

24 February 2016		ITEM: 15
Council		
Constitution Working Group – Governance Review		
Wards and communities affected: None	Key Decision: Not Applicable	
Report of: David Lawson, Monitoring Officer		
Accountable Head of Service: Fiona Taylor, Head of Legal and Democratic Services		
Accountable Director: Lyn Carpenter, Chief Executive		
This report is Public		

Executive Summary

On 22 October 2014 a motion was considered and unanimously agreed which requested the Constitution Working Group to carry out a governance review, in order to judge the need for the committee, cabinet, mayoral or hybrid forms of governance.

In the course of debating the motion, the Leader of the Council suggested that an item on the Constitution Working Group be brought back to the next meeting of the Council and that a small budget be allocated to the group so that they could investigate thoroughly the advantages and disadvantages of the different forms of governance with similar sized authorities. This was reported to Full Council on 28 January 2015 which approved a budget of £5,000 and the composition of the Constitution Working Group.

The current form of governance has been in place for some time and the aim of the review was to see where any improvements could be made to improve local democracy, scrutiny, efficiency and decision making.

1. Recommendation(s)

- 1.1 That the options discussed at Constitutional Working Group set out below at 3.1 to 3.14 be investigated further for best practice and that potential protocols, changes to procedures or draft amendments to the Constitution be developed for consideration where appropriate.**
- 1.2 That pursuant to the recommendation at 3.15 the function of setting the Council Tax Base and Determining the Collection Fund Balance be delegated to the section 151 Officer.**

2. Introduction and Background

2.1 The importance of good governance

Councils have a responsibility to ensure that decision-making is as effective as it can be. Many councils are making informal changes to their governance arrangements including tightening up existing processes, making sure that avenues exist for all members to get involved in the policy development process (for example, through overview and scrutiny) and putting in place consultation arrangements for particularly contentious decisions.

Changing governance under the Localism Act

The Localism Act 2011 (the Act) expanded the number of decision-making systems that councils could adopt. Since that Act was passed there are 3 main models to choose from. Councils wishing to move from one to another must make a formal decision to do so, using a resolution of Full Council. In some instances a referendum will also be required.

Leader and cabinet

Cabinet is led by a leader, who is elected by Full Council (and will usually be the leader of the largest party on the council). The intention is that the Full Council will determine its policy framework (through approval or adoption of a series of plans or strategies) and its budget, following proposals from the Executive: the Executive is then responsible for implementation of the policy framework. These councils must have at least one overview and scrutiny committee.

Mayoral system

These councils have a directly-elected executive mayor with wide decision-making powers. The mayor appoints a Cabinet made up of other councillors, who may also have decision making powers. These councils must also have at least one overview and scrutiny committee.

Committee system

Committee system councils make most decisions in committees, which are made up of a mix of councillors from all political parties. These councils may have one or more overview and scrutiny committees but are not required to.

Hybrid systems

There are variations for each of these models that can lead councils to adopt hybrid approaches; most commonly this is a hybrid between leader/cabinet and the committee system (with such an approach usually seen legally as being a modified version of the leader/cabinet system, and therefore not requiring a formal change under the Act).

This report therefore seeks the agreement of Council to the further development and investigation of options identified by the Constitution Working Group as having potential to achieve improvements.

- 2.2 Constitution Working Group (Group) approached a range of authorities with different governance systems and visited Kent County Council which operates a hybrid executive model. Following this visit, the Group decided that they needed to understand better what was perhaps not working in Thurrock's current governance system or could work better and the most efficient way of proceeding was for the Group to consult all Thurrock Members to gather feedback on what Members themselves thought were the strategic and procedural weaknesses of the Council's current leader/cabinet governance system. This would allow an opinion to be formed as to whether these issues could be addressed by changes short of a formal governance system change or not - which would potentially be quicker and less expensive. The Monitoring Officer was asked to provide a briefing to the Group on Members' responses to the consultation and whether any identified issues could or could not be addressed within the existing leader/cabinet governance system or a hybrid thereof. The Group agreed that the responses from Members should be anonymised, reviewed and presented to Full Council.
- 2.3 Democratic Services sent out a consultation document to all Members and the Monitoring Officer in August 2015 provided a detailed and extensive briefing note to the Group of the options available within the existing governance system in response to issues identified by Members - which the Group discussed at its meeting held on 20 October 2005.

3. Issues, Options and Analysis of Options

The Group considered the issues raised by Members and the Monitoring Officer's response in order to identify areas for possible further work are set out below at 3.1 to 3.15.

3.1 Requisition vote at all meetings

Monitoring Officer' advice: In the case of principal councils the method of voting is not prescribed by statute - though usually by standing orders it is by show of hands. Under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 there must be a recorded vote where the decision relates to the budget / council tax at a budget decision meeting of the Authority. Also an individual Member of the Authority can require his/her vote to be recorded by virtue of the Local Authorities (Standing Orders) Regulations 1993.

At the moment a recorded vote can be triggered at Full Council by any 5 Members present at the meeting standing to indicate such a demand – the procedure is that the Mayor shall put the motion and the Chief Executive shall call out the names of Members and record their votes or abstentions. Likewise

the Committee Procedure Rules provide for a recorded vote if no fewer than one fifth of the Committee's Membership demand it at the meeting.

Discussion: The disadvantage to this at Full Council would be an obvious delay if for every vote the current procedure of calling out names was maintained – instead there may be alternative electronic or administrative methods for a quicker capture of voting history which may have less impact than a change in the relevant standing order but achieve largely the same outcome.

Options: No constitutional change is required as such rather an alternative electronic or administrative method of capturing full voting history could be investigated as likely to be the most cost efficient and transparent solution.

3.2 **Members budget for ward work**

Monitoring Officer advice: It is a matter of policy as to whether there should or should not be a Members budget for ward work – Section 236 of the Local Government & Public Involvement in Health Act 2007 provides that arrangements may be made for the discharge of any function of a local authority by a member, to the extent that it is exercisable in relation to the electoral ward of that member.

Discussion: The Group felt it would be an improvement if each ward could have a budget for work within a ward. However this option is already canvassed within the Constitution at Chapter 2, Part 1 – The Full Council - Rule 4.2 and Chapter 3, Part 1 – Article 7 – The Leader / Cabinet Executive Rule 9.6.

Options: Whether Cabinet / Full Council wish to investigate this option further.

3.3 **Prayers after the meeting starts**

Monitoring Officer advice: Local Government (Religious Observances) Act 2015: this Act came into force on 26 May 2015. It gives local authorities the power to include prayers as an item of business should they wish to do so.

Discussion: This would require a minor change in the Constitution to reflect prayers as an item of business at Full Council meetings.

Options: Given this new legislation this option should be referred to Full Council for consideration as to whether it should be investigated further.

3.4 **Planning proposals on huge issues to be discussed at full council**

Monitoring Officer advice: The Group discussed options for greater Member involvement for major developments of a certain size, scale and complexity including a process that involves the referral of decisions to Full Council –

following consultations with chairs and seeking 'best practice' examples from other councils there would be a number of concerns including the need to ensure that all Members are trained and constantly 'refreshed' and potential uncertainty – both in terms of outcome and timescales for the development industry. This would be counter-productive to growth and investment in the Borough.

That said, Members desire to effectively influence major development proposals is fully appreciated but following consultation and 'best practice' enquiries it appears that the best time for getting wider Member engagement is at the beginning of the process, where Members can truly help to influence and shape things.

One particular best practice example was a process whereby schemes of a certain scale can [preferably at pre-app stage, if not within the first 3 weeks of submission] be put in front of a Member Panel. Westminster are one authority that run a process of this nature.

Such a process could be structured to effectively combine the engagement of councillors, community representatives and members of the public in a single meeting. It differs from the Member /community briefings in that it is not an information opportunity but a working discussion therefore it is important that this takes place when the scheme remains fluid and capable of change - such discussions should be a material consideration later in the application process.

Discussion: The Group engaged in discussion around how to define "huge developments"

Options: This option should be referred to Full Council for consideration as to whether it should be investigated further in order to identify best practice as to wider Member engagement.

3.5 Clarify on signatures for petitions

Monitoring Officer advice: In Chapter 1 Part 1 Para 7.1 our Constitution confirms that:

"the term residents includes (where appropriate) those people who live, study, work or have businesses in the borough or who receive services for which the Council is responsible"

Each local authority can choose how to verify the signatures given on a petition. That said it is expected that local authorities will remove duplications and obviously frivolous signatures.

Discussion: The Group discussed whether possible to incorporate views of residents outside borough but still proximate and affected within ambit of Petition Scheme – this may arguably depend on some reciprocity which may not be forthcoming from other authorities.

Options: This option should be referred to Full Council as to whether it should be investigated further with neighbouring authorities as to best practice.

3.6 **Planning site visits, request prior to the debate**

Monitoring Officer advice: Pre-debate site visits, by convention, can already be requested via Democratic Services / Chair or arranged by officers under the existing Rule 8 Chapter 5 Part 3 of the Constitution

Discussion: This convention could be mentioned in the Constitution in a more explicit way to see if the number of adjournments mid application can be reduced.

Options: This option should be referred to Full Council as to whether it should be investigated further as to best practice.

3.7 **Longer to speaking right on larger developments application.**

Monitoring Officer advice: Rule 6.1 of Chapter 5, Part 3 indicates the normal procedure for speaking rights at Planning Committee –there is an inherent discretion which would reside with the Chair to depart from the normal timings where the nature of the application justifies such departure.

Discussion: Whilst possible to specify extra speaking time there is a risk that being over prescriptive may be counterproductive when compared to an agreed convention or consensus to allow extra speaking time with the consent of the Chair.

Options: Given the existing discretion to depart from normal timings and the inflexibility of being over prescriptive in the Constitution this option should be referred to Full Council as to whether it should be investigated further as to best practice.

3.8 **Timings for items at council**

Monitoring Officer advice: The Mayor has both an inherent and explicit discretion to exceed standard timings for speeches under the Council Procedure Rules.

Discussion: Whilst possible to specified extra speaking time there is a risk that being over prescriptive may be counterproductive when compared to an agreed convention or consensus to allow extra speaking time with the consent of the Mayor. As to any removal of the current guillotine standing order at 9.30 pm (or two and a half hours after the meeting commenced) this would require an explicit change of the Constitution – however Members are always prompted to consider suspending this standing order should they desire to continue longer at any particular meeting.

Options: Given the existing discretion to depart from normal timings and the inflexibility of being over prescriptive in the Constitution this option should be referred to Full Council as to whether it should be investigated further.

3.9 **Confirm the calling in of contracts**

Monitoring Officer advice: Currently under Chapter 4, Part 3 – Scrutiny Procedures Rules 10.14 (d) “decisions to award a contract **following a lawful procurement process**” cannot be subject to Call In

Procurement usually involves a decision to issue an agreed tender where parties compete for a contract against a set range of criteria with an evidenced decision reached. If there are grounds for believing that such a lawful process was not followed then an award of contract could be called in under the above rule. If a lawful process has been followed after a duly released tender and there is then a delay and / or change of decision there may be a significant risk of litigation. Arguably the key stage is the decision to release the tender – if a robust and compliant process is duly followed then the award of the contract to the successful party would appear to be merely administrative / operational matter but if the process is flawed then a case could be put forward for call in – even under the existing rule.

Discussion: The current rule doesn’t absolutely prohibit this – rather recognises that where an agreed and lawful procurement process has been undertaken then final stage should almost be administrative – if flaw in lawful procurement process then call-in possible – perhaps further guidance on this.

Options: As the current rule does not prohibit call in of a contract award where there are evidenced concerns that a lawful procurement process has not been followed the wording could be at looked again to seek to make this clearer as a consequential clarification.

3.10 **Overview and Scrutiny feels like its only job is to "note" actions of the current administration renaming them as Select Committees with specific outcomes such as suggesting policy, not just overiewing the Cabinet, would give them a fresh start and renewed focus**

Monitoring Officer advice: Some councils call their Overview & Scrutiny Committees – “Commissions” or “Select Committees” there is no particular reason why the name cannot be changed.

Discussion: The name change is perfectly possible but Members already have agenda setting rights and scrutiny committees can play an important role in policy development.

Options: This option should be referred to Full Council as to whether it should be investigated further for best practice.

3.11 A feeling that Cabinet / officers can simply ignore committees that have no judicial powers. A remedy could be insisting that no item can go to Cabinet without going to committee first, even if this means more emergency sessions to discuss an item before it comes to Cabinet

Monitoring Officer advice: The Cabinet system is a very flexible vehicle if there is consensus amongst Members for example; Kent County Council who we visited has a system with all forward plan matters going to cross party advisory committees before Cabinet – who then submit a report to Cabinet. There is provision for urgent decisions and a single O&S committee retained for Call In.

Discussion: This would be regarded as a consensual hybrid change with the current 6 Overview & Scrutiny Committees being perhaps replaced with an emphasis on pre scrutiny of key decisions by a Cabinet Advisory Committee(s) with provision for a mandatory Overview & Scrutiny Committee for Call in purposes and modified provision for urgent decisions. If there is no consensus with the Leader / Cabinet this would not be a possible option.

Options: This option should be referred to Full Council and Cabinet as to whether it should be investigated further.

3.12 Stilted rules of Full Council debate, 3 minutes is too short for speaking time, not being allowed to interject in debate, ability to yield to Members who may wish to interject, Points of Order more flexible, Members being able to table a short period to address the meeting on an issue they feel is important, but does not require a motion.

Monitoring Officer Advice: Rules of debate are fairly standard and ubiquitous across all local authorities probably because most council have followed the template of the Modular Constitution

“14.4 Content and length of speeches

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed () minutes without the consent of the chairman”

Therefore the period of time allocated could be varied or a longer period be permitted under the existing discretion of the Mayor / Chair.

Points of order are in the main an objection submitted to the Chair / Mayor for decision claiming some irregularity in the constitution or conduct of the meeting – a member may raise a point of order at any time without notice - it must however be raised immediately the alleged irregularity or impropriety becomes apparent – citing the rule or procedure breached - they would or should not be limited by number.

Personal Explanation can be reasonably flexible to correct a misstatement or something that has been misunderstood by a later speaker – a few councils

appear to have the concept of “points of information” for example Brentwood Borough Council.

“Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Mayor. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate, If the Mayor gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Mayor on the admissibility of a point of information or clarification will be final”

Discussion: Members present expressed an interest in more flexibility on timings and when Members can speak again outside the Rules of Debate. There is inherent flexibility under the discretion of the Mayor as to timings.

Options: The potential option of including a “Point of Information or Clarification” should be referred to Full Council as to whether it should be investigated further as to best practice.

3. 13 **Members understand that we should not have direct operational power however there is a feeling that we have little power over officers to influence the delivery of service. All officers at the Head of Service level and above should be confirmable by the General Services Committee, including temporary appointments, to give member buy in to officer appointments. Manager level appointments should be raised with the Committee to see if it is a role that is of significant interest to Members that it would merit the Committee’s attention.**

Monitoring Officer advice: This is possible to draft if “Heads of Services” are within the statutory definition of “Deputy Chief Officer” however the Head of Paid Service must be confirmed by Full Council, such “interim appointments” can be included in a definition of Member involvement – less clear is where an officer is acting up / covering a role merely temporarily but retaining their substantive role.

Discussion: Manager level appointments would be the responsibility of the Head of Paid Service. Finally officers owe an explicit duty to the whole Council and not particular groups.

Options: The option of including Deputy Chief Officers confirmable at General Services Committee” should be referred to Full Council as to whether it should be investigated further as to best practice.

3.14 **Full Council delegates the power to make PSPO's to the Licensing Committee. Also consider how to best exercise other public protection powers**

Monitoring Officer advice: Public Space Protection Orders (PSPOs) potentially provide a flexible and effective tool to tackle many forms of environmental nuisance. They were brought in by the Anti-Social Behaviour, Crime and Policing Act 2014 which replaced 19 existing powers dealing with anti-social behaviour with 6 broader powers, Injunctions, Civil Behaviour Order, Community Protection Notice, PSPO, Closure Powers, and Dispersal Powers.

In the case of the 2014 Act it is understood that local authorities will soon be consulted about clarifying that all of its functions should be specified in regulations as local choice functions. These are functions where the Council has discretion as to whether the function should be discharged by the Council, Committee of Council or by the Leader / Cabinet.

Therefore there appears to be potential flexibility, subject changing the constitution, as to whether the decision to make a PSPO is made by Cabinet, Full Council, Committee or a further delegation in consultation.

Discussion: There is flexibility here for Council to decide to lodge the remit for making of PSPOs with the Licensing Committee with appropriate delegations to officers.

Options: This option should be referred to Full Council as to whether it should be investigated further as to best practice.

3.15 **That setting the Council Tax Base and Determining the Collection Fund Balance be delegated to the section 151 Officer**

Monitoring Officer advice: Both calculations are simply for Members' information and approval. They cannot be amended as they are based on factual numbers and technical assumptions. It is common practice for a section 151 Officer to have such delegations and would be in line with not bringing reports that can only be noted by Members.

Recommendation: That the function of setting the Council Tax Base and Determining the Collection Fund Balance be delegated to the section 151 Officer.

4. Reasons for Recommendation

- 4.1 The current form of governance has been in place for some time and the aim of the review and consultation with all Members was to see where any improvements could be made to improve local democracy, scrutiny, efficiency and decision making.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This matter has been the subject of consultation with Group Leaders, Chairs, Members and Senior Management.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The governance reviews are an ongoing process and both contribute and promote good governance in Thurrock.

7. Implications

7.1 Financial

Implications verified by: **Sean Clark**
Director of Finance & IT

There are no financial implications arising from this report at this stage

7.2 Legal

Implications verified by: **Fiona Taylor**
Director of Legal

The Localism Act 2011 enables local authorities to decide on their own form of governance. Councils have a responsibility to ensure that decision-making is as effective as it can be and decision making should critically benefit from the perspective of all councillors, but also be accountable, and involve the public. In undertaking the Governance Review the Constitution Working Group was expected to help promote and foster good governance in Thurrock.

7.3 Diversity and Equality

Implications verified by: **Becky Price**
Community Development Officer

There are no diversity implications arising from this report at this stage.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Localism Act 2011 as amended

9. Appendices to the report

- None

Report Author:

David Lawson

Monitoring Officer

Legal & Democratic Services