

Council

27 April 2016

By the Leader of the Council

DECISION REQUIRED



**Horsham
District
Council**

Not Exempt

Report on the review of governance by the Governance Group

Executive Summary

The Localism Act 2011 provides Local Authorities an opportunity to review their governance arrangements. It provides for two permissible forms of council governance i) executive arrangements (the Cabinet and Leader model) or ii) the Committee system. Following the election of a new council in May 2015, the Leader undertook to facilitate a review of the Council's current and future governance arrangements. The review of the Council's governance arrangements was enabled in two parts: i) a Governance Group of members and ii) three all-member seminars – the final one being to hear and discuss the report and proposals of the Governance Group.

This report proposes a range of formal and informal enabling changes to existing governance arrangements.

Recommendations

That the Council is recommended:

- i) To endorse and support the Cabinet and Leader model of governance for Horsham District Council;
- ii) To delegate to the Head of Legal and Democratic Services the enablement of the consequences of this review as detailed in section 3 of this report throughout the Constitution of the Council with immediate effect; and
- iii) To agree that the Accounts, Audit and Governance Committee undertake a review of the effectiveness of such changes to governance arrangements in 2017 after one year of operation.

Reasons for Recommendations

- i) To receive the report of the findings of the Governance Group and enable improvements to the governance arrangements at Horsham District Council.

Background Papers

Governance briefing three – presentation from the Governance Group to all members, 29 March 2016.

Wards affected: All Wards.

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1 Introduction and Background

- 1.1 In the light of the 2011 Localism Act, the Council has the opportunity to review its Governance arrangements. At the start of the new council, the Leader stated that he would be leading a review of the council's governance arrangements. This has been in two parts
- i) A Governance Group consisting of the chairman and vice chairman of scrutiny, the council chairman, the chairman of the standards committee, a cabinet member, the Leader of the minority group, the deputy leader and the Leader of the council.
 - ii) Two all-member seminars where the governance options were explained and discussed and members' queries were answered. Members' comments and opinions were sought. The presentation and members' comments were then circulated to all councillors. Post seminar member comments were also circulated. A third all-member seminar was held to present and discuss the proposals of the Governance Group. The outcome of that seminar is described in section 5 of this report.

2 Relevant Council policy

- 2.1 The Corporate Plan 2016/19 has a council priority of '*Efficiency - Great value services*' which will be better enabled by clear, well understood and supported governance arrangements that allow the council to achieve this.

3 Details

- 3.1 There are two permissible forms of council governance:
- i) The executive (Leader & Cabinet) system
 - ii) The committee system
- 3.2 Horsham District Council currently operates (i) the executive (Leader & Cabinet) system. The national picture of governance arrangements is:
- a) cabinet system (167 shire districts – including those styled Borough)
 - b) an adapted cabinet system –known as “hybrid”- (7 councils)¹
 - c) the committee system. (32 districts)
- 3.4 Any council changing from the cabinet system to the committee system cannot change back for 5 years (Localism Act 2011, Section 9KC). A council operating the cabinet system can produce its own variation of the arrangements and there is no 5 year rule preventing further revision of these.

The Governance Group

¹ The term 'hybrid' was introduced in the document "Rethinking Governance" published by the Local Government Association and the centre for Public Scrutiny in 2013. A 'hybrid' arrangement is one which retains the leader/ cabinet model but effectively adds an advisory board or committee stage prior to decisions being made by the cabinet.

- 3.5 The Governance Group was guided by the Local Government Association publication '*Rethinking Governance*' 2013. The Group examined how governance arrangements worked in similar councils and evaluated those along with a detailed understanding of how the Cabinet system currently works at Horsham District Council.
- 3.6 Councils that had changed their governance arrangements were chosen for comparison: Maidstone & Canterbury (committee system) and Sevenoaks & Tunbridge Wells (hybrid).
- 3.7 The Governance Group met on 12 occasions, visited other councils and received representations from experienced officers who had worked in all arrangements.
- 3.8 The Group asked that seminars be held for all council members to explain the history of council governance, possible change considerations and briefings about how other councils worked. The seminar notes were then circulated to all members.
- 3.9 Any members with a particular view on governance were invited to come and give those views to the Governance Group. Officers were available to members throughout the review to give further explanation and hear any members' views that were to be passed on to the Governance Group.

The role of Scrutiny in governance

- 3.10 The Local Government Act of 2000 introduced Scrutiny as a major part of governance so it was felt that an examination of the role of Scrutiny should be included in the review. All councils operating cabinet governance arrangements must have an Overview and Scrutiny Committee. They are intended as a backbench counterbalance to the Cabinet.
- 3.11 Scrutiny's role is to question the council's cabinet, its chief officers and representatives of certain other organisations and to make recommendations to the cabinet and (where appropriate) to the council.
- 3.12 It was felt that the HDC Scrutiny function was an important part of HDC governance and was considerably appreciated by members. The group felt that it should be retained under any changed governance arrangement and that ways to empower it should be examined. Neither of the comparator councils with the committee system has a Scrutiny function.

Comparison of current Horsham District Council governance arrangements with committee and hybrid arrangements

3.13 The Governance Group evaluated the governance arrangements at HDC alongside committee and hybrid arrangements against five key lines of enquiry sourced from the *Rethinking Governance* publication.

	Horsham 2015	Committee	Hybrid
Member Involvement	Backbench involvement in policy development but pathway not always clear	Officers generate reports, and lead at committee. Few members are engaged in policy development	Executive members generate policy but advice of the advisory function arrives at the end of process
Efficiency	Existing decision making responsibilities may not be well understood	Has many meetings and often takes operational decisions	Officers take operational and administrative decisions
Accountability	Cabinet Member and Cabinet collective accountability. Scrutiny Committee. Accountability not always clear.	No scrutiny function and no individual member responsibility	Appears to reduce scrutiny function
Timely decision making	Decisions may be taken quickly	Requires a committee meeting. Can be very fast or very slow depending on matter.	Adds an extra layer before cabinet
Openness	Emerging forward plan and 'thinking space' advisory function	Public committee stage, but no advisory stages nor Forward Plan	Lack of member involvement in early stages of policy development

Alignment of member seminar and Governance Group views

3.14 Having considered the alternatives to the existing arrangements at Horsham, and having heard the views of members at two seminars, it appeared that there was general alignment in a view that cabinet governance arrangements should be retained but modified. These changes should emphasise:

1. Involving backbenchers in policy development at an early stage
2. Accountability with a strong Scrutiny function
3. Engagement and commitment from backbenchers
4. Member responsibility rather than an officer led culture
5. Clear pathways to efficient/timely decision making

Horsham governance 2016 onwards

- 3.15 The Group examined the existing HDC system to see how this could be changed to include the guiding principles that had emerged.
- 3.16 It was felt that while the advisory group system at Horsham District Council had been criticised, it did provide backbenchers with the opportunity to give their views early on evolving cabinet level decisions. It was seen that the hybrid 'advisory board' system formalised backbench involvement but this tended to be heavily towards the end of policy making. It was clear that backbench members had not generally participated in policy development before the publication of an advisory committee/board report. The group looked at what adaptations could be made to the existing HDC system to combine the advantages of the hybrid system with an early and greater advisory role for backbenchers.
- 3.17 The Governance Group believed that it was possible to combine obtaining the views of a nominated group of members per portfolio, who meet before a cabinet level decision is made (hybrid system) with the more relaxed, less formalised, positive features of advisory groups participating in early policy development and initiation. Having 'room to think' was a clear benefit recognised by both case law and the original authors of the 2000 model constitution. Members should be able to express their opinion during the early stages of policy development.
- 3.18 A clear path from policy development to final agreement should be visible and well understood by members.
- 3.19 The Group believes that it would be highly desirable to implement any changes in governance so that they can run from the beginning of the forthcoming council year.
- 3.20 It further proposed that a review of the effectiveness of the changes to governance be undertaken by the Accounts, Audit and Governance Committee after Annual Council 2017.

Proposals

- 3.21 The Governance Group propose that the following changes should be introduced:
- A single Policy Development Advisory Group (PDAG) should be appointed for each Cabinet portfolio at each meeting of Annual Council [in accordance the with Local Government (Committees and Political Groups) Regulations 1990];
 - Annual nominations of membership of PDAGs will be made by group leaders and agreed by members at the Annual Council meeting. Subsequent (in-year) changes to membership will be delegated to group leaders;
 - PDAG membership size will be 11 to include the Cabinet Member who will chair the meeting. A variance in size (not exceeding 11) will be permitted by notification of group leaders and the subsequent assent of Annual Council. There will be a quorum of three (including the Cabinet Member) and membership will be politically balanced;
 - An annual timetable of 6 PDAG meetings per Group per year will be agreed at Annual Council;
 - Officers will publish an agenda, attendance and notes for each meeting of PDAGs on the council's website and members will be able to see a list of 'what's newly published' in one place;
 - Visiting members may attend PDAG meetings by prior notice and speak at the discretion of the chairman;
 - A record of the final views of PDAGs will be included in cabinet reports;
 - Sub-groups of a PDAG can be created from the membership of the PDAG and with the assent of the group, duly noted by the Proper Officer;
 - At the request of the Leader, additional in-year PDAGs may be created by approval of full council;

- The terms of reference of a PDAG will be to advise Cabinet Members on their areas of responsibility;
- These proposals would replace any existing constitutional references to “advisory groups”;
- The Cabinet meeting in public and not officers will take key decisions based on a clearer financial value; and
- Audio broadcast and the making available of recordings of public meetings on the Council’s website be trialled for three months.

Scrutiny 2016 onwards

3.22 Members felt that a strong Scrutiny function independent of the executive (cabinet) aided good governance. The Governance Group examined the existing HDC scrutiny function against good practice scrutiny functions elsewhere and proposes that:

- The existing overall Scrutiny structure be retained and that the committee that discharges the function be called the ‘Overview and Scrutiny Committee’;
- Cabinet Members be held to account by a programme of appearance before the committee;
- Existing ‘working groups’ be renamed ‘sub-committees’ to permit the discharge of the Overview & Scrutiny function directly where appropriate; and
- Enable the ‘call-in’ function to allow the Overview & Scrutiny committee to challenge decisions taken by the cabinet.

The effect of proposed changes

3.23 The Governance Group believe that its proposals will have the following effects:

- **Member involvement:** Clear member advisory pathway at the earliest possible stage
- **Efficiency:** Clearer key-decision making responsibilities
- **Accountability:** Strong Scrutiny function. Clear line of cabinet member accountability
- **Timely decision making:** Decisions, subject to advisory stage may be taken quickly
- **Openness:** Published agendas, member attendance, and policy development advisory group conclusions, benefitting from ‘thinking space meetings

4 Next Steps

4.1 This report recommends that delegation be made to the Monitoring Officer to enact the consequential and administrative changes to the constitution of the recommendations so that the requirements of this report may be discharged for the 2016/17 municipal year and thereafter.

5 Outcome of Consultations

5.1 Paragraph 1.2 above details that three all-member seminars were facilitated. The summary feedback from the third all-member seminar was:

- The proposals that strengthened Scrutiny were welcomed, particularly the clarification of decisions that may be 'called-in' and the strengthening of the accountability of cabinet members;
- Support for the formalisation of policy development advice at the earliest possible stages of decision making, with improved administrative support and publication of agenda and notes;
- Endorsement of the change to the cabinet report template to require the views of the PDAG to be included in summary form;
- Support for the benefits of a clear Forward Plan of forthcoming decisions for a 12 month rolling period;
- Endorsement of the need for all members to support and engage in the council's governance arrangements; and
- Acknowledgement that the public perception of governance arrangements at HDC would be improved by the modifications proposed.

5.2 The proposals in this report were supported and endorsed in full at the third briefing on governance for all members held on 29 March 2016. The intention to receive the report of the governance group was included on the publicly available Forward Plan from February 2016. There was no legislative nor regulatory requirement to conduct any form of public consultation on this matter as there is no formal change in governance arrangements as defined by the Localism Act 2011.

6 Other Courses of Action Considered but Rejected

6.1 The Governance Group considered two alternative forms of governance arrangements, the committee system and the modified cabinet and leader model known as hybrid. Paragraph 3.13 of this report contrasts each consideration and paragraph 3.21 proposes the course of action for governance at Horsham District Council.

7 Financial Consequences

7.1 The Council needs to have well-understood and supported governance arrangements to meet the ambitions set out in the Corporate Plan. The financial consequences of this report relate to the potential resource requirement of improving the advisory function as described in paragraph 3.21. Further, whilst the trial of new audio technology has no financial implications at this stage, an annual revenue cost would be subsequently generated should the trial prove acceptable to members. A consequent executive report may be made after the trial as required.

8 Legal Consequences

8.1 The Council is permitted to review its governance arrangements pursuant to the Localism Act 2011. The setting of the financial threshold for a key decision is a Council decision pursuant to the Local Government Act 2000. Improved governance arrangements will further strengthen the legitimacy of the Council's actions and will provide mitigation against Corporate Risk as described in section 10 of this report.

9 Staffing Consequences

- 9.1 Staffing arrangements are the responsibility of the Head of Paid Service. It is proposed that the changes in governance recommended herewith be met within existing resources for the time-being subject to review by the Monitoring Officer and the Head of Paid Service after 3 months of operation.

10 Risk Assessment

- 10.1 The recommendations within this report are part of mitigating a Corporate Risk described in the Corporate Risk Register presented to the Accounts, Audit and Governance Committee, 23 March 2016. The risk is CRR08 Governance, *Source*: The Council's decision-making processes are based on Constitution that is overly bureaucratic and unnecessarily complicated. *Event*: Non-compliance with the Constitution and delays in decision-making. The potential consequences described in the register are: opportunities lost, complaints / claims / litigation, financial losses and lack of openness and transparency.
- 10.2 Certainty of around the parameters of decision making mitigates risk.

Appendix 1

Consequences of the Proposed Action

<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>Section 17 of the Crime and Disorder Act 1998 requires the Council to do all that it reasonably can to reduce crime and disorder. The governance arrangements at the Council enable the meeting of that duty. There are no crime and disorder implications as a result of this report.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>The Human Rights Act 1998 requires not only that the Council shall not infringe the convention rights but also (by inference) promotes the convention rights. The governance arrangements at the Council enable the meeting of that duty.</p>
<p>What is the impact of the proposal on Equality and Diversity?</p>	<p>The Equality Act 2010 brings about an obligation upon the Council as a public authority to have due regard to the need to:</p> <ul style="list-style-type: none">a) Eliminate unlawful discrimination, harassment and victimisation;b) Advance equality of opportunity between different groups; andc) Foster good relations between different groups. <p>The governance arrangements at the Council enable the meeting of that duty.</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>There are certain activities where the need to consider environmental and social impacts alongside traditional economic/financial considerations is a legal requirement:-</p> <ul style="list-style-type: none">• if the report relates to procuring and/or commissioning the Social Value Act 2012 applies (regard must be given to economic, social and environmental well-being),• Climate Change Act 2009 includes legally binding targets to reduce carbon dioxide emissions and for public sector organisation to prepare for changes to the climate, such as increase incidence of flooding and heatwaves,• Significant plans and programmes might require a Strategic Environmental Assessment/Sustainability Appraisal to be completed (there are limited instances where this would apply). <p>Beyond these legal requirements 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. The governance arrangements at the Council enable the meeting of that duty.</p>