

**REVIEW OF NHDC CONSTITUTION: NOTES OF THE POLICY PORTFOLIO HOLDER'S
CONSTITUTIONAL ADVISORY GROUP MEETINGS**

REPORT OF THE STRATEGIC DIRECTOR CUSTOMER SERVICES

PORTFOLIO HOLDER: COUNCILLOR MRS CPA STRONG, POLICY & GREEN ISSUES

1. SUMMARY

- 1.1 To advise Members of the results of the Policy Portfolio Holder's review of the constitution.
- 1.2 To consider changes to the constitution arising from this.

2. FORWARD PLAN

- 2.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

3. BACKGROUND

- 3.1 In April 2009 Council considered a report from the Acting Monitoring Officer recommending a series of amendments to the constitution carried out as part of a review of the Council's governance arrangements. The report explained proposals for two new schedules to be introduced in to Part 3 of the Constitution to reflect the legislative arrangements for defining executive and non executive functions and that the terms of reference for Council and its Committees had been updated.
- 3.2 In respect of legislative changes the most significant of these were to the Overview & Scrutiny functions where committees had been given increased prominence through the introduction of the 'Councillor Call for Action' and a new Crime & Disorder Committee.
- 3.3 Additionally the Appointments, Investigations and Disciplinary Committee's terms of reference were introduced in the previous year under emergency powers exercised by the Chief Executive had been revised following the revision of the Officer Employment Procedure rules and also contained provision for the committee to be renamed the Employment Committee. Following the conclusion of the debate Council resolved:
 - (1) *That the revised Terms of Reference for Council, Cabinet and Committees and revised Scheme of Delegation to Officers, as attached at Appendix 1, as amended, and the revised Officer Employment Procedure Rules, as attached at Appendix 2, be adopted;*
 - (2) *That a fundamental review of other parts of the Constitution takes place during the course of the 2009/10 Civic Year.*

4. REVIEW OF NHDC CONSTITUTION REVIEW: NOTES OF THE POLICY PORTFOLIO HOLDER'S REVIEW ADVISORY GROUP MEETINGS

- 4.1 The Portfolio Holder's Advisory Group met on 4th February and 23rd March 2010. Members of the Group are detailed in section 5 and the main deliberations appear in paragraphs 4.2 – 4.12 below.
- 4.2 The Advisory Group was been established to consider amendments to the Council's constitution on an annual basis as a result of:
- Legislative change
 - Current practice and performance of existing political governance arrangements
 - Other technical constitutional changes required as a result of officer recommendations or previous decisions made by Council.
- 4.3 As a precursor to the review, lead officers for each committee and their respective chairs have routinely evaluated the operation of committees and these observations have been reflected in the proposals now being considered.

Legislative Implications

- 4.4 The Advisory group considered a number of confirmed or likely legislative changes but noted that some of these may not be implemented because of the dissolution of Parliament for the General Election on 6th May. The likely implications of these include:
- **Counter Terrorism Act** – 'prevent' agenda – whilst no constitutional change is required the Act does not contain new duties in respect of performance reporting for the Local Strategic Partnership against National Indicator 35 'Measures to tackle terror extremism'.
 - **Sustainable Communities Act** – The Sustainable Communities Act received further review prior to the dissolution of Parliament for the 2010 General Election. It was agreed that a regular cycle of submissions from Councils should be put forward, but that the timing of that cycle and its regularity would not be issued by the Secretary of State until January 2011. This is to allow sufficient time for the Queens Speech post-election to be progressed, and for those ten 'top issues' selected from the first round of 199 submissions put forward to be considered and responses made.

The arrangements required of the Council to handle the Sustainable Communities Act are firstly dependent on there being submissions under the definition of the Act in the first instance, then that those submissions are considered by an independent panel, which cannot include any elected members to ensure impartiality. In the light of this timescale and required membership of the panel, it is not considered that there are immediate changes required to the Council's Constitution at this stage, as any changes which may result from the timing of the next cycle or membership of the panel, can be taken into account in the 2010/11 review.

- **Local Government & Public Involvement in Health Act 2007**

- A revised protocol for the Councillor Call for Action (CCfA) is currently being reviewed by the Corporate Legal Services Manager.
- Power to issue byelaws without consent of the Secretary of State is not considered necessary at present but will be kept under review.
- New executive and election arrangements from 2011 including the new strengthened leadership model introduced in the original 2007 Act will provide Councils with the choice between a directly elected mayor and an indirectly elected leader with a four year term. District Councils are due to implement this with effect from 2011 and a report on this will be presented during 2010/11 ahead of the requirement for the Council to adopt one of the approaches for 2011/12 onwards.
- Electoral arrangements have been simplified by devolving powers to local authorities to change their scheme of elections without Secretary of State involvement. However, no constitutional change is required at this point.
- The duty to co-operate as a partner and through scrutiny by the authority of the way in which that duty is discharged by other public bodies.
- Duty to involve linked to the overall Performance Management Framework and engagement with the local community e.g via local spending reports foreseen in the Sustainable Communities Act. There is further analysis underway to review the content and effectiveness of the original spending reports produced in 2008, with the recommendation that these, and their reporting methods may change in early 2010.

- **Local Democracy, Economic Development & Construction Act 2009** requiring Councils to respond to petitions and tell local people what action is going to be taken to address their concerns. The requirements outlined in the draft statutory guidance require that: anyone who lives, works or studies in an area including under 18s can sign or organise a petition and trigger a response. In addition:

- Facility for making electronic must be provided by the local authority
- Petitions must be acknowledged within the time period specified
- Flexibility of a type response
- Petitions with a significant level of support trigger a debate at Full Council
- Petitions with a requisite level of support may trigger a senior level government officer to give evidence at the meeting of the authority's Overview & Scrutiny Committee
- Petition organisers can prompt the review of their local authority's response if the response is felt to be inadequate.

Local arrangements are being developed and a report will be presented to Council in due course.

Participatory budgeting

- 4.5 It is anticipated that standards and regulations for participatory budgeting will be produced in due course by the Communities and Local Government Department and Participatory Budget Unit although it is unclear whether such regulations will be mandatory.

Comprehensive Area Assessment

- 4.6 Changes to the performance reporting regime for local authorities from April 2009 established the identity of a 'Place' and the relevant change to reporting of outcomes and their impact on local communities. The first CAA assessments were published in December 2009 but that publication runs alongside the review currently underway of the effectiveness of the process, consultation and weighting. This has the potential to change the process from September 2010 review cycle with any additional reporting required effecting one or more of the Council's committees from early 2011. Performance reporting for Police and Community Safety partners is also subject to further review and implementation of new framework from April 2010 to take account of new Local Area Agreement arrangements. The terms of reference for Overview & Scrutiny Committee will need to reflect this.

Area Committees & Community Engagement Review

- 4.7 The main considerations relating to the operation of Area Committees in 2009/10 and looking forward to 2010/11 are:
- Committee Chairs have exercised their discretion to utilise venues to accommodate local matters of concern or facilitate open forum meetings.
 - Support arrangements for the work of the Area Committees via the Community Development Officers has continued satisfactorily
 - An active programme of community engagement has been delivered, for example: outdoor surgeries have been held by Hitchin and Royston Members, visits to local schools for question and answer sessions. A Youth question time held as part of local democracy week, active support of youth councils in each of the towns, 'Town Talks' and other public forums arranged, varied presentations made by community groups at Area Committees and regular engagement with Town Centre Managers.
 - Some Area Committees have actively encouraged Members on external bodies to describe their work although it is acknowledged this could be developed further
 - The twice yearly meeting for Area Committee Chairman and Vice Chairman was arranged to consider issues of common interest and approach
 - Community Development Officer reports to Area Committees have been consolidated in to single Area Champions and financial reports with technical sections.
 - A total of 67 formal presentations were made to Area Committees and 60 grants awarded in the year to January 2010.

Planning Control Committee

- 4.8 The main considerations relating to the operation of the Planning Control Committee in 2009/10 and looking forward to 2010/11 are:

- Tree Preservation Order Appeals – appeals are currently considered by the Licensing & Appeals Committee are proposed to transfer this responsibility to the Planning committees
- Town and Parish Council ‘call in’ – currently allows a Town and Parish Council to submit a written opinion (which is considered to be a material consideration) contrary to any recommendation the application is included in the report to the planning application. This has proven to be largely ineffectual and has affected the Council’s ability to meet its performance indicator to decide planning applications within the required deadline. As a result it is considered preferable that a ‘call in’ by a Town and Parish Council should be subject to the local NHDC Member’s endorsement.
- Special meetings – noted that these had proved successful for dealing with specific major developments and will continue to be used in exceptional circumstances.

Acting Monitoring Officer Review of the Constitution

4.9 There are limited new issues to be identified for the 2009/10 constitutional review. The previous Acting Monitoring Officer carried out an extensive review of the Scheme of Delegation earlier this year to take into account the senior management restructure. However there are a few issues which have resulted in minor changes in the draft constitution, namely:

- Delegation for approval of the use of Council land and property for community use and events in addition to the delegation to the Head of Finance (i.e. Estates)
- Delegation for the Head of Revenues and Benefits to attend Magistrates Court.

Other Constitutional Changes: Main Issues

4.10 Governance

Community Governance Reviews: to establish direction and formulate recommendations to Council on the requirements under the Local Government & Public Involvement Health Act 2007 to undertake Community Governance Reviews. This matter was reported to Council in February 2010 and appropriate changes in the revised Constitution have been made to reflect this.

4.11 Hitchin Town Hall Trust

The Cabinet Sub Committee is now formally incorporated in to the Constitution.

4.12 Council Tax Setting

It is proposed to constitute a Council Tax Setting Committee that would be delegated to agree the Council Tax Base and the level of council tax each year. The formula to be used for the calculation of the Council Tax Base is set out in the Local Authority (Calculation of Council Tax Base) Regulations 1992 No.612. The Tax Base agreed is used to determine the level of Council Tax levied by the Council.

The benefit of this Proposal is that it takes account of the formulaic process that informs the setting of the council tax base and avoids the need to call a full Council meeting to undertake this function.

4.13 Overview & Scrutiny

As part of the review process the current operation and performance of Overview & Scrutiny arrangements was considered

- The advisory Group considered a range of options including maintaining the status quo, creating a single O & S Committee with Sub Committee structure, and other options
- In addition, consideration was given to providing a direct reporting line from the Audit & Risk Committee to Council (as per Audit & Risk Committee recommendations 21st May 2009)
- Finally, the Group considered the legal requirements for a Crime & Disorder Committee and possible incorporation of functions in to new O & S arrangements or as an O & S Sub Committee

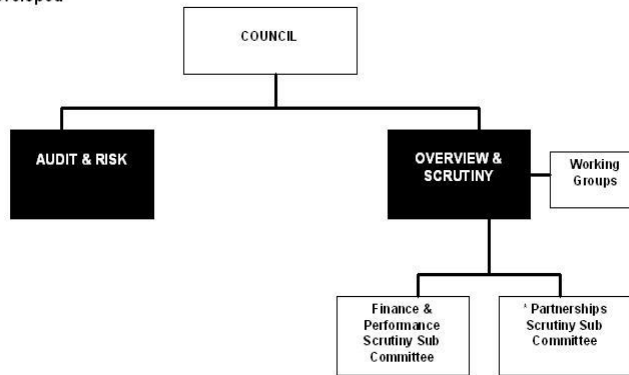
In considering these matters, the Advisory Group noted:

- Considerable interest in the accountability of partnerships
- Scrutiny should focus on priorities/Corporate Plan,
- Cabinet's role in Performance Management may need to be reconsidered
- The valuable role of scrutiny in assisting in policy development
- Scrutiny function needs to be involved in improvement monitoring
- Consideration to be given to structuring presentations by Portfolio Holders to Scrutiny Committee
- Continuing uncertainty about the need for the separate Crime & Disorder Committee understood to only be required if there was more than one Overview & Scrutiny Committee
- General consensus that amending structure to operate with one combined Overview & Scrutiny Committee would be feasible subject to ensuring the agenda is not too broad
- Desire to ensure replacement regime for Fundamental Service Reviews/Task & Finish Groups allowed Members to set the agenda.
- Supported establishment of work groups to provide opportunities for backbenches, provide an external focus on partnerships, improvement activity etc and occasionally allow for urgent items to be considered.
- A working assumption that a Member of the majority opposition party would chair the single Overview & Scrutiny Committee
- Acceptance that a separate Audit & Risk Committee has a large workload but could reduce meeting frequency and increase number of Members
- Support for combined Finance & Performance Scrutiny Sub Committee
- Support for a Partnership Scrutiny Sub Committee which, subject to legal requirements, could incorporate Crime & Disorder Committee.
- Support for independent committee Audit & Risk Committee in line with CIPFA guidance and acknowledgement that the committee already has the capacity to report direct to Council.
- Acknowledgement that the Audit & Risk Committee was not concerned with Risk Management but rather with quality assurance of the risk management process.
- Noted that combining Finance and Performance would assist in demonstrating sound control in Use of Resources and Key Lines of Enquiry.

- General support for move towards exception only performance reporting, subject to Cabinet's approach

4.14 Having considered several options the Advisory Group supported the development of Overview & Scrutiny arrangements as outlined in Figure 1 below.

Proposal to be Developed



* Subject to statutory requirements re Crime & Disorder Reduction Committee

Figure 1: Diagram illustrating preferred Overview & Scrutiny Arrangements

Outstanding Matters

- 4.15 *Treasury management – consider requirements of new guidance and possible incorporation function in to Audit & Risk Panel/Sub Committee*
- 4.16 *[ORG 08.04.10: Chief Executive's terms and conditions of service etc: KW to discuss requirements in detail with JC]*

5. Members of the Policy Portfolio Holder's Constitutional Advisory Group

5.1 Members of the Policy Portfolio Holder's Constitutional Advisory Group were

Councillor FJ Smith	Leader of the Council
Councillor Terry Hone	Deputy Leader
Councillor Tricia Cowley	Community Engagement & Rural Affairs Portfolio Holder
Councillor Michael Weeks	Chairman of PARC
Councillor Steve Jarvis	Leader – Liberal Democrats
Councillor Paul Clark	Deputy Leader – Liberal Democrats
Councillor Robert Inwood	Community Engagement Spokesperson
Councillor Lawrence Oliver	Chairman of Scrutiny
Councillors Martin Stears-Handscomb	Leader – Labour
Councillor Lorna Kercher	Deputy Leader – Labour
Councillor Judi Billing	Community Engagement Spokesperson

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