

Item No. 7.3	Classification: Open	Date: 24 January 2007	Meeting Name Council Assembly
Report title:		Strategic Management Arrangements - Amendments to the Constitution	
Ward(s) or groups affected:		N/A	
From:		Borough Solicitor	

RECOMMENDATION

1. That Council Assembly consider recommendations from the Executive relating to the Strategic Management Arrangements.
2. That, if Council Assembly agree the recommendations from the Executive, to consider and approve recommendations from the Constitutional Steering Panel as set out in Appendix A to make necessary changes to the Constitution.

BACKGROUND INFORMATION

3. At its meeting on 16 January 2007, the Executive decided to make changes to the strategic management of the Council as follows:
 - To create two new Strategic Director posts. These are:
 - Strategic Director (Regeneration and Neighbourhoods)
 - Strategic Director (Major Projects)
 - To delete the posts of:
 - Strategic Director (Regeneration)
 - Strategic Director (Housing)
 - To redesignate the Strategic Director (Environment and Leisure) to Strategic Director (Environment and Housing)
 - To create a new Assistant Director (Finance and Resources) posts in Environment and Housing with a direct reporting line to the Finance Director to ensure appropriate senior and professional input into the assessment of issues, determining the distribution of costs between the General Fund and Housing Revenue Account
 - That Local Project Boards be termed Project Delivery Boards
 - Terms of reference for the Executive to sit as the Major Projects Board, as set out in Appendix 1 to the Executive report 16th January 2007 and to recommend to the Council Assembly that the Board be established as a formal committee of the Executive, meeting a minimum of six times per year.
 - The Executive also noted the following:

- The proposals within this report for changing strategic management arrangements to be implemented by the Chief Executive under delegated authority
 - The assimilation of Paul Evans to the post of Strategic Director (Regeneration)
 - That the deletion and creation of chief officer posts may be considered as entailing consequential changes to the wording of the Constitution and Policy Framework and therefore it be recommended to Council Assembly on 24 January 2007
 - That the necessary changes to the Constitution and Policy Framework be considered by the Constitutional Working Group before consideration by the Council Assembly
 - That the Chief Executive has offered meetings with leaseholder and tenant representatives to discuss their proposals for service improvements
 - That the Acting Borough Solicitor will conduct a review of the Council's Constitution to identify any potential anomalies and to make recommendations to Constitutional Council Assembly in May 2007 that ensure that there is clarity of function between the Council's constituent bodies and any other appropriate recommendations.
3. As a consequence of these changes the Constitution requires amendment as set out in this report. Council Assembly is asked to consider and approve changes to the Constitution as recommended by the Constitutional Steering Group.

KEY ISSUES FOR CONSIDERATION

4. Article 12 of the constitution sets out the arrangements for the management structure and functions of officers of the council.
5. Part 7 of the Constitution sets out the management structure of the Council detailing the officers and their designations.
6. Part 3E of the constitution makes provision for the recording of any executive committee delegations. The Executive procedure rules require the terms of reference, constitution and names of appointed executive members.
7. The changes to strategic management agreed by the Executive give rise to the changes to the Constitution as set out in Appendix A.
8. Guidance issued by the government on the New Council Constitutions at Chapter 10.9 recommends that the Constitution should be drafted as a flexible document.

Resource Implications

9. The resource implications are set in the report to the Executive.

Legal Implications

10. It is a function of the Executive (contained in Part 3C paragraph 4 of the Constitution) as follows:

“Matters reserved to the Executive for collective decision making

Decisions regarding the strategic management of the Council including decisions on major re-organisations and major reallocations of functions between departments or Chief Officers”

11. In May 2005, Council Assembly (constitutional meeting) agreed to establish a Constitutional Steering Panel. The role of the panel which is set out in council assembly procedure rule 2.4(1)(l) (page 111 of the Constitution) is to oversee, review and recommend amendments to the constitution to council assembly. The membership comprises the political group whips of each party represented on the council.
12. The Constitutional Steering Panel met on 18 January 2007 and recommended that Council Assembly agree the changes set out in Appendix A of this report.
13. The Council Assembly must consider whether to make the changes to the Constitution and the Policy Framework as a result of the changes to strategic management arrangements as agreed by the Executive and recommended by the Constitutional Steering Group.

Community Impact Statement

14. The community impact statement is set out in the Executive report.

REASONS FOR LATENESS

15. The circulation of this report was delayed as the report to the Executive on 12 December was called in by the Overview and Scrutiny Committee. The call-in meeting took place on 8 January 2007 and the despatch of the Executive report was delayed to take into account the outcomes of that meeting. No specific proposals were agreed by Overview and Scrutiny but some comments made by representatives of tenants and leaseholders were included in the Executive report. As a result of this process, the Executive and Constitutional Steering Panel met after the agenda despatch date for Council Assembly.

REASON FOR URGENCY

16. If the call-in had not taken place, this report would have been circulated on time. There was an expectation among consultees that their feedback would be reported to the Executive on 16 January. If the decision proposed in that report was delayed until the next scheduled meeting of the Executive, the proposal to establish the Major Project Boards as a Committee of the Executive would have had to be further delayed until the February of Council Assembly. Any delay in implementing the recommendations of the Executive report will create additional uncertainty for affected staff and perpetuate the capacity issues identified, thereby exposing the Council to additional risk.

BACKGROUND INFORMATION

Background Papers	Held At	Contact
Report to Executive - 16 January 2007 - http://www.southwark.gov.uk/YourCouncil/AgendasMinutes/ExecutiveMeetings/ExecutiveReports20052.html	Constitutional Team, Town Hall Peckham Road, London SE5 8UB	Paula Thornton 020 7525 4395
Supplementary legal advice from the Borough Solicitor submitted to Executive on 16 January 2007	As above	As above.
Strategic Management Arrangements – Amendments To The Constitution	As Above	As above

LIST OF APPENDICES

No.	Title
Appendix A	Strategic Management Arrangements – Amendments To The Constitution
Appendix B	Extracts from the Constitution - Article 12 Officers and Part 3E: Matters Reserved To Executive Committees

AUDIT TRAIL

Lead Officer	Glen Egan, Acting Borough Solicitor	
Report Author	Graham Love, Head of Democratic Services	
Version	Final	
Dated	19 January 2006	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor	Yes	Yes
Chief Finance Officer	No	No
<i>List other Officers here</i>		
Executive Member	No	No
Date final report sent to Constitutional Support Services	19.01.2007	

STRATEGIC MANAGEMENT ARRANGEMENTS – AMENDMENTS TO THE CONSTITUTION

Article 12 - Officers

12.01 Management Structure

Retain 12.01 (a)

Replace 12.01 (b) with

“The Council will engage, on the advice of the head of paid service, persons for the posts designated as chief officers for prescribed service portfolios. The head of paid service will determine and publicise a description of the overall departmental structure of the council showing the management structure and deployment of officers.”

Delete 12.01 (d)

Delete the management structure at page 242 of the constitution.

PART 3E: MATTERS RESERVED TO EXECUTIVE COMMITTEES

Add:

The Major Projects Board to:

1. Agree the delivery plans for each major project.
2. At regular intervals monitor the achievement of the delivery plan through performance management reports on each major project.
3. Receive annual reports as appropriate.
4. Agree exception reports when there is any significant delay or barrier to delivery of the agreed plan.
5. Establish Project Delivery Boards ensuring arrangements for stakeholder consultation and involvement are in place.
6. Monitor the effectiveness and appropriateness of the Project Delivery Boards and agree to any necessary changes.
7. Hear deputations or receive reports from stakeholders.
8. Allocate and agree resources, use of resources for each major project.
9. Agree any variance in resource allocation to any major project.
10. Confirm the Executive Member lead on each major project.
11. Sign off major projects when they are completed or no longer require significant Executive input.
12. Resolve conflicts and dependencies between any major projects.
13. Set up additional major projects as required.

14. Agree the scheme of management (delegations) to officers.

15. Agree policy decisions in respect of major projects that are required to deliver the major project.

16. Agree the Forward Plan for the Projects Board.

Nothing in the above shall infer authority for decisions that are set out elsewhere in the constitution.

The Major Projects Board will adopt the Executive procedure rules where they apply.

The appointed executive members to the Major Projects Board will be all Executive councillors.

EXTRACTS FROM THE CONSTITUTION

ARTICLE 12 - OFFICERS AND PART 3E: MATTERS RESERVED TO EXECUTIVE COMMITTEES

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PART 3E: MATTERS RESERVED TO EXECUTIVE COMMITTEES

The leader will maintain a written record of any delegations to executive committees here.

NOTE:

- (a) All matters not reserved to the executive, executive committees or to individual members are delegated to the appropriate chief officer and heads of service. All delegated matters can always be decided by the parent body. See also Part 3: Matters delegated to officers.

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Article 12 – Officers

12.01 **Management structure**

- (a) **General.** The council may engage such staff (referred to as officers), as it considers necessary to carry out its functions.
- (b) **Chief officers.** The council will engage persons for the following posts who, with the exception of the borough solicitor, will be designated chief officers:

Post	Functions and areas of responsibility
Chief Executive	Corporate and strategic management arrangements; strategic partnerships, governance, strategic policy adviser to the council.
Strategic Director Housing	Housing functions.
Strategic Director of Health and Community Services	Health and social care in respect of adults. (Statutory director for adult services).
Strategic Director of Children’s Services	Health, education and social care of young people, under-5’s/youth. (Statutory director for children’s services).
Strategic Director Regeneration	Regeneration and development control.

Strategic Director Environment and Leisure	Environment, transportation, highways, public protection, leisure and culture services.
Strategic Director of Customer and Corporate Services	Corporate customer services, human resources, ICT, accommodation and efficiency strategy.
Director of Education	Attainment, schools support, special educational need, children's services in schools.
Finance Director	Financial management, debt management, corporate procurement, strategic risk management.

- (c) **Head of paid service, monitoring officer and chief finance officer.** The council assembly will designate the following posts as shown:

Post	Designation
Chief Executive	Head of paid service
Borough Solicitor	Monitoring officer
Finance Director	Chief finance officer

Such posts will have the functions described in article 12.02–12.04 below.

- (d) **Structure.** The head of paid service will determine and publicise a description of the overall departmental structure of the council showing the management structure and deployment of officers. This is set out at part 7 of this constitution.

12.02 Functions of the head of paid service

- (a) **Undertaking duties of head of paid service.** The head of paid service shall undertake all duties designated under section 4 of the Local Government & Housing Act 1989. These are personal functions and must be undertaken by the head of paid service personally. Where the head of paid service is also the chief executive he/she may delegate other functions that are not included in section 4.
- (b) **Discharge of functions by the council.** The head of paid service will report to council assembly on the manner in which the discharge of the council's functions is coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (c) **Restrictions on functions.** The head of paid service may not be the monitoring officer but may hold the post of finance director if a qualified accountant.

12.03 Functions of the monitoring officer

- (a) **Maintaining the constitution.** The monitoring officer will maintain an up-to-date version of the constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the head of paid service and finance director, the monitoring officer will report to the council assembly (or to the executive in relation to an executive function)

if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) **Supporting the standards committee.** The monitoring officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the standards committee.
- (d) **Receiving reports.** The monitoring officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The monitoring officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the standards committee.
- (f) **Proper officer for access to information.** The monitoring officer will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (g) **Advising whether executive decisions are within the budget and policy framework.** The monitoring officer will advise whether decisions of the executive are in accordance with the budget and policy framework.
- (h) **Providing advice.** The monitoring officer will provide advice on the scope of powers and authority to take decisions, maladministration, impropriety, probity and budget and policy framework issues to all councillors and to officers. The monitoring officer shall also provide advice to officers and members in relation to personal and prejudicial interests.
- (i) **Appointment of a deputy.** The monitoring officer shall appoint a deputy to act in his/her absence and when the monitoring officer is unable to act as defined in section 5 of the Local Government & Housing Act 1989.
- (i) **Restrictions on posts.** The monitoring officer cannot be the finance director or the head of paid service.
- (k) **Proper officer for freedom of information.** The monitoring officer will act as the “qualified person” for the purposes of freedom of information requests and application of the public interest tests.

12.04 **Functions of the finance director**

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the head of paid service and the monitoring officer, the finance director will report to the council assembly or to the executive in relation to an executive function and the council’s external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The finance director will have responsibility for the administration of the financial affairs of the council.

- (c) **Contributing to corporate management.** The finance director will contribute to the corporate management of the council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The finance director will provide advice on the scope of powers and authority to take decisions, mal-administration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.
- (e) **Give financial information.** The finance director will provide financial information to the media, members of the public and the community.
- (f) **Constitute a pensions advisory panel.** The finance director will constitute a pensions advisory panel and take into account the panel's advice when performing the following functions:
- (i) establishing and reviewing the strategic investments objectives
 - (ii) reviewing the definition of the investment return target most likely to satisfy this investment objective.
 - (iii) considering what constraints, if any, should apply to the invested assets and monitor compliance.
 - (iv) establishing and reviewing the strategic asset allocation (benchmark) that is likely to meet the investment return target.
 - (v) considering and reviewing the appropriateness of the fund structure i.e. the delegation of powers to managers, set boundaries for the manager's discretion, consider what manager return targets are likely to achieve the investment return target.
 - (vi) monitoring the performance of the investment managers at least once every three months, and from time to time consider the desirability of continuing or terminating the appointment of investment managers. In monitoring performance of investment managers, the panel should consider:
 - the investments made by the managers.
 - their input to the process and the value of their advice.
 - investment returns and risk against established targets.
 - manager compliance with the fund's requirements.
 - discussion of results with managers.
 - (vii) considering policy matters in relation to the pension scheme and the council's early retirement policy.
 - (viii) considering applications, from other bodies, for membership of the council's pension scheme.
 - (ix) monitoring early retirements.
 - (x) monitoring costs incurred in administering the pension scheme, including:
 - management and other direct costs.
 - transaction (dealing) costs.
- (g) **Constitution of the pensions advisory panel**
- (i) The pensions advisory panel will be constituted as follows:
 - three members (one from each political group) who have received the appropriate training; one of those members will chair the panel;
 - three officers (the finance director, an officer with specialist knowledge on the pensions scheme and the head of human resource or their equivalents);
 - two independent advisers (non-voting); and'

- a representative appointed by the constituent trade unions representing beneficiaries (non-voting).
- (ii) Decisions should aim to be reached by consensus. Where agreement cannot be reached then, a majority vote will apply. Voting rights are restricted to members and officers, with the chair having the casting vote if required.
- (iii) Decisions of the panel will be treated as advice to the finance director.
- (iv) To be quorate at least three voting members of the panel must be present, plus at least one independent adviser. At least one of the voting members must be an officer.
- (h) **Treasury management.** All treasury management decisions are delegated to the finance director in line with financial standing orders. S/he will report on an annual basis to council assembly.
- (i) **Cap and trading schemes.** The finance director must be consulted on all decisions relating to the landfill allowance trading scheme (LATS) and any similar cap and trading schemes.
- (j) **Risk management.** The finance director will be responsible for ensuring awareness of and compliance across the council with risk management responsibilities and protocols as they impact upon day to day operations and major project activities and for reporting on risk management as appropriate.
- (k) **Fraud.** The finance director is responsible for management of the investigation process for all suspected cases of fraud, corruption, financial loss or malpractice.

12.05 **Duty to provide sufficient resources to the monitoring officer and finance director**

The council will provide the monitoring officer and director of finance with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 **Conduct**

Officers will comply with the officer code of conduct, when issued¹ and the member and officer protocol set out in part 6 of this constitution.

12.07 **Employment**

The recruitment, selection and dismissal of officers will comply with the officer employment procedure rules set out in part 4 of this constitution.

¹ The officer code of conduct will be issued by the Secretary of State. Southwark currently has an internal code of conduct, which does not form part of this constitution. Once the national code has been issued it will be deemed to form part of the terms or conditions of employment of qualifying employees. The definition of a “qualifying employee” will be specified in regulations to be issued under section 82 of the Local Government Act 2000.