

This report will be made public on 5 September 2023



Report Number **AuG/23/10**

To: Audit and Governance Committee
Date: 13 September 2023
Status: Non executive
Responsible Officer: Amandeep Khroud – Assistant Director – Governance and Law – Monitoring Officer

SUBJECT: CHANGE OF GOVERNANCE ARRANGEMENTS

SUMMARY: This report introduces the steps necessary to implement the decision of Council of 21st June 2023 to change its governance arrangements from a Leader and Cabinet executive form of governance to a committee system as of the Annual Meeting of Council to be held May 2024.

REASONS FOR RECOMMENDATIONS:

A revised Constitution is required to set out the Council's new governance arrangements and is to be produced in good time to be implemented as of the Annual Meeting of Council 2024. The Council's current Constitution requires that any such review is to be considered by the Audit and Governance Committee before it is formally approved and adopted by Full Council.

RECOMMENDATIONS:

- 1) **That the Committee endorse the terms of reference of the Constitution Working Group, attached as Appendix A, and task the Group with overseeing the:**
 - (a) **Consideration of possible structures for a committee system of governance, with preference given to a streamlined style of arrangements; and**
 - (b) **Drafting of a revised Constitution in sufficient time to be adopted for the 2024/25 municipal year; and**

- 2) **That the Monitoring Officer be given delegated authority to:**
 - (a) **Provide such resources as she in her opinion considers necessary to support the work of the Constitution Working Group.**
 - (b) **Undertake due consultation and engagement in respect of the proposed revised governance arrangements of the Council; and**
 - (c) **Produce a revised constitution for the Committee and Council's consideration by March 2024.**

1. BACKGROUND

- 1.1 Prior to the introduction of Local Government Act 2000, a principal council operated under a system whereby responsibility for decision making in the exercise of a council's functions were made by full Council or by delegating responsibility for decision making to a committee or sub-committee, an officer of the authority or another local authority. As of 1989, all ordinary committees, sub-committees and appointments were required to be politically balance in accordance with that Act.
- 1.2 The introduction of Part 2 of the Local Government Act 2000 required each local authority to adopt, (subject to exceptions in respect of small authorities), executive arrangements in one of a number of specified forms, the most common ones being a Leader and Cabinet or a directly elected mayor and cabinet. This Council currently operates under a leader and cabinet model form of governance. The legislative framework requires a fixed division between responsibility for the exercise of executive functions, being almost all of the council's operational decisions and their implementation of policy. An Overview and Scrutiny function enables councillors not part of the executive to scrutinise the decisions of cabinet. Full Council retains the function of determining its policy framework (through approval or adoption of a series of plans or strategies) and its budget, following proposals from the leader and cabinet. Under the required executive arrangements it is the Leader, as senior executive member, who then determines whether executive decisions are made by the cabinet, cabinet committee, an individual cabinet member or an officer.
- 1.3 As of 2012, each principal authority is permitted to change between forms of governance, which includes a committee system form of governance, and which may be brought about by either a resolution of the council itself no more than once every five years or by way of a local referendum.
- 1.4 At the meeting of Council of 21st June 2023 (minute 23 refers) it was resolved :
 - “1. That the Committee System model of governance be adopted by Folkestone and Hythe District Council with effect from the Annual Council meeting in May 2024.
 2. That a Constitution Working Group be convened, comprising of the Leader of each constituted Group (or their nominee) plus one Independent. The Working Group is instructed to consider and make recommendations to Full Council on the composition and terms of reference of committees by January 2024.
 3. That the Independent Remuneration Panel be instructed to review the Scheme of Members' Allowances in light of the revised model of governance and make recommendations to Full Council by January 2024.
 4. That the Monitoring Officer, in consultation with the Constitution Working Group, redrafts the Council's constitution to fit a committee

system of governance and presents the revised constitution to Full Council for adoption by March 2024.

5. That it be noted that the council acknowledges that there will be a cost implication to this proposed change in Governance. A budget is to be made available of up to a maximum of £100k taken from general reserves in agreement with the S151 Officer and the Finance and Governance Portfolio Holder.”

1.5 This report considers the next steps to achieve that.

2. PROGRESS TO DATE

2.1 The Council resolution established a Constitution Working Group, which given the time frame to achieve the change in form of governance first met on 12th July 2023.

2.2 The principal task of the Constitution Working Group is to produce for Council recommendations on the composition and terms of reference of committees by January 2024. This will then evolve into preparing significant change in respect of the Constitution, together with involvement and consultation concerning the other procedural, training, and preparatory changes necessary to enable the Council to operate effectively within a committee system. The Constitution Working Group considered and agreed draft terms of reference attached as **Appendix A**.

2.3 The Council's current Constitution requires, at Article 14.3.1 that:

“Other than the power, of the Monitoring Officer, of amendment, set out in Article 14.4 below, changes to the Constitution will only be approved by the full Council, after consideration of the proposal by the Audit and Governance Committee, and after consultation with the Cabinet and other appropriate bodies.”

2.4 At Article 14.5 (Review of the Constitution) it goes on to state that:

“14.5.1 The Monitoring Officer will commission a review of the entire Constitution, at intervals, to be determined by the Audit and Governance Committee.

14.5.2 The Monitoring Officer will arrange for broad consultation to be carried out, as part of the review process, and will seek views from (but not limited to) the Cabinet, the Overview and Scrutiny Committee, the Audit and Governance Committee, the Head of Paid Service and Chief Finance Officer.

14.5.3 Following consultation, draft changes will be subject to further broad consultation before being presented to the Audit and Governance Committee, for consideration, and the Council, for approval.”

- 2.5 Accordingly, the Audit and Governance Committee is the body at which formal debate on any such recommendations is to take place, together with formal oversight of that process, and the Committee is asked to endorse the process for the change as set out below.
- 2.6 As noted in the resolution of Council, the decision to change the form of governance requires early consideration to be given to designing a new Committee structure and to then incorporate that structure into a revised Constitution to run from the implementation date of the Annual Meeting at the beginning of the 2024/25 municipal year.
- 2.7 It is noted that in producing a new Constitution for 2024/25 the Council must, in reviewing constitutional arrangements, concern itself with the differing requirements of operating a committee system form of governance, as permitted under section 9B of the Local Government Act 2000 (as amended) (LGA 2000), arising in particular from:
- those matters referred to under section 9P of the LGA 2000 and associated Direction (which sets out some 82 matters that the Constitution is to inform the public of);
 - the Secretary of State's Guidance in such matters issued under s9Q of the LGA 2000;
 - the requirements of the Local Authorities (Committee System) (England) Regulations 2012;
 - the varying mandatory standing orders made in respect of a committee system under the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended); and
 - section 9GA of the LGA 2000 and the Openness of Local Government Bodies Regulations 2014.
- 2.8 It is suggested that the Committee, via the Constitution Working Group, might approach this task in the following sequential order:-
- (i) To determine the overall structure of a new Committee system and, in particular, how that may operate as an effective but inclusive 'streamlined' model, separating strategic and executive overview from operational decision making and policy development.
 - (ii) Determine whether the Council will retain overview & scrutiny arrangements, be that a comprehensive function or just for external partners and call-in, or not
 - (iii) Subject to the decisions at (i) above, determine what functions should be reserved to full Council, how much responsibility should be concentrated in the 'executive' policy committee(s) and conceptual and practical basis for the other operational committee(s) structure (if any)
 - (iv) Address whether the Council wishes to combine decision making on individual applications for planning and regulatory licence applications with the making of related policy decisions or to retain a split between the two forms of decision making as is the case now

- (v) Consider whether or not the Council wishes to retain dedicated separate committees for Human Resources or to establish decision making sub-committees for individual employee decisions.
 - (vi) Address the workload and committees responsible for development control, regulatory (non Licensing Act) and for audit, standards and constitutional governance matters.
 - (vii) Consider the size of Committees and impact on political balance.
- 2.9 In It is further suggested that the above issues be considered before moving onto other matters, which will include:-
- (i) A review of the Officer Scheme of Delegation and whether this is a scheme that is purely specific or approached as a scheme by reservation where possible
 - (ii) A review of the detailed content of the constitution, including Council Standing Orders, Procedure Rules, etc. This will include a range of detailed issues including precise roles and remits of Committees,
 - (iii) Whether there is to be introduced, alongside a scheme of delegation, an alternative call-in or reservation system to Council, etc.
- 2.10 In beginning this process, the first meeting of the Constitution Working Group held a workshop where a number of these questions were addressed and a view taken to inform the drafting of a committee structure. To assist this, an external law firm has been engaged to assist the Monitoring Officer.
- 2.11 Reports will be made to each meeting of the Audit and Governance Committee to update the Committee on progress and to seek approval where considered necessary until such point as a revised Constitution may be presented in early 2024.

3. NEXT STEPS

- 3.1 Following the resolution by Council to change the form of governance, there then follows a process of formal notification. The legislation provides that, as soon as practicable after the Council has passed a resolution to change the form of its governance arrangements, it must:
- (a) Secure that copies of the document setting out the provisions that are to have effect following the resolution are available at its principal office for inspection by members of the public; and
 - (b) Publish in one or more newspaper circulating in its area, a notice which:-
 - (i) states that the authority has resolved to make a change in its governance arrangements;
 - (ii) states the date which the change is to have effect;
 - (iii) describes the main features of the change;
 - (iv) states that copies of the document setting out the provisions of the arrangements which are to have effect following the resolution are available at the authority's principal office for inspection by members of the public; and
 - (v) specifies the address of the authority's principal office.

- 3.2 A project plan is being put in place and supported by officers. This forms five separate work-streams. Each work-stream is supported by a project plan, staffing and timeline. The work-streams are:
- (1) Committee Design - to produce the desired terms of reference and design of the committees
 - (2) Constitution - to review and produce a revised draft Constitution for next municipal year
 - (3) Training - to prepare officers and Members for the new form of governance
 - (4) Service Review - to form the ongoing support to officers and Members necessary to implement the new processes, procedures, requirements and cultural approach of the committee system.
 - (5) Members Allowances - to produce a Scheme to implement from 2024 municipal year.

3.3 The Committee Design Phase required early consideration as later steps are reliant upon that being agreed. The meetings of the Constitution Working Group are therefore centred on these aspects, including agreeing design principles and considering draft committee structures as a process of iteration to be discussed in coming months, including all Member workshops and subsequent training.

3.4 There is no statutory duty to consult members of the public on the Constitutional changes being prepared but the current Constitution requires that the “Monitoring Officer will arrange for broad consultation to be carried out”. It is intended that a dedicated a web-page will be produced to inform the public and seek comment. This is as an alternative to a set questionnaire or time period for engagement and will, rather, allow for ongoing and informed comments to be received from interested members of the public.

3.5 Consultation over the committee design and the changes to the Constitution with Members will take place through the representation of political groups on the Constitution Working Group but also through planned all-Member workshops to present and receive feedback on design principles, prior to the recommended outcomes coming to this Committee.

3.6 A timeline of intended engagement, gatekeeping and reporting events is set out as **Appendix B**.

4. **RISK MANAGEMENT ISSUES**

4.1 A change in the form of arrangements will represent a key integral element of the overall organisational vision of the Council and also how it interacts with the District’s residents and other stakeholders. That process of change will raise a number of associated risks to be identified and managed as part of the

development process and implementation.

5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Comments (NM)

5.1.1 The ability for the Council to change from one of the permissible forms of governance arrangements of a local authority to another is provided for by Chapter 4 of the Local Government Act 2000 (as amended by the Localism Act 2011). Section 9KC of the Act straightforwardly states that a “resolution of a local authority” (a simple majority) is required in order for the council to make such a change in governance arrangements.

5.1.2 It should be noted, however, that a local authority may not then pass another resolution that makes a change from one to another of the permissible forms of governance arrangements ‘before the end of the period of 5 years’ beginning with the date the first resolution is passed, unless that change is by way of referendum.

5.1.3 A resolution passed by the Council to change from one of the permissible forms of governance arrangements to another will then be implemented only during-

- (a) the first annual meeting of the local authority to be held after the resolution to make the change in governance arrangements is passed, or
- (b) a later annual meeting of the local authority specified in that resolution in this instance from the annual meeting of Council 2024.

5.1.4 The Council is expressly empowered, under section 9L(3) of the Local Government Act 2000, to take steps for the purposes of preparing for the change or implementing it (including steps relating to transitional arrangements) prior to the change in the form of governance as of the annual meeting of 2024.

5.1.5 There are various duties placed upon the Council in devising its committee structure and revising the Constitution, as described at paragraph 2.7 above, including those of the Local Authorities (Committee System) (England) Regulations 2012

5.2 Finance Comments (OO).

5.2.1 The cost of the democratic process is currently funded by the Council’s General Fund budget. The main cost drivers are the size of the committees and the officer resource required to support Members both through providing secretarial support to the committee and briefing the members of the committee. A unit cost per committee meeting will be an artificial figure and may not be indicative of the total cost to the Council if the level of activity changed (because some costs are fixed in nature and would not change if more meetings were to be held).

5.2.2 It is difficult to identify the full costs of the implementation of the change to the governance system and there will be direct and indirect costs. However, based on the experience of other authorities it is likely that they will be in the region of

£50,000-£100,000 in one off costs on internal and external resources to implement the changes. In addition, there may be a need for additional staffing costs to support the new structure. These costs are associated more with the act of making the change, such as redrafting the constitution, making changes to rules of procedure and financial systems, project delivery and impact on forward work programmes as well as training and briefing costs for officers and Members.

5.2.4 Members' Allowances will require a full review and an exercise is currently underway to recruit new members of the Independent Remuneration Panel.

5.3 Comments on other controls/policy matters (AK)

5.3.1 There are significant resource and policy considerations for the Council in changing its decision making structure to a new form of governance. This will include that:

- (a) There will be an initial orientation, briefing and training impact that will reduce as the change in governance arrangements becomes embedded.
- (b) Project planning resource will be called upon to assist in preparation and for delivery of the drafting process and changes.
- (c) Across the Council, the change to potentially different ways of working and briefing with Members will require greater and different input from officers. The extent of these resource implications in the longer term will vary dependent on the number, frequency and timing of meetings (for example, evening or daytime meetings).
- (d) Committee Services will directly be affected over the longer term and other authorities that have moved to a committee system have reported that an increase in staffing is required and this is the subject of the project work-stream. Such matters as retention of a separate overview and scrutiny system or not and the number and frequency of meetings will have a direct bearing on this and so costs cannot be estimated at this time.

5.4 Diversities and Equalities Implications (AK)

5.4.1 There are no direct implications of this report.

6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report:

Notes of the meeting and presentation to the Constitution Working Group of 12th July 2023.