

Brighton & Hove City Council

Policy & Resources Committee

Agenda Item 87

Subject: Review of the Council's Constitution

Date of meeting: 1st December 2022 – Policy & Resources Committee
15 December 2022 – Full Council

Report of: Executive Director Governance, People & Resources

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1 The Council is under a statutory duty to keep its Constitution under regular review. This report proposes changes to the Council's Constitution for approval by Policy & Resources Committee and (where relevant) Full Council.
- 1.2 The proposals have been designed to assist in the smooth running of Committee and Council meetings.

2. Recommendations

Policy & Resources Committee

- 2.1 Recommends to full Council the proposals set out at paragraphs 3.1-3.9 (Council Procedure Rules), 3.14 (Sub-Committee reporting) and 3.20-3.23 (Contract Standing Orders and the Petitions Scheme).
- 2.2 Notes the proposals set out at paragraph 3.10-3.12 (Minutes of meetings), 3.24 (the light touch annual survey on the Constitution) and 3.25 -3.27 of the report (the co-option of an additional Independent Person to Audit and Standards Committee).
- 2.3 Agrees the proposals to make minor changes to the Scheme of Officer Delegations set out at paragraph 3.15 (Safer Communities) and 3.16 (authorised and unauthorised encampments).
- 2.4 Agrees the proposals to make changes to the Downland Advisory Panel Terms of Reference set out at paragraphs 3.17 -3.19 and Appendix 2.

Full Council

- 2.5 Approves the proposed changes referred to in paragraph 2.1

Policy & Resources Committee and Full Council:

- 2.6 Authorise the Chief Executive and Monitoring Officer to take all steps necessary or incidental for the implementation of the changes agreed by the Policy & Resources Committee and by Full Council, and authorise the Monitoring Officer to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.7 Agree that the proposed changes come into force immediately following their approval by Policy & Resources Committee or by Full Council, as appropriate.

3. Context and background information

Proposals to amend Council Procedure Rules to reflect existing custom and practice

- 3.1 Rule 11.5 permits the rejection of public questions, petitions and/or deputations by the Chief Executive or Mayor. It is proposed to clarify that this power vests in the Chief Executive or Chair in the case of Committees and sub-Committees.
- 3.2 Rule 9.12 provides that the Mayor 'may' allow an Independent Member to ask an oral question at a meeting of Full Council. It is suggested that the wording be amended to provide that they 'shall' allow an oral question from an Independent Member, to reflect custom and practice.

Proposal to limit the number of Notices of Motion ('NoMs') to Committees and to clarify the rules on referral of NOMs (Rule 8).

- 3.3 It is proposed to introduce criteria for rejecting NoMs on the basis that they are 'the same/ substantially the same as any other NoMs going to another Committee'. This would prevent duplication of the debate and assist in managing the Committee workload. It is further proposed that a six-month rule be applied to NoMS to Committees so that the same matter may not be debated again within a six month period.
- 3.4 In addition, it is proposed to clarify existing wording in Rule 8.5 to make clear that where a NoM is taken at a Committee, it is not also automatically referred on to full Council – ie a NoM will be either debated at Committee or full Council, not both.

Proposal to align speech times at Committees and sub-Committees with those of full Council

- 3.5 In order to provide clarity for Chairs and Committee members and to manage the duration of meetings, it is proposed that speech times should be included in the Council Procedure Rules for Committees and sub-Committees as they are for full Council. This would mean that Council Procedure Rule 16.4 would be replicated for Committees and sub-Committees as below:-

'Except with the consent of the Chair, the mover of a motion shall not speak for more than five minutes and no other speaker shall speak for more than three minutes on any individual agenda item. For the purposes of this Procedure Rule, a person who moves an amendment is not moving a motion. The length of time allotted to the mover of a motion does not include any time permitted under a right of reply. This rule shall not apply to questions. Any extension of time for speeches consented to by the Chair shall normally be limited to five minutes.'

- 3.6 This the proposal would relate to the duration of each member's comments on each separate item on the agenda and would not restrict the number of items they might comment on. It would not apply to any questions members pose, and it would be at the Chair's discretion to accept additional comments.

Member written questions

- 3.7 A 150 word limit is proposed on member written questions for Committees and full Council.

Deadline for amendments for Committees/sub Committees and full Council

- 3.8 It is proposed that the deadline for amendments be brought forward from 10am on the day of the meeting to 4pm the day before the meeting. This will enable officers to have time to format, advise on and make any changes agreed to the proposed amendments in order to be able to circulate them and publish them as early as possible on the day of the meeting.
- 3.9 The current arrangement of a 10am deadline on the day of the meeting is very challenging. This is the case for full Council when the Whips meetings and other briefings take place on the day of the meeting, before it has been possible to advise on the amendments or publish them. This leads to a confusion of addendums and papers at the meeting and requires many officers to be involved because of the time constraints. Equally, for Committee and Sub-Committees, amendments received on the deadline need formatting, circulating to finance, legal colleagues and lead officers and then liaison with members to discuss the intention of the amendment and any perceived issues. The quality of advice, ability to manage the publication of the documents and the good governance of the meeting are negatively impacted by the current deadline.

Proposal for shorter minutes and an action log

- 3.10 The minutes currently prepared in respect of Council meetings are lengthy, but not a verbatim record. The resource involved in generating very detailed minutes is significant and, as a result, it is often not possible to make them available soon after the meeting – sometimes not until just before the next meeting cycle. The webcast is available within 24 hours of the meeting.

- 3.11 It is suggested that the written minutes should be substantially shorter for those meetings where there is the availability of a webcast recording. This would not apply to Regulatory Committees and sub-committees such as Planning and Licensing. A transcript of the Teams meeting can also be made available. Shorter minutes would mean that attention could be focused instead on producing the Decision List and an Action Log promptly rather than lengthy minutes according to a much longer timescale. This will help officers and members to ensure that actions are followed up and to track progress.
- 3.12 It is proposed that the shorter minutes will include the subject matter description, the names of those who spoke on the matter and the Committee resolution. No change to the Council's Constitution is required in relation to this proposal as the requirement in relation to Minutes is to record the names of Members present and any decisions taken at the meeting. This proposal is therefore for Committee to note.

Proposal relating to Sub Committees reporting to parent Committee

- 3.13 Currently Part 4 of the Constitution requires annual reporting by Sub Committees ('All Sub-Committees are required to report annually on their activities to their parent Committee.')
- 3.14 It has been noted that the majority of Sub Committees are not complying with the requirement and that – in any event – it is not appropriate in all instances. It is therefore proposed that this requirement be deleted. Any member of a Sub-Committee may request that a report be made to the parent Committee at any time.

Proposal to change officer delegations relating to authorised and unauthorised encampments

- 3.15 Two proposals aim to update existing delegations to the Executive Director – Housing Neighbourhoods & Communities . First of all, the Drug Action team has been disbanded and the officers who exercise relevant powers now sit within 'Safer Communities'.
- 3.16 Secondly, minor amendments are proposed to the wording of the delegations to reflect a more inclusive approach which does not single out particular groups of the population. The proposed amended wording is set out at Appendix 1.

Proposal to update the terms of reference of the advisory body which inputs on the Downland (currently 'the City Downland Estate Advisory Panel')

- 3.17 In May 2021, BHCC set up a collaborative body to inform the Council's decision-making around the Downland. The City Downland Estate Advisory Panel ('the Panel') is listed in Part 4 of the Constitution as one of the 'Other Bodies' which provides a consultative function to the Council. The Panel harnesses the expertise which exists in the City by providing a vehicle for

communicating the views of a wide range of interests in the Downland to inform the decisions the Council makes in this area.

- 3.18 In early summer 2022 the Panel's terms of reference were reviewed by its Chair and its members with support from officers. The reasons for the review included the following:
- To incorporate any changes needed to the way the Panel works. This has resulted in proposals to amend the terms of reference to a) provide that the Chair have two deputies, each representing a specific group of stakeholders, and also b) meet the strong request by Panel members that arrangements be changed to permit them to input into agenda-setting.
 - To revisit the membership to ensure that it is both up to date and that it includes representation from people with the right local expertise to advise on the different areas covered by the CDEP. Communications with stakeholders on this topic are ongoing. It may be (for example, if the Trust for Developing Communities does not wish to take up a place) that the Panel's membership may be further adjusted to accommodate alternative representation for minority communities who to date have been less likely to access the downland.
 - To ensure AMB members are properly aware of Panel discussions.

- 3.19 It is proposed that the work of the Panel – renamed 'Downland Advisory Panel' – will continue to be reported annually to Policy & Resources Committee via the Asset Management Board. It is proposed that the attached draft terms of reference at Appendix 2 will replace the version currently in force.

Proposed changes to the Council's Contract Standing Orders

- 3.20 The Council's current Contract Standing Orders require all contracts of an estimated value of over £250,000 to be executed as deeds. This means that a wax seal must be attached to a high proportion of the Council's contracts, each of which must be generated in hard copy and physically signed. This requirement prevents the Council from adopting a more streamlined process for signing contracts and storing them electronically.
- 3.21 Executing a contract as a deed extends the limitation period within which claims must be started to 12 years. However any need for legal action by the Council is expected to be apparent within the usual limitation period of 6 years. It is therefore proposed to raise to £1,000,000 (from £250k currently) the threshold for requiring that contracts be executed by deed instead of being signed by an authorised officer. Appendix 3 sets out the amended proposed wording. Where there are strong legal reasons for executing a contract of any value as a deed (for instance, where there is no consideration) then that will continue to happen on a case by case basis.
- 3.22 It is also proposed that the requirement for Legal Services to comment on waivers where contracts are under the relevant financial threshold set out in

the Public Contract Regulation 2015 be removed. Contracts which are under the threshold are not regulated and the lack of legal implications mean that this is not considered to be an appropriate to require legal comment. It is proposed that this be achieved by amending Contract Standing Order 20.3 as indicated in Appendix 3.

Proposal to bring the Petitions Scheme into line with the Council Procedure Rules – Part 8.10

- 3.23 The Petitions Scheme is not currently consistent with the Council's Procedure Rules regarding who makes the decision to accept a petition. It is therefore recommended that the Scheme be amended to ensure complete consistency with the Procedure Rules as set out at Appendix 4.

Public engagement re the Council's Constitution

- 3.24 It is suggested that a light touch survey be made available annually, via the Council's website, whereby the Council will check any comments or views held by the public or other stakeholders on aspects of the Constitution which are considered appropriate to review.

Proposal to update the Council's arrangements to permit the co-option of a third Independent Person

- 3.25 The Localism Act 2011 requires the authority to appoint at least one Independent Person whose views must be taken into account by the authority before it decides to investigate an allegation under the Code of Conduct for Members. The Council has appointed its two current Independent Persons as non-voting members of the Audit & Standards Committee in order to assist members by providing independent input into the Council's audit functions as well as its standards functions.
- 3.26 The Council's longest-serving Independent Person has given notice that she will not be seeking a renewal of her term when it expires on 1 March 2023. The increased burden of standards complaints received by the Council, combined with the ongoing financial challenges faced by all local authorities, means it is considered prudent to recruit two new Independent Persons to serve alongside the remaining Independent Person. The ambition will be to ensure that the skills of the new Independent Persons complement each other.
- 3.27 The appointment of any Independent Person(s) (once recruited) is a matter which requires full Council approval. It is proposed that Policy & Resources Committee note the proposal to recruit an additional (third) Independent Person, with the expectation that a detailed Report be brought to full Council in February 2023 seeking formal approval both for two new Independent Person appointments from 1st March 2023 and at same time for the necessary changes to the terms of reference to Audit & Standards Committee.

4. Analysis and consideration of alternative options

- 4.1 The Committee could decide not to implement the changes set out in this report. The proposals are recommended for approval in order to achieve consistency, clarity and streamline processes.

5. Community engagement and consultation

- 5.1 The proposals in this Report have been reviewed in detail by elected Members and Leaders Group. The proposals do not represent changes to the decision-making structure or framework. Community consultation is proposed on an annual basis in the report, which will be reported back to Committee as part of future Constitution Reviews. The Downland Advisory Panel has discussed in detail the proposed changes in relation to its terms of Reference.

6. Conclusion

- 6.1 The proposals reflect the Council's ongoing efforts to review its Constitution to ensure that it is reflective of current practice and priorities and to achieve clarity and increased efficiency. As a result, it is recommended that the proposals in this report be approved.

7. Financial implications

- 7.1 There are no material financial implications arising from this report. Where costs do occur it is expected that these would be contained within existing resources.

Name of finance officer consulted: Peter Francis Date consulted 10/11/22

8. Legal implications

- 8.1 Policy & Resources Committee and, where specified in this report, full Council have the authority to make the changes to the Council's Constitution which are set out in the report. The intention is for the proposals to be implemented with immediate effect following the decision of the decision-making body, unless expressly stated to the contrary.

Name of lawyer consulted: Elizabeth Culbert 09/11/22

9. Equalities implications

- 9.1 The Council has a public sector equality duty under s149 of the Equality Act 2010. In the exercise of its functions the Council must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those that do not. The Council's public sector equality duty has been considered by officers and the proposals of this report have been assessed for their equalities impact. The majority of the proposals in the report relate to internal procedures which do

not have an impact on those with protected characteristics. The proposal to undertake an annual survey will need to be delivered in such a way that access is made available to those with protected characteristics so that they can fully participate in the survey and their responses be taken into account when making future proposals. The proposal to publish shorter minutes is not considered to have an adverse impact on those with protected characteristics. The decisions and webcasts will remain available.

10. Sustainability implications

- 10.1 The proposal to limit the number of contracts that are executed by seal to those with a value in excess of £1m will lead to a significant reduction in printing and storage of paper files.

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1: Extract from Part 6 of the Constitution: Scheme of Delegation to Officers

Appendix 2: Extract from Part 4 of the Constitution: Scheme of Delegation to Committees Sub Committees – ‘Other Bodies’

Appendix 3: Extracts from Part 7.5 of the Constitution: Contract Standing Orders

Appendix 4: Extract from Part 8.10 of the Constitution: Petitions Scheme

Background Documents

None

Appendix 1

Part 6 of the Constitution- : Scheme of Delegations to Officers

VI. DELEGATIONS TO THE EXECUTIVE DIRECTOR OF HOUSING, NEIGHBOURHOODS AND COMMUNITIES

1. Authorised and unauthorised sites and encampments

To exercise the Council's functions in relation to ~~the management of~~ authorised and unauthorised sites and encampments, including all activities necessary or incidental to the Council's performance of its responsibilities in relation to all types of encampments ~~the following: a) Gypsies, Roma and Travellers; b) Van dwellers.~~

6. ~~Community Safety and Drug Action Team~~ Safer Communities

APPENDIX 2

PROPOSED UPDATED TERMS OF REFERENCE – DOWNLAND ADVISORY PANEL

NB to be included in list of ‘Other Bodies’

1. Name

Downland Advisory Panel

2. Purpose

- 2.1 The purpose of the Downland Advisory Panel (‘the DAP’) is purely consultative. It exists to allow Brighton & Hove City Council (‘BHCC’) to draw on and access local skills, experience and expertise, to advise on the management of the City Downland Estate and assist with the strategic direction and implementation of the City Downland Estate Plan – its policy development, plans and delivery.
- 2.2 The collective views of the DAP will contribute to presentations and committee papers which are prepared by officers of BHCC. In this way, the DAP will support and inform the decision making processes followed by BHCC as responsible authority (see below).

3. Status

- 3.1 The Downland Advisory Panel shall provide a purely advisory function to the Council’s Policy & Resources Committee and its Asset Management Board. It is a partnership body which includes both Council members and external organisations and does not have subcommittee status. While the political balance rules in section 15 of the Local Government and Housing Act 1989 will not apply, it is expected that those members of the DAP who are elected members of the Council (‘BHCC’) will be appointed on a cross party basis.

4. Areas of focus

- 4.1 The DAP’s aim is to provide advisory support to contribute to BHCC’s implementation of the following vision -

“A rejuvenated City Downland Estate will be carbon negative and climate resilient, its biodiverse grassland landscape fully restored and teeming with wildlife. The estate will be a locus for natural farming, where local food production will flourish.

By creating new amenities and opening up more land to the public - and by making it easier for all to visit and enjoy - the estate will fulfil its potential to boost the wellbeing of everyone who experiences it. The estate will be managed to reflect the will of the community. This land is yours.”

4.2 With the above in mind, members of the DAP will collectively:

- Work to monitor the proper implementation of the City Downland Estate Plan, its Vision, Purposes, and the Outcomes in the City Downland Estate Plan (CDEP);
- Broaden and deepen engagement with the City Downland Estate, in particular through the active involvement of individuals and groups for whom its relevance and potential benefits have been limited until now;
- Establish the DAP as a shared vehicle for collaborative change across partners and sectors.
- Mobilise additional resources, knowledge, skills and commitments for the highest priorities of the CDEP;
- Offer support to assist BHCC in overseeing progress towards CDEP outcomes across partners and sectors, identifying weak areas and helping to address them.
- Give strategic advice and objective, independent feedback to BHCC Asset Management Board to assist with CDEP implementation as required.

5. Reporting

5.1 The work of the DAP will be reported annually through an officer report that will be agreed at the Asset Management Board and then presented to the Council's Policy & Resources Committee. The DAP may also report on an ad hoc basis to the Asset Management Board with recommendations as necessary, the expectation being that if a CDEP-related item is on the agenda for the AMB, the DAP's views will have been sought in advance. Separate reporting to the AMB may not be necessary if the councillor members of the Asset Management Board are also members of the DAP.

6. Membership

6.1 The Chair of the DAP will be the Chair of the Council's Asset Management Board, supported by 2 vice chairs to be selected from the DAP's membership, and representing different sectors. **The Chair and 2 vice chairs are referred to collectively in these Terms of Reference as 'the Chairs Group'.**

Membership of the Board shall consist of appointees from the following sectors. NB Substitutes will not normally be permitted given the complexity of the subject matter:

- 1) BHCC Members and officers
- 2) Organisational stakeholders
- 3) Farm tenants and independent agricultural experts
- 4) Community and voluntary Groups

These sectors will make up the core membership of the DAP. Make up of each of the sectors is as follows:

BHCC Members

- 5 members (reflecting the political balance of the council), including the chair of the Asset Management Board. In cases where councillor members of the DAP are not also members of the AMB, there is an expectation that the former will fully brief the latter on DAP proceedings. Councillors who are not selected by their group to sit on the DAP shall be able to attend DAP meetings as observers.

BHCC Officers

- Officers with responsibility for managing the downland estate and giving corporate advice including Property & Design, City Parks, Sustainability, Public Health, Sports & Leisure, Education and Planning

Organisational stakeholders (including those with statutory advisory role) One representative from each of:

- The Aquifer Partnership (TAP),
- South Downs National Parks Authority (SDNPA),
- The Living Coast (TLC)
- National Health Service (NHS)
- Sussex Wildlife Trust
- Brighton and Hove Food Partnership

Farm tenants/agriculture

- Two representatives from those holding farm tenancies within the BHCC downland estate and other tenancies
- One independent agricultural expert

Community Groups

- Brighton and Hove Estate Conservation Trust (1 representative)
- Brighton Downs Alliance (2 representatives)
- Trust for Developing Communities (1 representative)
- Brighton & Hove Archaeological Society (1 representative)
- Brighton & Hove Wildlife Forum (1 representative)
- Local Access Forum (1 representative)
- Local specialists / experts as set out below

6.2 Other relevant parties may be invited to participate in meetings on a meantime basis where particular areas of work would benefit from specialist input. Any additional individuals wishing to attend may do so as observers (at the reasonable discretion of the chair).

7. Quorum

- 7.1 A minimum of ten people is required for Panel meetings to proceed provided each of the groups listed at 1) – 4) in paragraph 6 above is represented.

8. Meetings and ways of working

- 8.1 DAP will meet at least 4 times a year. Meeting dates will be set annually to ensure optimal attendance and ensure coordination with other relevant meetings such as AMB.
- 8.2 The Chairs Group will be responsible for agreeing agenda items for DAP meetings.
- 8.3 The Asset Management Board and DAP Chairs Group will be supported by BHCC teams / staff/ officers and admin support.
- 8.4 Any DAP members identifying subjects for discussion at DAP meetings should contact either supporting officers from BHCC or members of the Chairs Group to add to agenda for a future meeting.
- 8.5 While the purpose of any potential items should be clearly stated, the DAP is not a decision-making body. It provides a consultative advisory input to the Council, which is responsible for all decision-making relating to the Downland. The purpose of the DAP is to enable to Council to seek the views of the wider community through the DAP's organisational stakeholders, farmers and community groups. Officers may be asked to provide context, but this is not the forum for officers or councillors to give their views.
- 8.6 BHCC officers may be asked to present input agreed by DAP to AMB.
- 8.7 DAP members will be invited to declare any conflicts of interest at the beginning of each meeting.
- 8.8 Where there is a discussion item on the DAP agenda that would benefit from expert input from organisations who are not DAP members, or from organisations not represented on DAP, DAP members may be invited to suggest people or organisations with relevant expertise. Any such request will be considered by the Chairs Group.
- 8.9 Task and Finish groups may be set up in between scheduled meetings to undertake specific pieces of work and present their findings to DAP.
- 8.10 Substitutes (whether of elected BHCC members or other representatives) will not normally be permitted due to the complexity of the subject matter and the sort of input required from all participants. With this in mind, there is an expectation that any representative who fails to attend a scheduled meeting three times or more shall be replaced by an appointee from the same sector (farmers/institutional stakeholders/community groups).

9. Review

- 9.1 Membership will be reviewed annually by DAP from May 2024 to ensure the correct balance is achieved and to take account of unforeseen issues arising following agreement of the CDEP by BHCC and the SDNPA.
- 9.2 These terms of reference may be reviewed annually and changes will in any event be subject to approval by the Council's Policy & Resources Committee.

Appendix 3

Extract from the Constitution Part 7.5: Contract Standing Orders

14.7 Subject to paragraph 14.8 below:

- (i) Contracts with an estimated value over ~~£250,000~~ **£1,000,000** shall be executed as a deed using the Common Seal of the Council;
- (ii) Contracts with an estimated value of ~~£250,000~~ **£1,000,000** or less may be executed as a simple contract and signed by an officer duly authorised for that purpose in accordance with CSO 3.1.

14.8 The Executive Director - Governance, People & Resources may, on a case by case basis or in relation to a particular class of contracts and taking all relevant circumstances into account, stipulate the method by which a particular contract or class of contracts is to be executed, irrespective of the overall estimated value of the Contract.

[...]

20.3 Subject to CSO 20.6, in relation to Contracts estimated to exceed a total value of £75,000, an Executive Director may, after consultation with the Chair of the relevant Committee and the Procurement Strategy Manager, waive the requirements of CSOs as long as:

- (a) the waiver report (the Report) is compiled after consulting with the Procurement Strategy Manager;
- (b) the Report is issued setting out the CSO being waived and the reasons for the waiver;
- (c) the Report includes legal comments **(if the contract is above the relevant Procurement Threshold, as defined above)** and financial comments, and highlights, as necessary, any future commitment (whether of a financial character or not) which the Contract may entail; and the Report justifies the method of Contractor selection so that value for money and compliance with the law can be demonstrated.

Appendix 4

Extract from The Constitution: Part 8.10 Petitions Scheme

Extracts from current Petitions Scheme – Part 8.10

[..]

Exceptions If the petition applies to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or on a matter where there is already an existing right of appeal, such as Council tax banding and non-domestic rates, other procedures apply. Further information on this is available on the Council's website, while general information on how you can express your views is available here.

We will not take action on any petition which ~~is considered by the Council's Monitoring Officer to be vexatious, abusive or otherwise inappropriate and, if this is the case, we will explain our reasons in our acknowledgement of the petition~~ the Chief Executive, Mayor or Chair consider, following consultation with the Monitoring Officer:

- not to be about a matter for which the Authority has a responsibility or which affects Brighton & Hove;
- that the meeting to which it has been addressed is not the appropriate forum; or that the petition is defamatory, frivolous or vexatious;
- that it is the same, or substantially the same, as a petition, deputation or public question which has been put at a meeting of a Committee or a Sub Committee in the past six months;
- that it requires the disclosure of confidential or exempt information;
- it to be from a member of staff on matters affecting them as employees; or
- otherwise inappropriate.

If the Chief Executive, Mayor or Chair rejects a petition then their decision is final. Reasons for the decision will be given.