

Annual Council

12th May 2016

Agenda Item 8

Brighton & Hove City Council

Subject:	Review of the Council’s Constitution – May 2016		
Date of Meeting:	12 May 2016 28 April 2016 – Policy & Resources Committee		
Report of:	Head of Legal & Democratic Services and Monitoring Officer		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report proposes changes to the Council's Constitution for approval by P&R and Council. Most of the issues set out in the report have been considered by the cross party Constitution Working Group and Leaders Group. They include proposed changes relating to overview & scrutiny, the establishment of a Strategic Delivery Board, some changes to Council Procedure Rules and Contract Standing Orders as well as the designation of a Lead Member for Planning Strategy. Some of the changes are for approval by Policy & Resources Committee while others require full Council approval.

2. RECOMMENDATIONS:

Policy and Resources Committee

- 2.1 That the Policy and Resources Committee **approves** the proposals set out at paragraph 5 and Appendix 2 (the establishment of a Strategic Investment Board) and paragraph 6 (the continued operation of the Member Procurement Advisory Board).
- 2.2 That the Policy and Resources Committee **recommends to full Council** the proposed changes to the Council's constitution as set out in paragraph 4 and Appendix 1 (the discontinuance of the Overview & Scrutiny Committee and the establishment of a Health Overview and Scrutiny Committee); paragraph 7 and Appendix 3 (review of Contract Standing Orders); paragraph 8 and Appendix 4 (review of the Council Procedure Rules); the renaming of the Policy & Resources Committee as the Policy, Resources and Growth Committee and the establishment of Lead Member roles for Planning Strategy as set out in paragraph 9 of the report.

Full Council

- 2.3 That the proposed changes to the Council's constitution recommended in paragraph 2.2 above be approved and adopted;

Both Policy and Resources Committee and Full Council agree:

- 2.4 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 Committee and Council and that the Monitoring Officer be authorised to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.5 That the changes come into force immediately following approval by Policy & Resources Committee and, for matters requiring Council approval, following approval by Council.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 When Brighton & Hove City Council adopted its new constitution in May 2012, it was recognised that the arrangements would need to be kept under review to ensure that they remain relevant, reflect the appropriate design principles and that they are kept up-to-date. Since the introduction of the committee system, the Council has been taking a number of measures to ensure the arrangements remain effective while, at the same time, ensuring that they are as streamlined as possible and avoid duplication.
- 3.2 In the last couple of years, the Council has revised and enhanced the role of the Health & Wellbeing Board to provide city-wide system leadership on health, social care and general wellbeing. We have seen the merger of the Transport and Environment & Sustainability Committees and the merger of the Adult Social Care Committee with Health & Wellbeing. We reviewed and enhanced the role of the Housing Tenant Area Panels and discontinued the Housing Management Sub-committee. All these measures were designed to ensure the system remains as streamlined and efficient as possible, whilst retaining high level of openness and transparency. Brighton & Hove City Council still has one of the highest levels of public participation in terms of public questions, deputations and petition.
- 3.3 The Cross-Party Member Working Group on the Constitution, consisting of Councillors Barradell, Simson and Littman meets periodically to review proposals for change. The proposals set out below were discussed at a meeting of the Working Group and/or the Leaders Group meeting.

4. CHANGES TO OVERVIEW & SCRUTINY

- 4.1 The current constitutional arrangements reflect the design principles agreed when we moved to a committee system. As stated above, the Council's decision-making arrangements were made as open and transparent as possible. This has ensured a high level of robust cross-party scrutiny and challenge within the policy committees themselves. As part of the ongoing budget savings, significant resources were taken out of the officer arrangements to support scrutiny, which

is now left with 1.6 FTE. Taken these into account, there is a need to ensure that there is no duplication and the system remains as streamlined as possible.

There are statutory requirements in relation to health scrutiny and also in relation to flood defence and crime and disorder. Outside of these core areas, section 9JA of the Local Government Act 2000 gives local authorities running a committee system the power, but not the duty, to have an Overview & Scrutiny Committee. In other words, the Council has the flexibility as to whether it operates a more general scrutiny arrangement and if it does, then how it does so. This is because the scrutiny function was designed as a check and balance to the cabinet system, where a small number of councillors, potentially from a single Party, carry all of the executive decision making powers of the Council. In a committee system, political proportionality rules apply and the majority of councillors are involved directly in decision making. In-depth scrutiny and challenge takes place in committees at the point of decision making.

- 4.2 In practice, since the existing system for Overview and Scrutiny was introduced, only one new policy review has been commissioned. Taking paragraph 4.1 above into account, it is proposed that the current overview and scrutiny procedures are reviewed and arrangements streamlined.

It is proposed that the current Overview and Scrutiny Committee be discontinued and instead be replaced with the following arrangements:-

- a) A Health Overview and Scrutiny Committee will be established in order to meet the statutory requirements of the National Health Service Act 2006 (amended by the Health and Social Care Act 2012). The Health Overview and Scrutiny Committee will have the ability to scrutinise matters relating to the health **and social care** of the Council's population **including both adults and children** and to make reports and recommendations to the NHS, the Council, its Committees and other relevant bodies. It will also provide the mechanism through which the Council responds to NHS consultations and any referrals from Healthwatch. Its remit will extend to the scrutiny of issues relating to social services delivered by the Council in partnership with health organisations as well as the responsibilities it carries out in relation to Public Health. Draft terms of reference for the new Committee are appended here, as Appendix 1.

Members will be mindful of the risk of overlap between the functions exercised by the Health and Wellbeing Board and the Health Overview and Scrutiny Committee. To reduce this risk, a Memorandum of Understanding will be prepared to be agreed between the two bodies in order to clarify the responsibilities which each exercises. In addition, it is proposed that the membership of the two bodies will not overlap so as to reduce the risk of conflicts arising.

- b) The Council will continue to meet its responsibilities in relation to flood and erosion risk scrutiny under the Localism Act 2011 by delegating those functions to the Environment and Transport Committee. In practice there have been very few issues of this type coming to the current Overview and Scrutiny Committee. The Environment and Transport Committee will be

able to commission a Panel of non-Environment and Transport members as and when necessary.

- c) It is proposed that the scrutiny of crime and disorder be delegated to the Neighbourhoods, Communities and Equalities Committee, which already has community safety within its existing remit.
- d) Currently the terms of reference and procedures for policy panels are included in the Overview and Scrutiny Committee's procedures, which envisage that policy panels will be commissioned by the relevant service committee and supported by the relevant Directorate with some support from the Scrutiny function. In practice however there has been only one such panel convened since the system was introduced. It is therefore proposed that the facility to commission policy panels be given to all service committees via specific provision in the general delegations. General guidance and practice notes will be available to support this as well as limited consultancy type support from the Scrutiny function.

4.3 The above arrangements will mean a reduction in the officer support needed for overview and scrutiny in the context of a significant reduction in the resources available to support that function. Importantly, it will enable the statutory scrutiny elements to continue to be delivered. The non-statutory policy review elements will be delivered under a new framework which directs this work through the service committees which have relevant expertise.

4.4 A copy of the draft amended terms of reference for the Health Overview and Scrutiny Committee is attached at Appendix 1. Delegated authority is sought to permit the Monitoring Officer to add to the general delegations of all committees the power to appoint a Policy Panel to carry out discrete pieces of policy review or development work.

5. ESTABLISHMENT OF A STRATEGIC DELIVERY BOARD

5.1 Major Project Boards provide an opportunity for the Council to benefit from member input and oversight in relation to large scale land development or other significant projects. Currently however those project boards are constituted on an ad hoc basis, without consistency in terms of membership, how they are set up or regulated. It is proposed to streamline this and to ensure maximum clarity and efficiency of by establishing a single Major Projects Strategic Delivery Board to oversee all major projects. The presumption will be that all major projects will come to the Board. The intention would be for the Board to report to the Policy, Resources and Growth Committee or the Economic Development & Culture Committee as appropriate. Proposed draft terms of reference are appended at Appendix 2.

5.2 It is proposed that in exceptional situations where a project-specific Board is considered more appropriate due to workload issues or the complexity of a particular project, then such a Board may be set up by either the Policy, Resources and Growth Committee or the Strategic Delivery Board.

6. REVIEW OF THE OPERATION OF THE MEMBER PROCUREMENT ADVISORY BOARD

- 6.1 In acknowledgement of the high number of procurement exercises being undertaken by the Council to meet the need to review services and to focus on achieving value for money, a Member Procurement Advisory Board was set up in April 2015. This created a process whereby a group of Members trained in the law, finance and practical procurement issues in this complex area were available to ensure that procurement matters receive focused review and that the Council was able to achieve the maximum benefit from procurement opportunities as they arise.
- 6.2 That Board, Chaired by Cllr Meadows, has been operating as an Advisory Board to provide advice to and report to the Policy & Resources Committee in accordance with its terms of reference. In accordance with the direction of Policy and Resources Committee given in April 2015, the function has been reviewed by considering the items of business that went to the Board over the last municipal year and in discussions with the Chair of the Board. It is considered to be operating effectively. As it provides useful input to this function, it is proposed that the outcome of that review be noted and that the Procurement Advisory Board be retained in its current form.

7. REVIEW OF CONTRACT STANDING ORDERS

- 7.1 A number of changes to the Contract Standing Orders are considered necessary to update them in accordance with relevant legislation and to ensure greater clarity.

The amendments proposed at Appendix 3 include the following:

- Updates to the EU procurement thresholds to ensure that the CSOs reflect current legislation
- Clarification of the 'light touch' regime which applies to certain types of service including social care, health and cultural services
- Specific reference to the practice of using electronic signatures to convey acceptance.

8. CHANGES TO THE COUNCIL PROCEDURE RULES

- 8.1 A number of amendments are proposed to the existing Council Procedures Rules in order to bring them into line with legislative requirements and current practice.
- 8.2 Extracts of those sections which it is sought to amend are appended hereto as Appendix 5 and include the following:
- (a) Additional detail regarding the requirement that authorities facilitate the recording of meetings in certain prescribed situations. While prescribed by legislation, the right to record or webcast by any device is limited to those meetings which are not exempt or confidential and does not apply to Licensing Act 2003 Panels.

- (b) Concurrent powers to the Chief Executive as well as the Mayor and Chairs of Committees to reject questions, petitions or deputations in accordance with certain prescribed criteria. Should either exercise that power then the relevant question etc will not be heard.
- (c) The Mayor be given the discretion to accept or reject late amendments to motions at Council which are submitted after 10am on the day of the meeting, this depending on his/her view of the complexity of the amendment and the degree of notice given.
- (d) Specific reference to be incorporated into the CPRs to allow for the practice of officers suggesting revisions to officer recommendations, with the presumption being that any such revisions will be considered unless any member present objects.
- (e) To allow a number of amendments to be moved and debated together but voted on separately. Current standing orders do not allow amendments to be moved before those already moved have been disposed of. The proposed changes reflect what happens in practice and has become part of the custom and practice of council meetings.

9. RENAMING OF POLICY & RESOURCES COMMITTEE AND ESTABLISHMENT OF LEAD MEMBER ROLE FOR PLANNING STRATEGY

- 9.1 With the devolution agenda and the financial challenges facing local authorities, the role of local authorities is evolving with growth and economic wellbeing increasingly become a more important role. This will be reflected in the volume and complexity of reports coming to the committee on these issues over the next months and years. To reflect this, it is proposed that the name of the committee be amended to add "Growth" at the end so that it will be the "Policy, Resources and Growth Committee."
- 9.2 The report of the Planning Peer Review is likely to recommend rationalizing and streamlining the arrangements for developing planning policy. There is a need for a co-ordination and focused political leadership regarding planning policy and strategy. It is therefore proposed that a Lead Member Role be established for Planning Strategy and that the arrangements at committee level be reviewed once the full report of the peer review is received.

10. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 10.1 The Council could decide not to implement some or all of the changes set out in the report.

11 COMMUNITY ENGAGEMENT AND CONSULTATION

- 11.1 The Cross Party Constitutional Working Group have been consulted and Leaders group considered the proposals set out in the report. Some issues came up after the meeting of the Constitutional Working Group, but they were all considered by Leaders Group. Where proposals will impact on staff, this will be undertaken in accordance with the Council's Change Management Procedure but it is not anticipated that the proposals will have any significant impact on staff.

12 CONCLUSION

- 12.1 The proposals reflect the Council's ongoing efforts to review and streamline its processes in an ongoing way so as to achieve both financial savings and increased efficiency. It is therefore recommended that they are pursued.

13 FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 13.1 The proposals will lead to lead to a modest reduction in costs for the Council. These have already been factored into Council's revenue budget requirement as part of the 4 year planning process.

Finance Officer Consulted: Peter Francis Date: 18th April 2016

Legal Implications:

- 13.2 The proposals in relation to Overview and Scrutiny are consistent with the legal requirements for scrutiny arrangements in a committee system, in particular the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

Lawyer Consulted: Elizabeth Culbert Date: 18th April 2016

Equalities Implications:

- 13.3 There are no direct equalities implications arising from this report. However, as the options work continues, any arising needs will be identified and met. In particular, modernisation work which involves an increased use of technology will need to include in its development the consideration and mitigation of any equalities impact.

Sustainability Implications:

- 13.4 None identified

Any Other Significant Implications:

- 13.5 None identified

SUPPORTING DOCUMENTATION

Appendices:

- Appendix 1: Overview & Scrutiny Committee
- Appendix 2: Terms of reference of Strategic Delivery Board
- Appendix 3: Contract Standing Orders
- Appendix 4: Council Procedure Rules