



Email: committeeservices@horsham.gov.uk
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Governance Committee

Monday, 14th December, 2020 at 5.30 pm
via Remote Video Link

Councillors: Andrew Baldwin (Chairman)
Toni Bradnum (Vice-Chairman)
Karen Burgess
Philip Circus
Frances Haigh
Tim Lloyd
Christian Mitchell
David Skipp

You are summoned to the meeting to transact the following business

Glen Chipp
Chief Executive

Agenda

	Page No.
1. Apologies for absence	
2. Minutes	3 - 6
To approve as correct the minutes of the meeting held on 13 December 2020 (Note: If any Member wishes to propose an amendment to the minutes they should submit this in writing to committeeservices@horsham.gov.uk at least 24 hours before the meeting. Where applicable, the audio recording of the meeting will be checked to ensure the accuracy of the proposed amendment.)	
3. Declaration of Members' Interests	
To receive any declarations of interest from Members of the Committee	
4. Announcements	
To receive any announcements from the Chairman of the Committee or the Chief Executive	
5. Review of the Policy Development Advisory Groups	
To receive an update from the Director of Corporate Resources	
6. Representatives on Outside Bodies	7 - 8
To review the clarity of the Constitution with regard to who appoints representatives on Outside Bodies	

7. **Feasibility Studies - review of Key Decision criteria**

9 - 20

To receive a report from the Monitoring Officer

8. **Urgent Business**

Items not on the agenda which the Chairman of the meeting is of the opinion should be considered as urgent because of the special circumstances

Governance Committee
13 OCTOBER 2020

Present: Councillors: Andrew Baldwin (Chairman), Toni Bradnum (Vice-Chairman), Karen Burgess, Philip Circus, Frances Haigh, Tim Lloyd, Christian Mitchell and David Skipp

Also Present: Councillor Tony Bevis

GO/12 **MINUTES**

The Committee agreed to amend the draft minutes of the meeting held on 10 June. The third bullet point of the resolution to Minute No. GO/9 (Public Speaking at Full Council and Formal Cabinet Meetings) should read 'Questions at Cabinet be restricted in terms of content, and public statements be permitted at Cabinet. (i.e. 'unrestricted' be changed to 'restricted'). The minutes, as amended, were approved as a correct record and would be signed by the Chairman at a later date.

GO/13 **DECLARATION OF MEMBERS' INTERESTS**

There were no declarations of interest.

GO/14 **ANNOUNCEMENTS**

There were no announcements.

GO/15 **REVIEW OF THE POLICY DEVELOPMENT ADVISORY GROUPS**

The Director of Corporate Resources reminded the Committee that the report of the Corporate Peer Challenge last autumn had identified Policy Development Advisory Groups (PDAGs), and how they related to the function of the Overview & Scrutiny Committee, as an area that would benefit from review.

Two HDC graduate trainees, who would help undertake the review, outlined how this was being progressed: comparisons were being made with six other local authorities; all Members and relevant officers would be invited to take part in a survey; and interviews with some Members and lead officers were proposed.

The Committee discussed the benefits of the PDAGs, which allowed briefings and discussion with non-executive Members before Cabinet decisions were made. It was suggested that the background to the formation of PDAGs in 2016 be taken into account as part of the review. Members also discussed the interface between PDAGs and Overview & Scrutiny and the need to identify how this relationship worked.

The Chairman suggested that the graduate trainees contact all Councillors inviting them to be involved if they so wished, and that the Committee meet in December to consider the report and any recommendations resulting from this review.

GO/16 **PUBLIC SPEAKING AT FULL COUNCIL AND FORMAL CABINET MEETINGS**

The Chairman advised that since the last meeting of the Committee, when Members discussed changes to the Constitution to allow members of the public to ask questions at Council meetings not directly relevant to items on the agenda, the majority Group had met to consider this proposal. Their agreement was not forthcoming and therefore the Committee was unable to make this recommendation the Council.

Mr Kornycky, a member of the public, addressed the Committee on the right of residents to speak at Committee or Cabinet meetings. He requested that the Committee consider reintroducing public questions to full Council on any topic, and the reintroduction of public statements to Cabinet meetings.

The Monitoring Officer confirmed that the current Constitution allows for public statements to Full Council only, although the wording does allow for some uncertainty.

The Chairman proposed that, in order to bring clarity, the Constitution should specify every type of meeting, be it Council, Cabinet or a Committee, and define the rules for public questions and statements for that meeting. The Committee agreed to this approach, and that this refinement to the Constitution be made. The Chairman emphasised that this would not change the existing rules, but make them clearer.

Councillor Circus, on behalf of the majority Group, proposed that an additional paragraph be added to the Constitution regarding questions to Ordinary meetings of the Council.

‘A maximum time of 15 minutes is to be allowed in the meeting to receive oral questions and answers (not statements) which, in the opinion of the person presiding at the meeting, are relevant to the business to be transacted at that meeting. A copy of any such questions must be submitted in writing no later than three working days prior to the relevant meeting. Questions can only be asked by residents who are identified as such from the voters list, or from anyone who satisfies the Monitoring Officer that they work wholly or in substantial part in Horsham District. As deemed appropriate, in the absolute discretion of the person responding, answers may be given either orally or else in writing within three working days of the relevant meeting.’

The proposal would ensure that the opportunity to ask public questions relevant to the business of that meeting is not exploited by campaigning organisations and individuals.

The Committee discussed the issue of giving residents the opportunity to ask questions not relevant to the business of the meeting, and Councillor Haigh proposed an amendment to the first sentence of the proposal:

‘A maximum time of 15 minutes is to be allowed in the meeting to receive oral questions and answers (not statements) which, in the opinion of the person presiding at the meeting, are relevant to the business to be transacted **by the Council.**’

The motion to amend the proposal was lost.

RESOLVED

- (i) That the rules for public questions and statements to Council, Cabinet and Committee meetings be added to the Constitution.
- (ii) TO RECOMMEND TO COUNCIL that the following statement regarding public questions to Ordinary meetings of the Council be added to the Constitution:

‘A maximum time of 15 minutes is to be allowed in the meeting to receive oral questions and answers (not statements) which, in the opinion of the person presiding at the meeting, are relevant to the business to be transacted at that meeting. A copy of any such questions must be submitted in writing no later than three working days prior to the relevant meeting. Questions can only be asked by residents who are identified as such from the voters list, or from anyone who satisfies the Monitoring Officer that they work wholly or in substantial part in Horsham District. As deemed appropriate, in the absolute discretion of the person responding, answers may be given either orally or else in writing within three working days of the relevant meeting.’

REASON

- (i) To clarify the rules set out in the Constitution regarding public involvement in public meetings of the Council
- (ii) To ensure that the opportunity for members of the public to speak at Council meetings is not exploited by campaigning organisations or individuals to further a cause not directly related to the business of that meeting.

The Monitoring Officer reported that there was a need to update the wording in the Constitution regarding the appointment of Members to outside bodies.

The Constitution stated that this was a function of Full Council unless delegated to Cabinet. This did not reflect the current practice, which was the Leader, in consultation with Cabinet and the Leader of the Opposition, being responsible for these appointments.

There was no record of this change being formally agreed and therefore the Committee was invited to consider whether to formalise the current practice, which was that of many local authorities.

The Chairman agreed that a full list of the outside bodies to which appointments are made be brought to the next Committee. This would enable the Committee to make an informed decision on what changes to the Constitution to recommend.

The meeting closed at 7.00 pm having commenced at 5.30 pm

CHAIRMAN

REPRESENTATION ON OUTSIDE BODIES

CABINET APPOINTMENTS

BODY	REPRESENTATIVES Appointed to May 2023
Gatwick Airport Consultative Committee	Cllr Liz Kitchen
Gatwick Greenspace Group	
High Weald Area of Outstanding Natural Beauty Joint Advisory Committee	
Horsham in Bloom Committee	Cllr Christine Costin
Horsham Unlimited	Cllr Paul Clarke
iESE	Cllr Claire Vickers
Police and Crime Panel	Cllr Tricia Youtan (substitute Cllr Jim Sanson)
South Downs National Park Authority	Cllr Diana Van Der Klugt
South East Employers' Association	Cllr Paul Clarke
South East Reserve Forces Cadets Association	Cllr Jim Sanson
Springboard Project	Cllr Kate Rowbottom
WSCC Health and Adult Social Care Select Committee 2020: Reformed as WSCC Health and Adult Social Care Scrutiny Committee	Cllr Tricia Youtan Member cannot be a Cabinet Member and must be member of Overview & Scrutiny Cttee
West Sussex Rural Partnership & Forum	Cllr Paul Clarke
Wey and Arun Canal Trust Liaison Group	Cllr Jonathan Chowen
Billingshurst Leisure Centre Advisory Committee (3) (Required as part of dual use agreement - not an outside body as set up and run by HDC)	Cabinet Member and 2 local Members (Cllrs Jonathan Chowen, Nigel Jupp, Chris Brown)
Horsham Community Safety Partnership (Not an outside body - HDC is one of seven statutory partners)	Cllr Tricia Youtan
Steyning Leisure Centre Advisory Committee (3) (Not an outside body as set up and run by HDC)	Cabinet Member and 2 local Members (Cllrs Jonathan Chowen, Tim Lloyd, Bob Platt)

COUNCIL APPOINTMENTS

BODY	REPRESENTATIVE
Local Government Association General Assembly	Leader
Court of the University of Sussex (annual)	Chairman of Council (substitute Member: Vice-Chairman of Council)

Report to the Governance Committee

Monday 14th December 2020

By the Monitoring Officer

FOR NOTING / DECISION



**Horsham
District
Council**

Not Exempt

<p>REVIEW OF KEY DECISIONS AS REQUIRED THROUGH A MOTION OF FULL COUNCIL DATED 14 OCTOBER 2020</p>
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Executive Summary

A report to the Governance Committee following a motion instructing the Monitoring Officer to review the effects of a Constitutional change that would make any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, a Key Decision.

RECOMMENDATION:

That the Governance Committee notes the findings of the Monitoring Officer and make no changes to the Council's existing Key Decision Framework.

REASON FOR RECOMMENDATION:

To comply with Article 13, Review and Revision of the Constitution.

Background Papers (not included)

Horsham District Council Constitution (amended August 2020)

Minutes of Full Council held on 14 October 2020

Wards affected:

ALL

Contact: Sharon Evans, Monitoring Officer

Background Information

1 Introduction and Background

- 1.1 At a meeting of Full Council on 14 October 2020, an amended motion ('the Motion') worded '*This Council instructs the Monitoring Officer, in line with Article 13 of the Constitution, to review the effects of a Constitutional change that would make any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, a Key Decision. This review to be done within three months and to report those findings to the Governance Committee which will then consider any changes it might recommend to Full Council*' was carried.

2 Relevant Council policy

- 2.1 Key Decisions and how they are operated are set out in Article 11.5 of the Constitution.

3 Details

- 3.1 The Motion seeks a review of the effects of a change to the Council's Constitution that would make any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000 a Key Decision, an additional definition to the existing definition at Article 11.5.
- 3.2 Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, a Key decision is defined in Regulation 8 as 'an executive decision, which is likely —
- (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority’.

3.3 At present, Key Decisions at Horsham District Council are set out at Article 11.5 of the Council’s Constitution and a ‘Key Decision’ means a Cabinet decision which is likely:

a) To involve expenditure or savings of £250,000 or more as well as otherwise being significant having regard to the Council’s budget for the service or function to which the decision relates; or

b) To be significant in terms of its effects on communities living or working in an area comprising two or more wards in the district.

In accordance with section 38 of the Local Government Act 2000, in determining the meaning of “significant” regard will be given to any guidance for the time being issued by the Secretary of State.

3.4 The Cabinet may only make a Key Decision in accordance with the requirements of the Access to Information Procedure Rules and the Cabinet Procedure Rules set out in Part 4 of the Council’s Constitution. Subject to Article 7, the Cabinet meeting will follow the Cabinet Procedures Rules set out in Part 4 of the Council’s Constitution when considering any matter.

3.5 Under Part 4 (Rules of Procedure), 4c 14 (Overview and scrutiny procedure rules), the Council’s Call-in procedure is available to the Chairman or, if absent, the Vice-Chairman, of the Overview and Scrutiny Committee; or any five non-Cabinet Members of the Council may request that the decision be called in.

3.6 Article 4b. 12 Consultation b) of the Constitution states that reports on Key and Cabinet Member non-key decisions will detail the views of the Policy Development Advisory Group that considered the matter and will set out the details and outcome of any consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

- 3.7 Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, it is up to each Council to consider the expenditure or the making of savings and whether they are significant having regard to the budget and set the threshold it considers appropriate as a Key decision. As a comparison, Appendix A shows the different thresholds considered in the key decision making process and the criteria used by neighbouring District / Borough Councils in West Sussex of similar size to Horsham (where the data has been publicly available). The varying levels of expenditure and savings for a key decision for the neighbouring Councils ranging from £100,000 to £500,000.
- 3.8 Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires that where a decision maker intends to make a Key Decision, a document must be published at least 28 clear days and available for inspection by members of the Public.
- 3.9 This Council has a concise and practical definition of what a Key Decision is, many Councils have a much higher threshold than £250,000 including two local Councils identified in Appendix A.
- 3.10 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 took effect from 10 September 2012 and the Council has adopted a definition very closely based on Regulation 8 (referred to in paragraph 3.2 above).
- 3.11 By adding to and amending the Council's current definition of Key Decision to include any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, is likely to delay and hinder the current decision making process for Key and non-Key Decisions as the potential Key Decision is being duplicated through an investigation in the form of a feasibility study and then the same Key Decision process will have to be undertaken again, giving the final detail, if the project proposed is to be implemented.

- 3.12 It is unlikely to be a good use of Council resources simply if the undertaking of research and preparation for a project could be considered a Key Decision based on the proposed criteria due to the proposed amendment. It is not until the research and investigation has taken place, and therefore armed with all the facts and details, that a decision is ready for consideration. The Motion is also capable of hampering the operational function of the Council due to the additional timeframe that would need to be anticipated to fit in with the forward plan, to publish reports, allow for the consultation with Policy Advisory Groups and the extra Cabinet meetings. This would all need to be worked into the initial project process. This could also hamper the flexibility and creativity that both officers and members need to be able to exercise at the initial stages of project planning.
- 3.13 In the event that the proposed change is adopted, there is potential for many more projects to be considered under the Key Decision Framework which could put the Council of risk at challenge if they were later found not to be a Key Decision. This would be due to adding an extra step into the decision process that was later deemed to be unnecessary.
- 3.14 Having reviewed the Council's Constitution in line with the Motion of 14 October 2020 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the Council's existing threshold for Key Decisions remains adequate for the purposes of the Cabinet to make Key decisions which involve a Policy Development Advisory Group and is subject to the Council's Call-in procedure.
- 3.15 It is therefore recommended that no changes are made to Article 11.5 of the Constitution and the Governance Committee notes the contents of this report.

4 Next Steps

- 4.1 Any proposed change to the Council's policy in relation to Key Decisions within the Constitution are not considered to fall within the delegations of the Monitoring Officer to make minor changes to the Constitution. If the Governance Committee were minded to change the Constitution, against the opinion of the Monitoring Officer, as proposed by the Motion, they would have to make a Recommendation to Full Council to make the changes that would reflect that. Following approval by Full

Council the Monitoring Officer will publish the amendments on the Council's website.

- 4.2 As it is not recommended that the current criteria for a Key Decision is amended, the Committee is asked to note the contents of this report.

5 **Outcome of Consultations**

- 5.1 The Motion at Full Council was passed to undertake this investigation. Consultation has taken place with the S151 Officer and the Chief Executive.

6 **Other Courses of Action Considered but Rejected**

- 6.1 The Constitution requires to be updated for effective governance, it needs to be treated as a 'living' document with the need for frequent amendments to ensure it remains up to date and reflects the operation of the Council if needed. In this case, the existing framework for Key Decisions is adequate and has served the Council well since it's inception in September 2012.

7 **Resource Consequences**

- 7.1 There are no direct cost implications arising from not amending the Constitution.
- 7.2 As above at paragraph 3.8, the Council must comply with the requirements of Regulation 9 with regard to Key Decisions. By adding amending the Council's current definition of Key Decision to include any proposal for a feasibility study, appraisal, out-line plan or the like, which might lead to a project with a value of over £250,000, even if it of itself does not involve expenditure of £250,000, as stated above it is likely to impact on Council resources and delay and hinder the current decision making process for Key and non-Key Decisions as the potential Key Decision process is being duplicated through an investigation in the form of a feasibility study and then for the decision itself.
- 7.3 As a consequence of the proposed criteria within the Motion if adopted, any subsequent proposal could be considered a Key Decision despite not meeting the current criteria and will require the publication and preparation of reports not ordinarily required under the current process.

8 Legal Considerations and Implications

- 8.1 It is a legal requirement for the Council to comply with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and have a Constitution. It is the responsibility of the Monitoring Officer to monitor and review the operation of the Council's Constitution to ensure that the aims and principles of it are given full effect and to make recommendations for ways in which the Constitution could be amended in order to enable decision to be taken efficiently and effectively.

9 Risk Assessment

- 9.1 The recommendation within this report is part of mitigating corporate risk by ensuring that the Constitution remains consistent, fit for purpose and user friendly and not amended unnecessarily.

10 Other Considerations

- 10.1 The Constitution and its Procedures, Rules and Codes act as an enabling tool in helping the Council meet its obligations under the Human Rights Act 1998 and the Equality Act 2010.
- 10.2 Consideration of how projects and proposals can secure environmental, social and economic benefits and reduce negative consequences should be an integral part of decision-making and the Constitution will facilitate such considerations.

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APPENDIX A

COMPARISON OF THE KEY DECISION CRITERIA FOR NEIGHBOURING DISTRICT / BOROUGH COUNCILS IN WEST SUSSEX

Local Authority	Key Decision Limit		Key Decision Criteria
<u>Horsham District Council</u>	£250,000		a) To involve expenditure or savings of £250,000 or more as well as otherwise being significant having regard to the Council's budget for the service or function to which the decision relates; or b) To be significant in terms of its effects on communities living or working in an area comprising two or more wards in the district.
Adur and Worthing Councils	Capital Schemes	£250,000	Either: (i) to result in the Council incurring expenditure which is, or the making of savings which are, significant, having regard to the Council's budget for the service or function to which the decision relates, which the Council has currently determined to be; A) Capital schemes, within the approved Capital Programme, in excess of £250,000; or B) the letting/re-letting of contracts of value of £100,000 or more over the period of the contract, where provision has been made in the approved budget; or C) expenditure in addition to the approved budget, requiring virement or a supplementary estimate in excess of £100,000; (ii) Or: to be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the wider area of Adur District Council and Worthing Borough Council jointly.
	Contracts	£100,000	
	Expenditure	£100,000	

Arun District Council	£500,000	<p>A 'key decision' means an executive decision taken by the Cabinet which is likely</p> <p>(i) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates; or</p> <p>(ii) to be significant in terms of its effects on communities living or working in the area comprising two or more wards;</p> <p>A key decision is any decision which would, if implemented, fall in any of the following categories:</p> <ul style="list-style-type: none"> • it is not in accordance with a policy, plan or strategy which forms part of the policy framework approved by the Council; • it may result in the adoption of any additional policy, plan or strategy by the Council; • it is not in accordance with the budget approved by the Council; • it may increase financial commitments in future years above existing budgetary approvals; • it will result in any of the following: <ul style="list-style-type: none"> • the appointment of additional permanent staff for which there is no budget provision; • the acquisition or disposal of land or property with a value in excess of £500,000; • the initiation of local legislation or byelaws; • if it is likely to be of significance in the opinion of the decision taker. <p>Any decision to incur expenditure or savings or realignment of expenditure in excess of £500,000 shall be treated as significant for these purposes. The decision taker shall inform the Monitoring Officer of all decisions (including those with a financial value below £500,000) about which he/she has any doubt as to whether the decision may or may not be significant for the purposes of this paragraph and the Monitoring Officer may determine this as a key decision.</p>
Chichester District Council	£100,000	(i) A "key decision" means an executive decision which:

			<p>(a) is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates or</p> <p>(b) is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the Council's area or</p> <p>(c) is likely to incur expenditure, generate income, or produce savings greater than £100,000</p>
Crawley Borough Council	Revenue Expenditure	£100,000	<p>a) Significantly impact or affect a "significant" number of people/communities living or working in the Borough (usually this is defined as impacting two or more wards)</p> <p>b) Result in the Council incurring expenditure which is, or in the making of savings which, are deemed significant in financial terms:</p> <ul style="list-style-type: none"> • By not being in the Annual Budget and Capital Programme approved by the Full Council. • In the case of revenue expenditure, any projects and new commitments likely to exceed £100,000 per annum. • In the case of capital expenditure, any projects if they involve entering into new commitments in excess of £500,000. • Any contract awards exceeding £500,000. <p>NB: Expenditure in excess of the above levels will not constitute a Key Decision if such expenditure is made as part of the implementation of, and in accordance with, a decision which itself was a Key Decision.</p>
	Capital Expenditure	£500,000	
	Contract Awards	£500,000	
Mid Sussex District Council	No financial limit detailed		<p>Key decisions.</p> <p>A Key decision means an executive decision which is likely</p> <p>a) to result in the Council incurring expenditure which is, or the making of savings which are, significant, having regard to the Council's budget for the service or function to which the decision relates or</p> <ul style="list-style-type: none"> • b) be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Council

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