

CONSTITUTIONAL ISSUES FOR CONSIDERATION BY THE STANDARDS COMMITTEE / COUNCIL ASSEMBLY

Issue	Reference	Proposed Changes/Options	Views of Executive / other committees	Comments/ Recommendation
Summary & Explanation		Reference to Community Councils		Noted.
Article 2: Members of the Council	2.04: Key tasks of Chairs	Broad outline in respect of Chairs of Community Councils		Standards Committee to recommend changes:- Amended Title to read: "Key Tasks of Executive Members, Chairs of Overview & Scrutiny Committees/Sub-Committees, other committees <i>and Community Councils</i> " Add new section 2.04 (d): (d) Chair of Community Councils will take specific responsibility for the development of the Community Council's workplan, propose arrangements for the involvement of the community and participate in consultation and decision-making in local area.
Article 3: Citizens and the Council	3.01: Participation.	Any specific means of participation at Community Councils e.g. public question time, deputations.		Noted.
Article 6:				

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Overview & Scrutiny Committee and Sub-Committees				
<u>Functions of Scrutiny</u>	6.02: General Role 6.03: Specific Functions – Scrutiny 6.05: Terms of Reference	<p>Officers have identified a number of issues for consideration:</p> <p>What should the relationship be between scrutiny committees and Community Councils?</p> <p>Should Community Councils be open to scrutiny in a wide sense, or should the formal scrutiny role be confined to individual executive decisions, which have been delegated to Community Councils?</p> <p>Should Community Councils be able to request scrutiny inquiries on given topics, as the Executive and Council Assembly do in the present arrangements?</p>	<p><u>Overview & Scrutiny Committee</u> considered the issues/options set out in column 3 and recommended that in respect of the function of scrutiny:</p> <p><i>That Community Councils be enabled to request scrutiny inquiries on given topics, as are the Executive and Council Assembly under present arrangements.</i></p>	<p>Standards Committee to recommend to Council Assembly.</p> <p>On basis of Overview & Scrutiny Committee's recommendation the following amendment to the Terms of Reference is proposed:</p> <p>6.05 (c) "To receive requests from the Executive, <i>Community Councils</i> and/or Council Assembly for reports from Sub-Committees and to allocate them if appropriate to one or more Sub-Committees.</p>
Article 8: Regulatory and other Committees	8.01: Regulatory and other Committees			
<u>Delegation of</u>		The options are: -	<u>Executive</u> recommended Option (B)	Standards Committee to recommend

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<p><u>planning and licensing functions.</u></p> <p>There is a question of how the planning and licensing functions are exercised. This varies depending how these functions are delegated to Community Councils. There would be little difference in practice to the division of functions and responsibilities</p>		<p>A) Community Councils exercise planning and licensing functions as Section 101 committees deriving their powers from Council Assembly; or</p> <p>B) Community Councils exercise these functions as sub-committees of the Planning Committee or Licensing Committee.</p>	<p>- that Community Councils exercise planning and licensing functions as sub-committees of the Planning and Licensing Committees.</p> <p>The <u>Planning and Licensing Committees</u> also supported Option B.</p>	<p>preference.</p> <p>Option B has one potential advantage as the Planning and Licensing Committee would have the same functions as the Community Councils and could recover jurisdiction should they wish, e.g. to deal with the rare cases where the Community Council is unable to deal with a matter because of personal interests or decided views. This would result in the Community Councils having a consistent organisational role whether exercising executive or non-executive functions, since they would be operating as sub-ordinate bodies of the Executive, Planning and Licensing Committees.</p>
<p><u>Roles and Responsibilities</u></p>		<p>Roles & Functions for Planning and Licensing have been drafted in line with the decision of Council Assembly on 27th November 2002:</p> <ul style="list-style-type: none"> • Planning (see Appendix 4) • Licensing (see Appendix 5) <p>These reflect demarcation of planning and licensing responsibilities between the main committees and</p>	<p><u>Planning Committee</u> noted the demarcation of responsibilities. It recommended a review of the effectiveness of the split after 6-month.</p> <p>The <u>Licensing Committee</u> supported the allocation of responsibilities. It asked for a review report on the delivery of licensing functions after 6-months.</p>	<p>Standards Committee to note and make any recommendations.</p>

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		<p>Community Councils.</p> <p>The exact line of delegation will be subject to a decision on the mechanism for delegation of functions. set out above.</p>		
Article 9 - Standards Committee	9.03 Roles and Functions	The Role and function of the Standards Committee will need to be amended in 9.03(o) to accommodate the delegation of appointments of Primary School Governors.	<u>Executive</u> supported this change.	<p>Recommend that 9.03(o) be reworded as follows:</p> <p>“To constitute the voluntary bodies appointments panel to make recommendations on appointments to Southwark charities, to maintain a list of prospective school governors for appointment and to make appointments to secondary school governing bodies.”</p> <p>Also add following wording to footnote:</p> <p>“Appointment of Local Education Authority governorships to primary school governing bodies will be made by the relevant Community Council from the list of prospective school governors maintained by the voluntary bodies appointments panel.”</p>
Article 10: Area Committees and Forums	10.01 Community Councils 10.02 Composition and Functions 10.03(a) Conflict of	The references have been changed from “Area Committees” to “Community Councils”. The revised wording of Article 10 describes the form,		Article 10 revised in line with the decision of Council Assembly. (See Appendix 6).

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	Interest 10.04 Access to Information 10.05 Executive Members on Community Councils	composition and functions of Community Councils and is attached as Appendix 6.		
<u>Article 13 - Decision-making</u>	New 13.09: Decision Making by Community Councils	A new paragraph on the procedures to be followed for Community Council decision-making needs to be added.	None.	Add new paragraph 13.09 and renumber subsequent paragraph: <i>“13.09 Decision making by Community Councils</i> <i>“Subject to Article 13.08, Community Councils will follow the Committee Procedure Rules set out in Part 4 of this Constitution as apply to them.”</i>
Part 3A: Matters reserved to Council Assembly	Clauses 7, 8, 9 & 11	Add “Community Councils” This proposed change will give Council Assembly the authority to agree terms of reference (Clause 7), decide the composition of Community Councils (Clauses 8 & 9) and take decisions on functions not delegated to Community councils or another body. This will ensure consistency within the constitution.		Recommend in Clauses 7, 8, 9 & 11 the addition of “ <i>Community Councils.</i> ”

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<p>Part 3D: Matters Reserved to Planning Committee/Community Councils.</p>	<p>Responsibility for Functions Part 3D</p>	<p>To reflect delegation of planning functions to Community Councils</p>	<p><u>Executive</u> noted and referred the draft Roles and Functions (Article 8) and Matters Reserved (Part 3: Responsibility for Functions) allocating the planning functions for the Main Planning Committee and Community Councils (Appendix 4) to the Planning Committee for consideration.</p> <p>The <u>Planning Committee</u> noted the proposed demarcation of responsibilities between Community Councils and the Committee in respect of planning functions.</p> <p>The <u>Planning Committee</u> also recommended that the effectiveness of this split should be considered as part of the proposed six-month operational review of Community Councils.</p> <p><u>Executive</u> also recommended that the six month review of Community Councils should include a review of consultation regarding Section 106 of the Town and Country Planning Act funds, and whether Community Councils should be consulted about the expenditure of funds under £100,000.</p>	<p>Matters Reserved revised in line with the decision of Council Assembly. (see Appendix 4)</p>

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Part 3E: Matters Reserved to Licensing Committee/Community Councils.	Responsibility for Functions Part 3E	To reflect delegation of licensing functions to Community Councils	<p><u>Executive</u> noted and referred the draft Roles and Functions (Article 8) and Matters Reserved (Part 3: Responsibility for Functions) allocating the licensing functions for the Main Licensing Committee and Community Councils to the Licensing Committee for consideration.</p> <p>The <u>Licensing Committee</u> supported the allocation of functions.</p>	Standards Committee to consider Matters Reserved revised in line with the decision of Council Assembly. (see Appendix 5)
Part 3: Matters Reserved to Community Councils	Responsibility for Functions Part 3	<p>New section on Matters Reserved drafted in line with the decision of Council Assembly. (see Appendix 7).</p> <p>This draft is based on the decisions of Council Assembly on 27th November 2003.</p>	None.	Standards Committee to consider Matters Reserved revised in line with the decision of Council Assembly. (see Appendix XX)
Council Assembly Procedure Rules	9: Application to Committees and Sub-Committees	<p>The options include either:</p> <p>Option A - Extending the existing Council Procedure Rules to cover Community Councils; or,</p> <p>Option B - Introducing a new separate section outlining Committee Procedure Rules.</p>	<u>Executive</u> supported option B.	The creation of a new Committee Procedure Rules is recommended, as this would be more transparent to the public. Protocols would also be prepared on licensing and planning issues.

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Committee Procedure Rules (New Section)	Council Procedure Rules – Application to Committees and Sub-Committees	<p>Existing provisions in respect of Committee are currently included in the Council Procedure Rules. To provide greater clarity on procedures a separate Committee Procedures Rules has been drafted.</p> <p>Consultation with the Community is currently being undertaken. Therefore it has not been possible to specify the form of the meeting. However as with all committees the option for groups of persons to submit deputations has been included. Officers have also included a section to providing a framework for local question-times/public forums. The rules allow flexibility for adjournments to enable informal processes to inform the decision-making and consultative parts of the meeting, as appropriate. It also addresses issues such as the importance of ensuring councillors and the public are</p>	<p><u>Executive</u> supports the drafting of a new section on Committee Procedure Rules covering Committees, Sub-Committees and Community Councils. These should be broad and allow innovation and flexibility.</p>	<p>Standards Committee to consider draft New Committee Procedure Rules (see Appendix 8).</p> <p>These are based on model constitution from the ODPM and Southwark’s existing Council Procedure Rules, which currently apply in part to committees and sub-committees</p>

¹ Guidance on New Council Constitutions, Paragraph 6.28

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		clear who is responsible for which decisions and therefore who must be held to account. The agenda should clearly differentiate between different types of business, i.e. “executive”, “non-executive”, consultative etc. ¹		
Access to Information Procedure Rules	1: Scope	Extend to Community Councils. The rules cover provisions on access to the public, including notice for meetings, availability of papers and closed information. This section applies to all meetings of the Council.	None.	Noted.
Budget and Policy Framework Procedure Rules	2: Process for developing the Framework	There are two options: Option A - Community Councils to be consulted directly; or, Option B – to be consulted via Overview & Scrutiny.	<u>Executive</u> supported Option A.	Standards Committee to express preference. Option A would provide the Community Councils with greater scope and opportunity to comment on budget and policy framework issues. Option B would emphasise the role of Overview & Scrutiny in providing a focal point for responses to the Executive and dealing with any cross-borough issues.

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Executive Procedure Rules	1.1: Who may make Executive decisions	Extend to Community Councils	None.	Standards Committee to recommend consequential changes.
	1.2: Delegation by the Leader	iii) Change “area committees” to “Community Councils”		
	1.3: Sub-delegation of Executive functions	Extend to Community Councils		
Overview and Scrutiny Procedure Rules				
<u>Scope of call-in</u>	Para. 18.4 Overview & Scrutiny Procedure Rules	Extend the scope of call-in to cover all executive decisions taken by Community Councils. This is the same approach that currently applies to Executive meeting decisions.	<u>Executive and Overview and Scrutiny Committee</u> supported this change.	Standards Committee to make recommendation: The scope of call-in powers cover all executive decisions taken by Community Councils
<u>Call-in threshold</u>	Para. 18.6 Overview & Scrutiny Procedure Rules	Extend the existing threshold to Community Council executive decisions. There are a number of implications if the threshold is extended: 1. As a matter of good practice, Members should not scrutinise their own decisions. Therefore, a Member serving on a	<u>Executive</u> recommended that: <i>The existing threshold be extended to all Community Council executive decisions.</i> The Executive noted the implications of this recommendation set out in points 1 and 2. <u>Overview and Scrutiny Committee</u> considered this issue and asked:	Noted. Standards Committee to express view on the implications of extending threshold.

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		<p>Community Council (who is also a Member of the Overview & Scrutiny Committee) who participates in taking an executive decision should not sign a call-in request on the same decision (thus avoiding any conflict of interest).</p> <p>2. Arising from point 1 above, in the circumstances when a Member has participated in taking an executive decision, then a Reserve Member (Overview & Scrutiny Committee) could be entitled to consider whether they wish to sign a call-in. This would assist in maintaining the pool of Members able to call-in decisions. The constitution would need to be amended to accommodate this change.</p>	<p><i>That in relation to whether a conflict of interest might occur in relation to a signatory's membership of a Community Council (where a decision of such a body is being called-in), Standards Committee be asked to judge whether scrutiny can be defined as commencing:</i></p> <ul style="list-style-type: none"> • <i>At the point at which a call-in request is made; or</i> • <i>At such time as any subsequent call-in meeting is held.</i> <p>This advice will be circulated in the covering report.</p>	
<p><u>Referral following consideration of a called-in by Overview & Scrutiny Committee</u></p>	<p>Para. 19 Overview & Scrutiny Procedure Rules</p>	<p>Following consideration of a call-in decision, Overview & Scrutiny Committee can refer the decision back to the decision-maker, i.e. Community Council, and ask for the</p>	<p><u>Executive and Overview and Scrutiny Committee</u> recommended that Standards Committee consider a further option:</p> <p>Additional Option C: Retain existing</p>	<p>Standards Committee to recommend option to Council Assembly.</p> <p>It is important that once a decision is called-in it is dealt with and implemented as soon as possible. It</p>

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		<p>decision to be reconsidered.</p> <p>Overview & Scrutiny Procedure Rules need to be extended to include this provision.</p> <p>An implication of this change is that the time period for which the decision-maker has to reconsider the decision is currently only 7 working days. This may be problematic when arranging extra-ordinary Community Council meetings at short notice and engaging public involvement. There are a number of options:</p> <p>Option A – Retain existing provision of 7 working days.</p> <p>Option B – Review existing provision of 7 working days, and in addition allow the Borough Solicitor in consultation with the relevant Chief Officer to determine whether the matter can wait until the next scheduled meeting of the Community Council.</p> <p>Option C - Retain existing provision of 7 working days, and allow the Borough Solicitor & Secretary in consultation with the</p>	<p>provision of 7 working days, and allow the Borough Solicitor & Secretary in consultation with the Relevant Chief Officer <i>and Chair of the relevant Community Council</i> to determine whether the matter might wait until the next scheduled meeting of the Community Council.</p>	<p>may be more difficult to convene special meetings of Community Councils. There are benefits to decisions been resolved locally, where possible.</p>

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		Relevant Chief Officer <i>and Chair of the relevant Community Council</i> to determine whether the matter might wait until the next scheduled meeting of the Community Council.		
OTHER ISSUES				
<u>Membership</u>				
The pool of Members available to serve on each Community Council is set out in Appendix 3. There are two issues: first, which community councils the Livesey Ward Members should serve on; and, second, the size of the councils.		<p>Option 1 – All Members serve on all community councils covered by their wards. In this option Livesey Ward could be treated in a number of ways:</p> <p>Option A - Livesey Ward Members have dual eligibility for membership of Peckham and Rotherhithe community councils.</p> <p>Option B – Two Members serve as voting members on Peckham and Rotherhithe, with the third Councillor being a Reserve Member.</p> <p>Option C – One Member serve on Peckham and Rotherhithe, with the other two Councillors being Reserve Members.</p> <p>Option 2 – Community Councils</p>	<u>Executive</u> recommended that options 1A and 1B receive further consideration.	<p>Recommend option 1A</p> <p>Option 1A would allow the members to participate fully on all matters concerning their wards. There would be a larger pool of members from which to draw a quorum. The other options provide for less participation by Livesey Members.</p> <p>Pros - This would allow Members with</p>

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		<p>have a fixed membership e.g. 6 (with other members serving as reserves).</p> <p>If Members chose option 2, then they should also indicate whether or not the seat allocation should be proportionate (although this is not a legal requirement).</p>		<p>other demanding portfolios to focus on those areas. It would enable backbench members to develop their community role.</p> <p>Cons – All Members serving in the areas entitled to serve on Councils. This arrangement would not facilitate this. They are not subject to proportionality rules and therefore not appointed by political groups. Could lead to different sized councils and possible quorum problems. Also public may expect all members to participate in Community Councils.</p>
Appointment of Chair & Vice-Chair				
<p>Current practice is that Council Assembly appoints Chairs of Committees, with the exception of Standards Committee. However the constitution allows for these appointments to take place at the first meeting of the committee.</p>	<p>Council Procedure Rule 2.4 (1) (vi)</p>	<p>The following options are available:</p> <p>A) Appointment by Council Assembly for all meetings in the current municipal year (i.e. until May 2003).</p> <p>B) Appointment by Council Assembly for the first meetings of Community Councils and delegation of responsibility to each Community Council to</p>	<p><u>Executive</u> supported Option A – Appointment by Council Assembly for all meetings in current municipal year (i.e. until May 2003) and then after annually by Council Assembly (Constitutional Meeting).</p>	<p>Standards Committee to recommend preferred option.</p> <p>Options A and B have advantages for members of the public as they will know in advance who the Chair will be and be able to raise issues prior to the meeting.</p> <p>Options A and B are procedurally very similar. However the opportunity to promote the autonomy of Community Councils through self-determination of Chairs should be considered. Option B would ensure that the process</p>

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		<p>appoint Chair for all subsequent meetings for the year.</p> <p>C) Appointment to be made by Community Councils for all meetings.</p> <p>These arrangements are the same as existing committees and comply with legal requirements. No additional constitutional change is required.</p>		<p>would take place locally.</p> <p>Option C presents some operational difficulties and uncertainty in managing the introduction of Community Councils.</p>
Timing/Location of Meetings				
<p>In line with current practice of Area Forums, the Committee Procedure Rules need to be flexible enough to accommodate Saturday and daytime meetings and venues outside of the Town Hall.</p>	<p>Council Procedure Rule 1.2 (2) & (3)-</p>	<p>Specific provisions will be included in Committee Procedure Rules to cover this eventuality.</p>		<p>Noted.</p>
Co-opted Members				

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<p>There are no plans to appoint co-opted Members in phase 1. However, the outcome of the consultation exercise on Community Councils could provide feedback on the potential use and role of non-voting co-opted members.</p>	<p>Article 8</p>	<p>This matter could be considered as part of the six-month review on the operation of Community Councils.</p>	<p><u>Executive</u> noted the current consultation around Community Councils and recommended that the six-month review of the operation of Community Councils includes looking at the possibility of co-opted members.</p>	<p>Standards Committee to note the six-month review of the operation of Community Councils will include looking at the possibility of co-opted members.</p>