

COUNCIL  
22 JULY 2020

Report of the Director of Corporate Services

## **RESPONSIBILITY FOR FUNCTIONS AND REVISIONS TO THE COUNCIL'S CONSTITUTION**

### **PURPOSE OF THE REPORT**

This report seeks approval of amendments to the Council's Constitution in terms of its decision-making structure and delegation to officers; Contract Standing Orders and Financial Regulations.

### **RECOMMENDATION**

1. That the decision making structure as set out in paragraph 2.3 is approved.
2. That Council discharges functions to Committees within that revised structure and delegates decision making to Officers as set out in Part 3 of the Constitution.
3. That the revised Contract Standing Orders and Financial Regulations as described in paragraph 3 of the report is approved.
4. That the programme of meetings for the 2020/21 is approved.
5. That a Councillor workshop is arranged prior to the September meeting of Council to define Commercialisation and to enable further

### **WARDS AFFECTED**

Not applicable.

### **STRATEGIC LINK**

The effective operation of the Council's democratic processes underpins all the Council's aims and objectives. The Constitution is also an important tool in setting and monitoring the Council's governance framework.

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## **1. BACKGROUND**

- 1.1 As part of the annual processes of the Council, the Annual Meeting must decide upon its decision making structure for the forthcoming year and which of the Council's functions it chooses to discharge to its Committees and delegate to its officers. Those arrangements are underpinned by the Local Government Act 1972 and are published by way of the Constitution.
- 1.2 At a recent meeting of the Leaders Advisory Group, changes to the decision making structure were discussed. The proposals are set out in the following sections of the report now require determination by the Council.

1.3 Contract Standing Orders and Financial Regulations have also been reviewed to reflect changes to procurement thresholds and best practice. Significant amendments are highlighted in the relevant paragraphs below.

## 2. REVIEW OF CONSTITUTION AND DECISION MAKING STRUCTURE

2.1 The Constitution is a comprehensive document which sets out how the Council operates, how the decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, and others are a matter for the Council to decide. The full Constitution will be made available to all Councillors in the Members Portal shortly.

2.2 In terms of decision making, Part 3 of the Constitution sets out which of Council's functions it seeks to reserve, discharge to Committees, and delegate to officers. Following the meeting of the Leaders Advisory Group, changes are proposed as follows:-

- Avoid delay and duplication of effort by reserving to Council the powers to formulate new, and amend existing policy, as opposed to matters being determined by Council on the recommendation of the two policy committees.
- Disestablish the Commercial Board
- Mainstream commercialisation within the remit of the policy committees
- Reduce the meeting frequency of the two policy committees from 6 to 8 weeks

2.3 The proposed decision making structure is illustrated below.



## 2.4 Council Meetings

Council is the strategic decision-maker and has certain powers reserved to it by law including all decisions relating to the creation of the policy framework and budget. Current practice in the Constitution however, introduces a second layer, where the policy committees discuss strategic matters and make recommendations to Council on the formulation of new policy, and amendments to existing policy. The reservation of powers to Council means that the Policy Committees are unable to bind the Council to a particular course of action. This can introduce an unnecessary delay to important matters and can lead to a different decision being taken by Council (which is its right) and potential uncertainties on important matters.

The incumbent delay is demonstrated by the recent housing report, which sought approval to introduce a major diversification of our current housing policy in the form of new build social housing. The concept was first presented to CLT before beginning a journey through the Commercial Board, a policy Committee and finally Council. This approach carries significant risk in terms of contractual delay and consistency of approach.

The alternative approach would mean that once a business case is approved by CLT, a report goes to Council as the first step. Council is its own master and its decisions cannot be changed by a policy committee. Decisions are also 'cast in stone' without prospect of reversal within 6 months from the date of decision. Council would, therefore, be in a position to shape the policy framework, allocate a set budget and define the outcomes and outputs it expects to see deliverable. The new policy would then be discharged to a policy committee to deliver and options may emerge for delegation to officers to speed up operational decision making once the future direction is established.

Licensing policy is excluded from this revised approach as regulated activity and policy is a formulated approach with little room for discretion. The current practice where policy is formulated by the Licensing Committee and then onto Council is recommended to continue.

The main benefits of the top down approach are considered to be:

All Members of the Council have the opportunity to shape major policy from the outset, rather than policy formulation appearing to be a rubber stamping exercise as is now.

The strategic direction of the Council is in the ownership of all Councillors.

By defining clear outcomes for new or improved policy, Council would be in a much better place to speed up decision-making and may feel more inclined to delegate matters to officers or empower member led task groups to deliver on those outcomes and associated targets.

Delays and uncertainties as matters pass through the Committee system are removed.

Using climate change as an example, we have seen some inevitable delay whilst the Group works to develop an Action Plan. Hypothetically and using this revised approach in retrospect, Council would have defined what was expected when adopting the motion in support of the climate emergency and what climate change looked like; defined an action plan of what was to be achieved and by when, and instructed either a policy committee, a member led task group, or an officer to implement it. This approach has some resonance with the peer review report which asks us to consider ways of speeding up decision-making.

Policy Committees would continue to implement and monitor the Council's policy framework and would undertake the role of monitoring projects against Council's original intention. For example any decision on the location of a new Traveller site would set an important point of principle (and policy) which would be reserved to Council. What that site would look like would then become an operational matter for Officers and ongoing review of the policy would revert to the policy committee.

As a consequence of this revision, the meeting schedule could potentially be relaxed from 6 to 8 weeks.

To complement the change, we would also need to do some work in removing items for noting from Council's agenda and stick with matters specifically reserved to it by law. This would be achieved by a greater discharge of functions to the policy committee and removing items purely for information for all agendas.

## 2.5 Policy Committees

The main changes in the terms of reference for the Policy Committees seek to link their remit with the Corporate Plan in terms of its 4 major themes. Individual references have also been revised and updated and to be explicit in terms of responsibilities and will see some financial reports going to a policy committee as opposed to Council.

## 2.6 Commercial Board

The Commercial Board may have failed to meet expectation based on its current terms of reference. Whilst the Leader previously committed to the Board's continuance for 12 months, now is the time to consider a revised approach and introduce something more meaningful and tailored to the Council's ambition. For example, commercialisation is not simply about assets, it could be about:-

- safeguarding the provision of essential public services by delivering them through a new model which reduces costs or generates profits;
- generating revenue through trading profitable services;

- generating economics of scale and efficiency savings to reduce costs
- exploring new options to ensure value for money and modernisation

If Council is minded to disestablish the Commercial Board the Chief Executive has offered to conduct a workshop prior to set out the 'art of the possible' given the extent of what's permitted in law and being realistic about the extent of Council assets and resources to deliver. The timing of such an event would need to be co-ordinated to be post the current emergency and conditions which prevent Councillors from coming to a meeting in person. The options could equally be set out in a report to that meeting if Councillors feel they are suffering workshop overload. Whichever delivery model is chosen, by defining what commercialisation means to the Council we would then be in a better position to mainstream commercialisation throughout all sections of the Council, and see it as a major factor in decision-making generally rather than the province of the Commercial Board. New major initiatives would proceed along the top down approach outlined above where expertise and knowledge is shared and benefitted by all. For that reason commercialisation has not yet been defined within the policy committee remit, but will naturally follow, once Council has agreed its approach.

## 2.7 Local Plan Advisory Group

The Local Plan Advisory Group is constituted as an Advisory Committee in terms of the Local Government Act 1972 (S101(4)). Its purpose is to consider matters relating to the review of the Local Plan and to make recommendations to Council as appropriate. Rules of transparency in terms of accessibility to the public and political proportionality in terms of membership both apply. The terms of reference for the Group are to be found in the Appendix. A detailed reports on the parameters for the review is to be presented to the Council in September. Establishment of the Group is recommended so that its terms of reference can be established in the Constitution and allow the political groups the opportunity to put forward members to sit on the Group.

## 2.8 Delegation to Officers

A review of the scheme of delegation to Officers has been undertaken. Job titles and the relative legal provisions updated.

# 3. **CONTRACT STANDING ORDERS**

- 3.1 A review of contract standing orders has been undertaken. Minor amendments have been made to update procurement thresholds set out in law and to reflect best practice. Procurement remains a high risk area for the Council and Contract Standing Orders is a key element in mitigating the risk of challenge.

## 4. FINANCIAL REGULATIONS

4.1 Financial Regulations provide the framework for managing the Council's financial affairs. They apply to every Member and employee of the Council and anyone acting on its behalf, including partnerships which are subject to formal partnership arrangements. In this annual review amendments are proposed as set out below. Financial Regulations have also been reviewed to complement Contract Standing Orders.

Section	Reference	Change
All		Amendments to reflect changes in job titles and proposed changes to Council / Committee functions.
B: Income and debtors' accounts	B7 & B8	Renumbered  Changed to reflect delegated authority to the Director of Resources to write off <u>any debt</u> after due consideration of the circumstances and where all reasonable measures have been taken to recover the debt.  Describes how information on write offs will be provided to members of the Governance & Resources Committee after the end of each financial year.
F: Medium Term Financial Strategy (MTFS)	F1	Removal of the Capital Strategy from the MTFS as it is now approved as a separate document.
G: Revenue Estimates	G2 & G3	Reflects the introduction of a rolling revenue budget with review and approval by Council after quarter 2 and quarter 4 and monitoring by the Governance & Resources Committee after quarters 1 and 3.
	G6	Reflects new scheme of delegation and increased delegation (increased from £10,000 to £25,000) to the Director of Resources for budget virements / transfers.
H: Capital Expenditure	H2 & H3	Reflects the updated Council Constitution and amended reporting arrangements in respect of new and overspent capital projects.
M: Treasury Management	M2	Reflects the new role of the Governance & Resources Committee in monitoring treasury management activities.
	M12	New statement setting out controls on loans to third parties and acquisition of interests.

## **5. CALENDAR OF MEETINGS**

5.1 The Calendar of Meetings for 2020/21 is attached as Appendix 2 for adoption by Council based on the following cycle of meetings:

Council	6 weeks
Policy Committee	8 weeks
Planning	2nd Tuesday of each month
Local Plan Advisory Group	as and when required

## **6. RISK ASSESSMENT**

### 6.1 Legal

The legislative foundation to enable or require amendments to the Constitution is shown within the main body of the report. The legal risk is therefore low.

### 6.2 Financial

There are no financial considerations arising from the report.

## **7. CONTACT INFORMATION**

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## **8. BACKGROUND PAPERS**

None

## **9. ATTACHMENTS**

Appendix 1 – Part 3 of the Constitution  
Appendix 2 – Programme of Meetings