

## **Meeting of the Council – 2<sup>nd</sup> December, 2013**

### **Report of the Cabinet**

### **Annual Review of the Constitution**

#### **Purpose of Report**

1. To consider the proposals of the Cabinet regarding the annual review of the Constitution.

#### **Background**

2. The Council introduced its written Constitution in May 2002.
3. Section 37 of the Local Government Act 2000 requires the Council to keep the Constitution up to date. This is reflected in Article 15, which requires the Monitoring Officer to monitor and review the operation of the Constitution in order to ensure that the aims and principles are given full effect.
4. Full Council is responsible for approving changes to the Constitution after consultation with the Cabinet. An exception to this is that the Leader, in consultation with the opposition Group Leader, may approve amendments to the Scheme of Delegation from time to time.
5. The Constitution is an important vehicle by which the Council promotes its overall democratic governance arrangements.
6. The last annual review of the Constitution was undertaken in November, 2012. All previously approved amendments have been fully implemented. Amendments are routinely made to update legal provisions and reflect ongoing operational issues.
7. This report takes account of ongoing changes in the national and local context and it is recognised that further amendments to the Constitution may be necessary during 2013/14 and beyond.

#### **Public Health Functions**

8. Following the transfer of public health functions to the Council in April, 2013, work has been undertaken to include appropriate references to statutory public health functions in the portfolio of the Cabinet Member for Health and Wellbeing with associated ongoing delegations to the Director of Public Health. These primarily relate to functions contained in the National Health Service Act 2006, the Health and Social Care Act 2012 together with the associated statutory guidance and regulations.

9. In October, 2013, the Leader of the Council made amendments to Cabinet portfolios, which included changes to functions relating to Environment and Culture and Health and Wellbeing. These are set out in Delegated Decision Sheet DCR/34/2013 (the full decision sheet is available on the website). Further work is being undertaken to include further references to the statutory functions of the Director of Public Health in the Constitution. These are set out in detailed regulations and guidance from the Department of Health.

### **Pay Policy Statement**

10. Under the provisions of the Localism Act 2011, the Council is required to approve its Pay Policy Statement on an annual basis and include the statement on the website. For the past two years, the Pay Policy Statement has been presented to the Council for approval in February. The Department for Communities and Local Government has now issued supplementary guidance, requiring full Council to be given the opportunity to vote on salary packages for new appointments that exceed a threshold of £100,000. Similarly, the guidance requires that any severance packages to employees leaving the authority that exceed the £100,000 threshold should also be submitted to full Council for approval.
11. In practice, the Council will consider the above matters following a recommendation from the Appointments Committee. The revised guidance will be reflected in the Constitution by amending the terms of reference of the Appointments Committee to provide that any recommendations on new appointments or severance packages that exceed the £100,000 threshold will be the subject of a recommendation to full Council. This amendment will be cross referenced in the functions reserved to full Council under Article 4 and in the Officer Employment Procedure Rules under Part 4 of the Constitution.

### **Members' Planning Code of Good Practice**

12. A detailed review of the Members' Planning Code of Good Practice, as set out in Part 6 of the Constitution, is currently in progress. The review is taking account of changes to the Members' Code of Conduct, the rules on declaration of interests and various other aspects associated with the development control process. The revised Code of Good Practice will be reported to the Development Control Committee in the first instance. Recommendations will subsequently be presented to the Council for future inclusion in the Constitution.

### **Ernest Stevens Trusts Management Committee**

13. The Council appointed the above Management Committee following the decision to replace the former Area Committees with the 10 Community Forums. The Management Committee comprises one ward Councillor from each of the Cradley and Wollescote, Lye and Stourbridge North, Norton, Pedmore & Stourbridge East, Quarry Bank and Dudley Wood and Wollaston & Stourbridge Town wards.

14. The former Area Committees had functions to deal with issues relating to local trusts/charities. In practice, however, the vast majority of business related to the Ernest Stevens Trusts under the delegated powers of the former Stourbridge Area Committee. As a general 'catch all' provision, it is recommended that the terms of reference of the Management Committee be extended to include all Trust land in the Borough. It is considered appropriate that this general power be allocated to a 'non-executive' Committee. In occasional cases, where the Management Committee is dealing with matters not relating to the Ernest Stevens Trust, substitution will be permitted from the wider political groups to enable the appointment of ward councillors for the area concerned for consideration of that business only.

#### **Signing of Decision Sheets in the absence of Cabinet Members**

15. In situations where a Cabinet Member is absent for an extended period of time, the general requirement is that all Decision Sheets should be referred to the Leader. In relation to the Directorate of Corporate Resources, it is recommended that the Deputy Leader (Cabinet Member for Finance) be authorised to sign decision sheets in the absence of the Cabinet Member for Human Resources, Legal and Property. This will avoid any potential delays in view of the high volume of decision sheets presented to the Cabinet Member for Human Resources, Legal and Property, particularly relating to staffing issues, where there is a budgetary aspect to the items under consideration.

#### **Recording of Council, Cabinet, Committee and Other Meetings**

16. The Department for Communities and Local Government has issued a guide entitled 'Your Council's Cabinet – Going to its meetings, seeing how it works'. This document makes reference to the filming and recording of meetings as well as the use of blogging, tweeting and other such electronic media. The guide includes a clear presumption that local authorities should not prevent the use of reasonable facilities for reporting on meetings. Councils are advised to allow the filming of councillors and officers at meetings that are open to the public.
17. Council Procedure Rules currently make provision for full Council meetings to be recorded for live broadcast on the Internet. The Council does not retain copies of these recordings for any other purpose other than the live broadcast. For all other meetings, no photographs may be taken, tape recordings made or other mechanical, electronic or similar apparatus used without the consent of the meeting concerned.

18. No objections have been raised to prevent individuals using their own mobile devices to use Twitter, similar social media or blogging facilities during meetings. With regard to filming or audio/visual recording, however, the guide recognises that the Council may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is being filmed. It is recommended that anyone wishing to film should liaise with Council staff before the start of the meeting. The guide suggests that the Council should adopt a policy on the filming of members of the public speaking at a meeting so as to allow people to object to being filmed if they so wish, without undermining the broader transparency of the meeting.
19. It is recommended that Council Procedure Rule 24.6 be amended to provide that the Council has no objection to the use of social media, blogging or similar electronic facilities during any meetings to which the public have access. With regard to the use of filming or any other audio/visual recording equipment during any meeting, this would still be subject to the consent of the meeting being obtained in advance. In practice, this will ensure that no person is filmed without prior knowledge and the use of the equipment is not disruptive to the efficient conduct of business.

#### **Amendments to the Terms of Reference of the West Midlands Joint Committee**

20. The West Midlands Joint Committee (WMJC) comprises the seven Metropolitan District Councils of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton. It was established in 1986 following the abolition of the West Midlands County Council. The Committee is a joint committee for the purposes of Part VI of the Local Government Act 1972.
21. The overall objective of the WMJC is to co-ordinate actions on important issues affecting the local authorities in the West Midlands, and to provide a vehicle for communicating these actions and their needs to Government and other influential bodies.
22. The Government has highlighted the importance of effective governance arrangements as one of the key requirements that must be met in devolving powers and funding to sub-regions. It is recognised that strengthened Transport Governance is a prerequisite to furthering significant devolved funding to the West Midlands, including Growth and City Deals, which must contain proposals for stronger governance across their functional economic area, so that decisions necessary for the growth of the area as a whole can be taken quickly and effectively.

23. The meeting of the West Midlands Metropolitan District Leaders Group on the 23rd January, 2013 agreed a set of principles for Transport Governance, recommended them to the Joint Committee and tasked officers with exploring how Transport Governance relating to the Integrated Transport Authority (ITA) could be taken forward.
24. At the Leaders meeting in March, a preferred route to implement the changes was agreed, which was to put in place a shadow board (through the existing Joint Committee structure) while progressing the required review to be considered by the Secretary of State. On 29th April, 2013, the West Midlands Joint Committee subsequently agreed to undertake a Governance Review of the West Midlands Integrated Transport Authority (WMITA).
25. Following this, the West Midlands Joint Committee meeting of the 12th June, 2013 agreed to set up a Shadow ITA pending formal approval by the Secretary of State. To accommodate this and other variations in respect of the Joint Committee, the seven West Midlands authorities are being recommended to endorse the revised Terms of Reference of West Midlands Joint Committee, as set out in Appendix 1. The amended terms of reference seek to:
  - update the provisions relating to Birmingham Airport to match what has previously been agreed by the West Midlands Districts.
  - provide for effective decision making between meetings.
  - provide for the new duty to co-operate.
  - accommodate the disbanding of the former West Midlands Planning and Transportation Sub-Committee.
  - create the Shadow Integrated Transport Authority Board.
26. It is recommended that the Council formally endorse the revised Terms of Reference of the West Midlands Joint Committee, as set out in Appendix 1, as amended by the Joint Committee at its meeting on 12<sup>th</sup> June, 2013. Following the report to the Cabinet on 30<sup>th</sup> October, 2013, the Council has now been requested to authorise the Leader of the Council, in consultation with the Chief Executive, to send or sign a letter of support to the Secretary of State for Transport in connection with the proposed structural changes to the Integrated Transport Authority.

### **Black Country Executive Joint Committee**

27. City Deal and Growth Deal is a Government initiative under which certain powers, such as the ability to set and spend budgets, are devolved from central government to local authorities in a bid to increase economic growth. The Black Country sub-region has been successful in its application to be included in the City Deal and Growth Deal initiative, and whilst the details of how it will precisely work and its core elements are to be finalised with the Government, the Government wants to see a decision making entity that is both accountable and transparent. Discussions with the Government have resulted in the proposal for a Joint Executive Committee for the Black Country.

28. The Association of Black Country Authorities has agreed that each Councils' Cabinet would seek to set up an Executive Joint Committee, comprising of the Leaders of the four Black Country Councils, to be the lead decision making forum for City Deal and Growth Deal. The proposed Constitution of the Joint Committee including Terms of Reference is set out at Appendix 2.
29. Paragraph 4 of the Black Country Executive Joint Committee terms of reference refers to the allocation of spending and capital expenditure programmes. For clarification, this should not be construed as overriding the powers that are properly reserved to this Council to make budget decisions in relation to this Council's revenue or capital expenditure. As the City Deal develops, any revenue or capital commitments will still need to be approved by the Cabinet and full Council in the usual way.
30. The Government expect as part of the City Deal and Growth Deal arrangement that the local business community, and in particular the Local Enterprise Partnership (LEP) take a key role in decision making as well as both shaping and influencing the outcomes of City Deal and Growth Deal. The Association of Black Country Authorities and the Chair of LEP have agreed that the Joint Committee should have an Advisory Board, which forms part of the recommendation and decision-making processes.
31. The Advisory Board will comprise the Black County Councils' four Cabinet Members for economic development and regeneration (voting), four representatives from the LEP (voting), Executive Directors for economic development and regeneration of the four Councils in an advisory role (non-voting), representatives from central government as necessary in an advisory role (non-voting), and such other persons and/or bodies as the Advisory Board feel will assist it in its decision making in an advisory role (non-voting). The precise details of how this will operate in practice will depend upon the approach to managing City Deal and Growth Deal agreed between Government and the sub-region.
32. It has been agreed between the four Black Country Chief Executives that Walsall MBC will act as Secretary to the Black Country Executive Joint Committee and for the purposes of complying with the necessary legislation Walsall will publish the meeting dates, agenda, reports and take minutes. Finally, Walsall MBC's constitution will apply to the decision-making processes.
33. The Cabinet resolved to endorse the establishment of a Black Country Executive Joint Committee for the purpose of dealing with the Government's agenda for greater local decision-making under City Deal and Growth Deal.

### **Ongoing Governance Reviews**

34. Over the past 12 months, the Council has introduced significant changes to its governance structures, most notably the introduction of Community Forums and the revised Scrutiny arrangements. The Community Forums are the subject of an ongoing process of monitoring and review in consultation with the Chairs/Vice-Chairs and Lead Officers. The Overview and Scrutiny Management Board is overseeing the progress of the new scrutiny arrangements. The outcome of the monitoring and review process will be reported to the Council to consider any amendments for the 2014/15 municipal year onwards.

## **Finance**

35. There are no financial implications arising from this report. Any costs arising from compliance with the Constitution are met from existing budgets.
36. In relation to City Deal, there will be financial implications in terms of government funding streams being made available. However, the details of those are yet to be finalised in negotiations with central Government and will need to form the basis of a future report.

## **Law**

37. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up to date.
38. The West Midlands Joint Committee is constituted under Part VI of the Local Government Act 1972. The Black Country Joint Executive Committee will be established under the provisions of the Local Government Act 1972, the Local Government Act 2000 as amended by the Localism Act 2011 and regulations issued by the Secretary of State.

## **Equality Impact**

39. This report complies with the Council's policies on equality and diversity and there are no particular implications for children and young people. An Equality Impact Assessment in relation to the City Deal proposals will need to be carried out when all the detail is available.
40. On consideration of the above, the Cabinet, at its meeting held on 30<sup>th</sup> October, 2013, resolved to recommend the Council as set out in paragraph 41 below.

## **Recommendations**

41. The Council be recommended:
  - (a) That the work undertaken and in progress to integrate public health functions within the Constitution, as referred to in paragraphs 8 and 9, be noted.
  - (b) That the terms of reference of the Appointments Committee be amended, with consequential changes elsewhere in the Constitution, to provide for salary packages for new appointments and any severance packages for employees that exceed £100,000 to be recommended to full Council for approval as referred to in paragraphs 10 and 11.
  - (c) That the review of the Members' Planning Code of Good Practice, as referred to in paragraph 12, be noted.
  - (d) That the proposed addition to the terms of reference of the Ernest Stevens Trusts Management Committee be approved as set out in paragraphs 13 and 14.
  - (e) That the Deputy Leader (Cabinet Member for Finance) be authorised to sign Decision Sheets in the absence of the Cabinet Member for Human Resources, Legal and Property, as referred to in paragraph 15.

- (f) That the approach to the recording of Council, Cabinet, Committee and other meetings, as set out in paragraphs 16 to 19, be approved and that Council Procedure Rule 24.6 be amended accordingly.
- (g) That the amended Terms of Reference for West Midlands Joint Committee, as described in paragraphs 20 to 26 and Appendix 1 to this report, be approved insofar as they relate to the executive functions of Dudley Metropolitan Borough Council and that the Director of Corporate Resources be authorised to take any necessary and consequential actions to give effect to this decision.
- (h) That the Leader of the Council, in consultation with the Chief Executive, be authorised to send or sign a letter of support to the Secretary of State for Transport in connection with the proposed structural changes to the Integrated Transport Authority.
- (i) That the establishment of the Black Country Executive Joint Committee, as referred to in paragraphs 27 to 33, be approved and the Constitution be amended accordingly.
- (j) That the constitution of the Black Country Executive Joint Committee, including the Terms of Reference set out in Appendix 2 to this report, be endorsed and the associated functions and powers be delegated to the Executive Joint Committee, subject to the requirement that any revenue or capital expenditure programmes or commitments are approved by the Cabinet and full Council in accordance with the existing Constitutional requirements of Dudley MBC.
- (k) That the Leader of the Council be appointed as the Cabinet's representative on the Black Country Executive Joint Committee together with a named Member to act as a substitute.
- (l) That the proposals for the City Deal and Growth Deal Advisory Board, as set out in paragraphs 31 and 32 of this report, including the provision for the appointment of the Cabinet Member for Regeneration, be approved.
- (m) That the Leader of the Council, in consultation with the Chief Executive and appropriate Directors, be authorised to make any necessary and consequential changes to the terms of reference of the Black Country Executive Joint Committee that may be required from time to time to implement the proposals in this report.
- (n) That the appointment of Walsall MBC to act as Secretary to the Black Country Executive Joint Committee and Advisory Board be noted.
- (o) That the ongoing reviews of governance arrangements, as referred to in paragraph 34, be noted.



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**Leader of the Council**