Constitution where, for example, legislation has changed and delegations need to be updated. These issues are set out below.

3.46 **<u>Recommendation 13.</u> That the Committee recommends to Full Council the following amendments:**

- **Amend Overview and Scrutiny provisions to comply with the requirements of the Local Government Public Involvement in Health Act 200 as set out at Appendix Four;**

  Most of the amendments reflect existing scrutiny practices but are not specifically mentioned in our procedures. The main changes are: duty to give written reasons when a request for scrutiny is not agreed a 2 month deadline for responses (28 days in the case of crime and disorder) and limitation on the co-option of non-Councillors to the Crime & Disorder Overview & Scrutiny Committee. Appendix 6A summarises the relevant legislative provisions and Appendices 6B and 6C set out the full procedures as amended.

- **Amend Licensing Committee referred functions to reflect the role of the executive in formulating the authority's statement of licensing policy under the Gambling Act 2005;**

- **Amend Contract Standing Orders to clarify procedures in accordance with the draft amended CSO's attached at Appendix 7;**
  An explanatory note is attached as appendix 7A.

- **Designate the holder of the post of Head of Overview and Scrutiny as 'Scrutiny Officer' for purposes of compliance with the Local Democracy and Public Involvement in Health Act. It is now a statutory requirement to have this role formally designated. The legislation requires that it should not be the Chief Executive, Monitoring Officer or s151 Officer and needs to be a person with day to day responsibility for the scrutiny service.**

- **Incorporate a sub-committee to Standards Committee to consider applications for dispensation.**

3.47 **<u>Recommendation 14.</u> That the Committee recommends to Cabinet the following amendments:**

- **Amend delegations for Director of Finance and Resources to include the power to determine applications for assistance under the Council's general indemnity (this was approved by Policy & Resources in 2005 but the delegations were not updated);**

- **Incorporate into the Constitution the current arrangements for appointing a substitute for CMMs. This will reflect the current arrangements whereby the Leader appoints a substitute and will not be a change in practice.**

- **Include Customer Services in the delegations for Central Services to tie in with the other Corporate functions already delegated to that portfolio.**

Other Constitutional issues for information

3.48 **Leadership and Civics' office**
The Council has been approached by the Lord Lieutenant to manage his office (which up until now has been run by East Sussex Council, with a financial contribution from ourselves and that Authority). The intention would be to create a "Leadership and Civics" office that would provide the executive support to the Chief Executive, the Leader and Deputy Leaders as current, but would also take on the new responsibilities for the Lord Lieutenancy.

3.49 **Leaders Group**
Established at the time of the first no overall control council, the Leaders Group has now run for many years as a forum for considering cross-council (and thus cross-party) issues predominately on matters relating to the constitution, civic life, elections, democracy, etc. It has also been, reasonably successfully, used on significant corporate issues (such as equal pay) to keep group leaders apprised of long term or complex matters. It is proposed that this approach should be retained but with care being taken of the role of the Governance Committee on the former and Member briefings, Overview & Scrutiny and formal Cabinet/Cabinet Member meetings on the latter.

4. CONSULTATION

4.1 As set out in the body of the report, there has been wide consultation with the public, partner organisations, Members and officers in relation to this review of the Constitution. The recommendations of the report have also been the subject of consultation with the Leaders Group.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are no direct financial implications arising from the proposed amendments to the constitution outlined in the report.

Finance Officer Consulted: Anne Silley Date: 03/12/09

Legal Implications:

5.2 Under the Local Authorities (Functions and Responsibilities) England Regulations 2000 (as amended), certain functions are reserved to Full Council for decision and others are reserved to the executive. For this reason, those recommendations in the report that require changes to the Constitution and relate to Council functions must be approved by Full Council and those that relate to Cabinet functions are required to be approved by Cabinet.

Lawyer Consulted: Elizabeth Culbert Date: 16/01/09

Equalities Implications:

5.3 Recommendation 12 in the report aims to ensure an increased focus and opportunity for Members to be engaged in equalities issues.

Sustainability Implications:

5.4 None.

Crime & Disorder Implications:

5.5 There are no Crime and Disorder implications arising from this report.

Risk and Opportunity Management Implications:

5.6 None.

Corporate / Citywide Implications:

5.7 The amendments to the Constitution are designed to ensure the continuous improvement of the Council's Governance arrangements.

SUPPORTING DOCUMENTATION

Appendices:

1. Extract from the proceedings of the Cabinet meeting held on the 14th January 2010.

2. Extract from the proceedings of the Governance Committee meeting held on the 12th January 2010.

3. Public Consultation responses

4. List of Partners and copy letter

5. Note from Cross Party Equalities Group

6. Changes required to Overview and Scrutiny to comply with Local Government and Public Involvement in Heath Act 2007

7. CSO changes (tracked)

Documents In Members' Rooms

None

Background Documents:

1. Local Authority Byelaws in England: A Discussion Paper (Office of Deputy Prime Minister, 2006)

2. Government Response to the Making and Enforcement of Byelaws (CLG, October 2009)