

<b>Item No.</b> 5.2	<b>Classification:</b> Open	<b>Date:</b> 14 July 2010	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Constitutional changes	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Communities, Law & Governance Finance Director	

## RECOMMENDATIONS

That the following constitutional changes be recommended to council assembly:

### Budget and policy framework

1. That council assembly note the current position as set out in points 1 to 6, 8 and 10 of the table in paragraph 15 relating to the budget and policy framework.
2. That in relation to points 7 and 9 of the table in paragraph 15, council assembly considers the constitutional and procedural changes drafted in consultation with the cabinet member for finance and resources set out in paragraphs 20 to 24.

### Article 7 – Regulatory and other committees - Clarification of the constitution

3. That Article 7 – Regulatory and other committees – be amended to provide clarification of the role of the annual meeting in establishing committees. The amendment is shown as a strikethrough below:

#### **Article 7 – Regulatory and other committees**

##### **7.1 Regulatory and other committees**

The council will appoint committees to undertake non-executive functions. Council assembly will delegate powers to these committees to discharge their relevant functions.

~~The council assembly shall establish the following committees:~~

- ~~a) Appointments committee~~
- ~~b) Audit and governance committee~~
- ~~c) Corporate parenting committee~~
- ~~d) Disciplinary appeals committee~~
- ~~e) Licensing committee~~
- ~~f) Overview and scrutiny committee~~
- ~~g) Planning committee~~
- ~~h) Standards committee.~~

##### **7.2 Key tasks of chairs of regulatory and other committees**

Chairs of the authority's committees will take specific responsibility for the development of that committee's work plan and represent the service or

function of the committee within and outside the authority as necessary to enable it to deliver its objectives consistently to corporate standards.

### **Reclassifying sections of the constitution as schemes**

4. That the councillor call for action and the community council protocols be reclassified as schemes.
5. That the schemes in recommendation 4 together with others schemes including the publications schemes be held on the Library pages on the council's website as part of the constitutional framework. The petitions scheme is already held here.

### **Consequential changes**

6. That officers be authorised to undertake any consequential and cross referencing changes arising from changes to the constitution.

### **BACKGROUND INFORMATION**

7. The council assembly on 19 May 2010 agreed a number of constitutional changes. This report covers constitutional areas that form part of the annual review of the constitution.
8. The objective for making changes to the constitution is to ensure that it is easily understood and user friendly. In order to achieve this, council assembly should take into account that the constitution should be:
  - **Accessible** to all those who need to use it to understand their rights and obligations under it.
  - **Efficient:** supporting effective decision-making so that the business of the council can be delivered in line with best practice on corporate governance.
  - **Inclusive:** so that decision-making is open and transparent and involves local communities.
9. All constitutional changes are considered by constitutional steering panel, which then recommends any changes to council assembly. Changes to the constitution are generally agreed by council assembly, unless another body or individual is authorised to do so – see Article 1.15.
10. All the issues in this report were considered by the constitutional steering panel, which met on 21 June 2010.

### **KEY ISSUES FOR CONSIDERATION**

#### **Budget and policy framework**

11. Scrutiny sub-committee C undertook a review in 2009-10 of the format and detail of revenue budgets, scrutiny of budget proposals and improved consideration by council assembly, approval of the capital programme and use of reserves. Its report was considered by overview & scrutiny committee at its meeting in November 2009.
12. Of the ten recommendations made by the sub-committee, overview & scrutiny committee accepted recommendation (4) concerning a budgetary scene setting meeting but considered that recommendation (5) concerning a further informal meeting at a later stage of the budget setting process had insufficient merit.

13. The remaining recommendations were considered in December 2009 by the executive which resolved that those recommendations relating to constitutional issues including monitoring financial performance, approval of the capital programme and the use of reserves should be addressed as part of the annual constitutional review (recommendations (3), (6), (7), (8), (9) and (10) and that recommendations 1 and 2 concerning the level of detail and portfolio-specific information to be presented within the budget should be considered by the then executive member for resources and the finance director.
14. At its constitutional review meeting in May, council assembly noted that a further report on the recommendations of scrutiny sub-committee C on the budget and policy framework was scheduled to be submitted to its next meeting.
15. The table below covers the recommendations referred to in paragraphs 12 and 13 above.

Recommendation	Officer response
<p>1. That the budget presentation to council assembly should include a high level analysis by service area for each directorate.</p>	<p>Some improvements relating to the format of the revenue budget report were included in February 2010 and further changes are planned for February 2011, though their achievement is subject to the timing of decisions on the budget by cabinet prior to council assembly and the extent of any significant changes to the budget plan.</p>
<p>2. In light of the complexity and resources required at present to provide the same budget analysis for each executive portfolio, the executive invite the finance director to review options to provide this information as part of the budget report to council assembly in future years.</p>	<p>There are significant technological issues which need to be addressed to enable reporting for both departmental and portfolio holder analysis. The current structure is departmentally based.</p> <p>The remit of some portfolio holders currently spans activities in up to five departments and this can change from year to year.</p>
<p>3. The executive is invited to clarify the responsibility for monitoring financial performance under each executive portfolio.</p>	<p>The responsibilities of individual cabinet members are ultimately determined by the leader of the council. Officers will do whatever is necessary to support them.</p>
<p>4. We invite overview &amp; scrutiny committee to arrange a budgetary scene setting meeting shortly after the November Executive meeting, providing an opportunity for the executive member and director of finance to involve back bench members so that at that stage there is wide understanding of the budgetary process and financial situation facing the council.</p>	<p>As noted above, overview &amp; scrutiny committee accepted this recommendation and officers will continue to provide support as appropriate.</p>

Recommendation	Officer response
<p>5. We invite overview &amp; scrutiny committee to consider the merits of an informal overview &amp; scrutiny committee at a later stage of the budget setting process.</p>	<p>As noted above, overview &amp; scrutiny committee considered that a further informal meeting at a later stage of the budget setting process had insufficient merit and the executive noted that this recommendation had been withdrawn.</p>
<p>6. We invite the executive to take further advice on the construction of the following wording in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, regarding the provision that full council carries out the “adoption or approval of the budget <i>and any plans or strategy for the control of the local authority’s borrowing or capital expenditure (The Capital Plan).</i>”</p>	<p>The wording of the Regulations has some ambiguity and may be construed to mean either that full council should approve any plan or strategy for capital expenditure or that full council should approve any plan or strategy for the control of the local authority’s capital expenditure.</p> <p>The council’s constitution is based on the second interpretation, i.e. that control of capital expenditure refers to the impact on the capital financing requirement and its consequent revenue budget implications – hence the plan or strategy for the control of the authority’s borrowing or capital expenditure being the treasury management strategy. It is accepted however that particularly in light of the current economic climate, it may be appropriate to revisit this.</p> <p>In the light of recommendation (7) below, the finance director has no further comment to make.</p>
<p>7. We invite the executive to submit to council assembly for their approval at least once every four years, and as necessary in the event of a significant change in circumstances, a programme for capital expenditure.</p>	<p>This recommendation is welcomed; however, it would need to be accompanied by a review of arrangements for approving amendments and additions during a four-year period and a restatement of responsibilities in the constitution. It is suggested that the cabinet should have responsibility for agreeing amendments and additions below a financial threshold.</p>
<p>8. We invite the executive to address issues around definition, build up, and in particular draw down from the council’s various reserves, and an improved system for the monitoring of such matters</p>	<p>Improvements in transparency are welcomed, but any proposals need to be considered whilst bearing in mind that the finance director, as section 151 officer, retains personal responsibility for the financial administration of the council.</p> <p>In order to be able to carry out his responsibilities, an element of flexibility must be retained to ensure that decisions can be taken in the best interests of the council (for example to protect its financial position).</p>

Recommendation	Officer response
	<p>For this reason, it is suggested that the creation and definition of reserves continue to be a matter for the finance director, but that when any new reserves are created, this should be reported at the first available opportunity to the cabinet as part of enhance monitoring and reporting.</p> <p>The use of reserves is considered in (9) below.</p>
<p>9. We invite the executive to consider whether an upper limit should be put on the sole authority of the finance director to authorise draw downs from reserves.</p>	<p>In relation to the use of reserves, it is suggested that consideration be given to the introduction of processes for joint sign-off for drawing down from earmarked reserves. This is already in place for the capital contingency reserve, the use of which has to be approved by the finance director and the cabinet member for finance and resources. Members may wish to consider whether it would be appropriate to introduce a threshold, below which cabinet member approval need not be sought.</p> <p>Allocations of earmarked reserves will continue to be reported to the cabinet as part of existing monitoring arrangements.</p>
<p>10. We invite the executive to consider the merits of referring any of these matters relating to reserves to the audit and governance committee for its consideration and advice.</p>	<p>The audit and governance committee's role includes the independent assurance of the council's governance arrangements, including their effective development and operation. Matters relating to reserves already form part of the committee's review of the annual accounts and the committee may also request further information at any time.</p>

16. The table in paragraph 15 above sets out the current position for recommendations 1 – 6, 8 and 10 and identifies that possible amendments to the constitution or to procedures need to be considered in relation to recommendations 7 and 9. The constitutional steering panel on 21 June 2010 considered the recommendations and officer responses. The panel agreed that the necessary constitutional amendments be prepared by officers, in consultation with the cabinet member for finance and resources, for submission to the next council assembly meeting.

### **Recommendation 7 – approval of capital programme**

17. Recommendation 7 concerns approval of the capital programme and proposes its submission by cabinet to council assembly for approval at least once every four years. It is suggested that this should be timed to coincide with council assembly's consideration of the council tax setting report in February 2011, and thereafter, every four years or

sooner in the event of a significant change in circumstances. This proposal would necessitate amendments to the constitution.

18. Amendments and additions to the capital programme are currently provided for within section 8 (c) of the Financial Standing Orders. These require virements between capital projects or programme headings as set out in the overall programme to be approved by the finance director, the relevant cabinet member and cabinet member for finance and resources or cabinet, according to financial value. It is recommended that, in order to maintain the ability to respond in a timely manner, that these approval arrangements be retained.
19. However, it is proposed that the opportunity be taken to include the cabinet's responsibility to approve capital virements over £1,000,000 and to replace references to dual decision makers with single decision makers (acting after consultation with others) in relation to virements over £100,000 and up to £1,000,000 and changes to profiles of expenditure and resources over £250,000.
20. The recommended changes to the constitution to give effect to the proposals in paragraphs 17 and 19 above are set out below. The additional wording is underlined and deletions are shown with a strikethrough.

### **Part 3A Council Assembly**

In 'Matters reserved for decision', insert a new clause 8 to read as follows "Agree the capital strategy and programme at least once every four years and as necessary in the event of a significant change in circumstances".

Re-number subsequent clauses.

### **Part 3B Cabinet role and functions**

In the list of plans and strategies to be approved by the cabinet, delete "Capital strategy and programme".

### **Part 3C Full Cabinet – matters reserved for collective decision making**

Insert a new clause 9 to read as follows:

"Approval of virements over £1,000,000 between capital projects or programme headings as set out in the overall programme approved by council assembly".

Re-number subsequent clauses.

### **Financial Standing Orders**

Delete existing section 7 (a) entitled "Capital Programme".

Insert revised section 7(a) with title "Preparation of the capital programme – Capital strategy and programme" to read as follows:

The cabinet Council assembly will, on consideration of ~~annual and ad-hoc~~ reports at least every four years and as necessary in the event of a significant change in circumstances from the finance director, agree the capital strategy and programme. The reports from the finance director will consider the compliance of proposed schemes in the programme with the medium term resources strategy,

the capital resources available to the council, the revenue implications of the proposed capital expenditure, and any other relevant information.

Delete existing section 8 (c) entitled "Capital Programme".

Insert revised section 8(c) entitled "Monitoring and control of the capital programme – Variations to the capital programme" to read as follows:

i) Virements

Virements between capital projects or programme headings as set out in the overall programme approved by ~~the cabinet~~ council assembly must be notified by the relevant strategic director to the finance director and cannot be actioned until they have been approved as follows:

- a. up to £100,000 – finance director
- b. over £100,000 and up to £1,000,000 – the cabinet member for finance and resources, after consultation with the relevant cabinet member(s) ~~and the cabinet member for finance and resources~~
- c. over £1,000,000 – the cabinet

ii) Changes to profiles of expenditure and resources

Changes to profiles for capital projects or programme headings as set out in the overall programme approved by ~~the cabinet~~ council assembly must be notified by the strategic director to the finance director and cannot be actioned until they have been approved as follows:

- up to £250,000 – strategic director
- over £250,000 – the cabinet member for finance and resources, after consultation with the relevant cabinet member ~~and cabinet member for finance and resources.~~

### **Recommendation 9 – use of reserves**

21. Recommendation 9 concerns the use of reserves and recommends that consideration be given to the introduction of process for joint sign-off for drawing down from earmarked reserves.
22. Draw downs will not normally be made from the general fund balance unless the circumstances are exceptional. The medium term resources strategy is updated annually to reflect targets for increasing this balance, required to mitigate a range of risks from the respect of financial operations to technical accounting issues. Therefore no changes are proposed. The same principles are applied in this context to the earmarked reserve for financial risk
23. Use of the capital contingency reserve is already subject to approval from both the finance director and the cabinet member for finance and resources and it is recommended that these arrangements be extended to the earmarked reserves for modernisation, service and operational improvement and for regeneration and development. It is further recommended that thresholds be introduced for all three reserves consistent with those in place for changes to profiles for capital projects and programme headings of expenditure and resources so that draw downs up to £250,000 would require approval from the finance director, but those over £250,000 would require

the approval of both the finance director and the cabinet member for finance and resources.

24. It is recommended that the changes set out in paragraph 23 above be reflected in appropriate internal protocols and in a note to the accounts (as is already the case for use of the capital contingency reserve).

#### **Article 7 – Regulatory and other committees - Clarification of the constitution**

25. As currently drafted any change to the establishment of a committee would have to go via the constitutional steering panel. This duplicates the role of the annual meeting which is responsible for the establishment of committees. In this respect the second paragraph in 7.1 is unnecessary as the details about committees are set out in Part 3 of the constitution.
26. As a consequential change in Article 1.5 (b) on changes to committees, the role of the annual meeting in establishing or disestablishing committees should be recognised. This also applies to panels.

#### **Reclassifying sections of the constitution as schemes**

27. With the inclusion of councillor call for action and the community council protocols in 2009 this has significantly increased the size of the constitution. It has also increased printing costs. The approval of a petitions scheme in May 2010 was an opportunity to review the structure of the constitution to provide greater consistency in the way that the schemes are dealt with. Consequently some of the documents in the constitution which describe for public purposes detailed operation of processes are recommended to be reclassified as schemes and included in a separate section on the website for such schemes. This section already exists on the council's website.
28. It is suggested that to ensure the schemes are publicly available that a common section on the website be used for all schemes falling within the general constitutional framework. The petition scheme is already held in the m.gov library pages on the council's website. It is proposed that others such as those listed in recommendation 5, the publications schemes together with any other documents identified, should be held here.
29. The table below sets out the documents to be reclassified:

<b>Part</b>	<b>Title</b>	<b>Changes by:</b>	<b>Recommendation</b>
<b>5.</b>	<b>Codes</b>		
	Code of conduct	Agreed by council assembly.	Remains in constitution
<b>6.</b>	<b>Protocols</b>		
	Member and officer	Agreed by council assembly.	Remains in constitution
	Communication	Agreed by council assembly.	Remains in constitution
	Members' allowances scheme	Agreed by council assembly.	Retain in constitution – see paragraphs 30 to 31 below
	Councillor call for action	Agreed by council assembly.	Reclassify as scheme. Include in schemes section of website
	Community councils	Changes agreed by the monitoring officer, after consultation with the chairs and vice chairs of community	Reclassify as scheme. Include in schemes section of website



Part	Title	Changes by:	Recommendation
		councils.	

### Members' allowance

30. The constitution requires council assembly to approve the members allowance scheme [part 3A paragraph 18]. This is in accordance with the Local Authorities (functions and Responsibilities) (England) Regulations 2000 which says this cannot be a cabinet function.
31. The Local Government Act 2000 (Constitutions) (England) Direction 2000 states the constitution prepared and kept up to date in accordance with section 37(1) of the Act by a local authority which is operating executive arrangements or, as the case may be, alternative arrangements must include the scheme of allowances for members of the authority drawn up in accordance with regulations made under section 18 of the Local Government and Housing Act 1989 (c.42).

### Councillor call for action

32. There is no requirement for this to be in the constitution.

### Community impact statement

33. There are no specific community impact implications.

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Constitution	Constitutional Team, Tooley Street, Second Floor, SE1	Lesley John 020 7525 7228

### AUDIT TRAIL

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