



Meeting: Council

Date: 24 September 2015

Wards Affected: All

Report Title: Referendum on Future Forms of Governance

Is the decision a key decision? Yes

When does the decision need to be implemented? 1 October 2015

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1. Proposal and Introduction

1.1 The Council resolved at its meeting on 23 July 2015 to hold a referendum on the Council's future form of governance and requested the Assistant Director – Corporate and Business Services to undertake a consultation exercise on the different forms of governance. This report provides details of the different forms of governance, their operation elsewhere and the outcome of a consultation exercise to enable the Council to determine next steps and which form of governance will be included in a referendum.

2. Reason for Proposal

2.1 For the Council to consider the consultation response, to determine whether to go ahead with a referendum on its future form of governance and if so which form of governance will be included in a referendum.

3. Recommendation(s) / Proposed Decision

3.1 That the Council considers the results of the consultation exercise and, having regard to the outcome of the consultation, confirms whether it wishes to proceed with a referendum on its future form of governance to be held in May 2016;

3.2 That, subject to the decision on 3.1 above, the Council considers the different types of governance, as set out in this report, to determine which question on the form of governance will be included in the referendum, as follows:

Question 1

How would you like Torbay Council to be run?

By a Mayor who is elected by voters. This is how the Council is run now.

OR

By a leader who is an elected councillor chosen by a vote of the other elected councillors. This would be a change from how the Council is run now.

Question 2

How would you like Torbay Council to be run?

By a Mayor who is elected by voters. This is how the Council is run now.

OR

By one or more committees made up of elected councillors. This would be a change from how the Council is run now.

- 3.3 That, subject to the decision on 3.1 above, the Assistant Director – Corporate and Business Services be authorised to prepare and publicise proposals on the form of governance to be included in the referendum, in accordance with legislation and in consultation with the Mayor and Group Leaders.

4. Background

- 4.1 At its meeting on 23 July 2015, the Council resolved the following Notice of Motion:

'Whilst recognising that the current mayoral system of governance cannot be changed until 2019, there is a ground swell of opinion that the Council should review its current mayoral system of governance, from both the community and a number of elected members on the Council. The referendum can only specify one alternative system of governance (either a move to a Leader and Cabinet or a move to a Committee system). This motion is presented at an early stage to determine that a referendum should be held and to enable full consultation as to which alternative system should be included in the referendum, with a view to holding a referendum to coincide with the Police and Crime Commissioner Election in 2016. Holding the referendum on the same date as the Police and Crime Commissioner Election will save money and lead to a higher turnout.

Therefore, this Council resolves:

- (i) That the holding of a referendum on the Council's governance arrangements be approved and that the Council's Returning Officer be requested to seek to combine this with the Police and Crime Commissioner (PCC) elections in 2016. The matter of timings to return to Council for a decision if it is not possible to combine with the PCC election.

- (ii) That the Assistant Director (Corporate and Business Services) undertake a public consultation on the different types of governance, in consultation with the Mayor and Group Leaders, as to the form and content of the consultation.
- (iii) That the Assistant Director (Corporate and Business Services) provides a full report to Council in September 2015 on the different forms of governance, their operation elsewhere and the outcome of the consultation exercise (referred to in (ii) above) to enable the Council to determine which form of governance will be included in the referendum.'

4.2 The Council has operated the Mayoral system of governance since 2005 following a referendum. The total number of "yes" votes in support of the mayoral system was 18,074 (representing 55% of the votes cast) and the total number of "no" votes was 14,682 (representing 45% of the votes cast). The overall voter turnout was 32.1%.

4.3 The first mayoral election was held on 20 October 2005. Following the initial election, the Mayoral term of office is every four years and further elections have been held in 2011 and 2015.

5. Different Forms of Governance

5.1 The legislation specifies that councils must operate Executive arrangements (either elected Mayor and Cabinet or Leader and Cabinet) or a Committee system or prescribed arrangements in regulations by the Secretary of State. Outlined below are the three main models of governance:

5.1.1 **Directly elected Mayor and Cabinet system.** A directly-elected Mayor is elected by local residents and holds office for four years. The Mayor is in addition to the elected councillors. The Mayor is responsible for making major decisions within the Council's budget and policies which are set by the Council. A cabinet (or executive) of at least two and up to nine councillors, is appointed by the Mayor who may (or may not) delegate decision-making powers. The Cabinet is not required to be politically proportionate. The Mayor is also required to appoint a Deputy Mayor from the Cabinet. Some non-executive functions are reserved for committees (such as Planning or Licensing). The appointment of at least one Overview and Scrutiny Committee is required under this system.

5.1.2 **Leader and Cabinet system.** The Leader is a councillor elected by full Council for a term determined by the Council and leads the Cabinet (or Executive). The Leader (once appointed) has the same powers as an elected Mayor (see above) and is responsible for appointing the Cabinet and delegating decision-making powers to the Cabinet members at his/her discretion. At least two and up to nine councillors can be appointed to the Cabinet and it is not required to be politically proportionate. The Council specifies in its Constitution how the Leader can be removed. Some non-executive functions are reserved for committees (such as Planning or Licensing). The appointment of at least one overview and scrutiny committee is required under this system.

5.1.3 The table below explains the similarities and differences between a Leader and Cabinet model and an Elected Mayor and Cabinet model:

Leader and Cabinet	Elected Mayor and Cabinet
The Leader is an elected councillor chosen by the other elected councillors	The Elected Mayor is elected by local residents
The Leader is elected by the Council for a period of up to four years and can only be removed if there is a vote to do this which is supported by the majority of other councillors	The Elected Mayor holds office for four years and cannot be removed by the Council
There is no additional cost associated with the election of a Leader which would take place at a meeting of the Council	The Elected Mayor is chosen every four years by local residents in a formal election. This would be in addition to the local elections, which would continue to take place.
Each year the Leader and Cabinet present a budget and major policies to the Council. They can be approved by a simple majority. Any changes proposed by the Council also require a simple majority of the Council	Each year the Elected Mayor presents a budget and major policies to the Council. They can be approved by a simple majority but any changes proposed by the Council must have the support of at least two thirds of the Council
The Leader is one of the elected councillors	The Mayor is in addition to the elected councillors

5.1.4 **Committee System.** The Committee system is different from the directly elected Mayor and the Leader and Cabinet systems as no decision making powers are given to any one councillor. All decisions by councillors are made by committees, which comprise councillors from all political groups. The Council appoints the committees and sets their terms of reference. Overview and scrutiny is optional under this model. However, there is a statutory duty on a committee system to scrutinise health, community safety and flood risk management. Three possible frameworks for operating this system are:

1. All major decisions are made at Council meetings with delegation to service committees representing the departmental structure. There are a number of specific functions that cannot be delegated to a committee or an officer e.g. budget setting. The present 'council function' committees (i.e. licensing, harbours, planning etc) would continue in their present form
2. All major decisions are made at Council meetings and there are increased delegations to senior officers for all other decisions in consultation with selected councillors depending on the nature and subject of the decision. The present 'council function' committees would remain unchanged.

3. The Council returns to a similar committee system as it operated prior to the requirement in the Local Government Act 2000 for the Council to adopt an executive system of governance. Attached at Appendix 1 is the Committee structure operated by the Council in 2000.

6. Financial and Legal Implications

6.1 Legislative background and requirements

6.1.1 The Local Government Act 2000 introduced a separation of powers between the Executive and Council in all but the smallest local authorities with the aim of making council decision-making more efficient, transparent and accountable. The Act required most local authorities to change governance arrangements from the committee system to an executive-scrutiny model.

6.1.2 The Localism Act 2011 increased the governance options for local authorities as follows:

- executive arrangements (leader and cabinet or directly elected mayor and cabinet);
- a committee system; or
- prescribed arrangements.

Provision was included in secondary legislation which meant the Council was unable to change its governance arrangements without approval at a referendum. This referendum could not be held for 10 years from the referendum that triggered the adoption of the mayoral system of governance (i.e. after 14 July 2015).

6.1.3 If councils propose their own system of prescribed arrangements this will require the approval of the Secretary of State. At the least any such prescribed arrangements would need to be an improvement on the current arrangements, demonstrate "efficient, transparent and accountable" decision-making, and be appropriate for all other councils to consider adopting. To date, no councils have proposed such arrangements.

7. Financial implications

7.1 The costs associated with each system are as follows:

7.1.1 **Directly elected Mayor and Cabinet system.** The election for a directly elected Mayor is held in addition to the local councillor elections, although the two elections are held at the same time. The approximate cost of a Mayoral election at a combined election is £80,000 and this is reduced if more than two elections are held on the same day. In addition to the election costs, the law requires the Council to produce a mayoral booklet which is posted to each voter on the electoral register. The cost of the mayoral booklet in the 2015 elections was £34,000 and each mayoral candidate was required to make a £1,000 contribution to appear in the booklet.

The elected Mayor is in addition to the Council's 36 councillors. The Mayor is paid the same basic allowance as councillors (currently £8,167), plus a special

responsibility allowance which is currently £54,446. Under the Mayoral system the Mayor is required to appoint a councillor as Deputy Mayor and the special responsibility allowance for this role is currently £20,227. Secretarial resources are also provided to the Mayor.

Under the current system the elected Mayor has chosen to take his decisions at Council meetings following a recommendation from all councillors. This means that there are approximately 9 Council meetings per year compared to 6 in 2000. He has also set up Policy Development Groups to enable cross party discussion on development of policies and other executive decisions. The cost in officer time supporting this model is approximately £116,900 per annum.

7.1.2 Leader and Cabinet system. There are no additional election costs under the Leader and Cabinet system as the leader is elected by the Council from the 36 councillors.

The Leader would be paid a basic allowance as all the other councillors (currently £8,167), plus a special responsibility allowance. Leaders' allowances of other authorities, with whom we benchmark our allowances against, currently range between £13,158 (South Hams District Council) and £31,102 (Plymouth City Council). The Council will determine the level of special responsibility allowance for the Leader (taking account of any recommendations made by the Independent Remuneration Panel) if it changes to a Leader and Cabinet system. Secretarial resources will also be available to the Leader.

Based on the governance arrangements in 2000 and 12 Cabinet meetings the cost in officer time supporting this model is approximately £94,600 per annum.

7.1.3 Committee system. There are no additional election costs associated with the Committee system. The main costs relate to implementing and ongoing support for a committee system which are considered to be higher than those incurred in supporting a directly elected Mayor or Leader and Cabinet systems. However, this would depend on the framework of decision-making that the Council adopted if it changed to a Committee system e.g. the number of Committees that would be established and any sub-committees (as outlined in paragraph 5.1.4 above). Implementing the Committee system would require the greatest change to the Council's governance arrangements and would involve increased member and senior officer time in preparing for this system. There could be many more meetings as a result of the committee system which would require more support from officers resulting in higher staffing costs. However, under a committee system there would be no legal requirement for an overview and scrutiny function and therefore savings could follow from this, but there is a statutory duty on a committee system to scrutinise health, community safety and flood risk management.

Based on the governance structure of 2000 but excluding the meetings likely to operate under all models of governance (e.g. Civic Committee, Development Control Committee, Scrutiny Committee) an average of 40 committee meetings were held at a cost of approximately £314,000 per annum and 23 sub-committees at a cost of approximately £111,300 in terms of officer time.

Changes would also be made to members' allowances to align with the additional Chairman/woman roles and responsibilities under a committee system (the role of chairing committees is substantially different from that of a Mayor/Leader or cabinet member). The Chairman of each committee will receive a special responsibility allowance and currently the special responsibility allowance attracted for Chairman of Development Management Committee, which would be comparable to the responsibility required under the Committee system, is £6,742.

7.2 The costs of holding a referendum when combined with the Police and Crime Commissioner Election is estimated at £80,000 based on previous election costs. The Council's Elections reserve provides budgets for elections, but does not include provision for additional costs associated with local referendums. Therefore, the costs associated with holding a governance referendum in 2016 will result in a budget pressure for 2016/17.

7.3 A summary of the approximate costs for the differences between the governance arrangements of each system is set out below:

Cost	Elected Mayor	Leader and Cabinet	Committee
Election and Mayoral Booklet	£114,000	£0	£0
Mayoral Allowance and additional Basic Allowance	£62,613	£0	£0
Deputy Mayor Allowance *	£20,227	£0	£0
Officer Time in Supporting meetings	£16,900	£94,600	£425,300
Leader of the Council Allowance	£0	£31,102	£0
Total	£213,740	£125,702	£425,000

*Note the current Deputy Mayor only takes £15,000 of his allowance.

8. Trends in other authorities

8.1 The national picture of unitary authorities' governance arrangements is set out below:

Number Unitary Authorities	Elected Mayor	Committee System	Leader and Cabinet
56	5 (9%)	6 (11%)	45 (80)%

8.2 A guide on governance change, 'Rethinking governance – practical steps for councils considering changes to their governance arrangements' published jointly by the Local Government Association (LGA) and the Centre for Public Scrutiny (CfPS) in January 2014, identified nine local authorities that changed governance arrangements to move to a committee system in 2012/2013. An additional seven local authorities adopted hybrid arrangements in the same period without changing from the Leader and Cabinet systems (e.g. adopting cabinet committees which

make recommendations to the Cabinet or policy development groups mapped to cabinet portfolios support executive decision making – see paragraph 8.4 below for more information). Two authorities considered changing their governance arrangements to a committee system but decided not to.

- 8.3 Most authorities operate the Leader and Cabinet system. In some councils, individual members of the Executive have decision-making powers; in others, decisions are made by the whole Executive. The term of office of leaders vary with some councils electing their leader for a term determined by the Council itself or on a four yearly basis.
- 8.4 Some councils operate a hybrid approach; typically, this is a hybrid between Leader and Cabinet model and the Committee system (with such an approach usually seen legally as being a modified version of the Leader and Cabinet system, and therefore not requiring a formal change under the Localism Act).

9. Consultation

- 9.1 Consultation was carried out between Monday 3 August and Monday 31 August 2015. A survey was published online and paper copies were made available through all libraries across Torbay and the Connections offices. Residents on the Council's Viewpoint Panel were also invited to take part in the survey and four consultation events were held in the 4 weeks the consultation was open across Torbay.
- 9.2 The purpose of the consultation was to gauge public feedback on whether residents wanted a referendum to take place as well as asking their views on which governance system should be included in the referendum. Therefore the first question residents were asked was 'Do you want to keep the current system (Directly Elected Mayor) without holding a referendum?' and the second question related to preferred options for the governance system. The full consultation report is provided in Appendix 2, with a summary below.
- 9.3 In total there were 904 responses to the consultation:
- The majority of respondents (97.1%) to the consultation lived in Torbay.
 - The majority of respondents (74.7%) answered **no** to question 1: Do you want to keep the current system (Directly Elected Mayor) without holding a referendum? Compared with 21.8% who answered **yes**, they wanted to keep the current system.
 - In answer to question 2, just over half of respondents (53.8%) chose Option 2 - Committee System, as their preferred option. Almost a quarter of respondents (23.6%) chose Option 1 - Leader / cabinet System.
 - Respondents were also given the opportunity to feedback any comments they had about the governance systems, themes included how democratic different systems appear, how much the different systems would cost, views specifically

in relation to the Mayoral system and views about how decisions are made. More detail is provided in the consultation report provided in Appendix 2.

- 9.4 While the results from this consultation exercise must be taken into account in reaching a decision about which alternative system should be included in the referendum, the results from this consultation are not binding for the local authority. The Council must, when taking its decision, take into consideration any other relevant factors which are included within this report.

10. Timeline and next steps

- 10.1 The Local Government Act 2000 sets out the procedure if a council wishes to consider changing its present arrangements. As set out above, a change in governance arrangements has to be approved in a referendum, the result of which would be binding on the Council and the Council would not be able to resolve to change its governance arrangements again for a further 5 years. An indicative timeframe for the steps required to be taken is set out below:

2015	
24 July 2015	Notice of Motion passed by Council calling for a referendum to decide the future form of governance arrangements and consultation on different forms of governance.
1 to 31 August 2015	Consultation on different forms of governance and the need for a referendum.
31 August 2015 to 14 September 2015	Evaluation of consultation outcomes and prepare report for Council.
24 September 2015	Report outcome of consultation to Council. Council determines whether or not to proceed to a referendum and determines which system of governance it proposes to change to.
Not fewer than 56 days before the date of the referendum	Subject to decision of Council on 24 September 2015, preparation of proposal document to include: <ul style="list-style-type: none"> • Proposals for the change. • Timetable for the implementation of the proposals. • A statement that the changes in governance arrangements are subject to approval in a referendum.
At least 14 days prior to the notice detailed above	Proposal document made available for inspection by the public and publish in Herald Express a notice which advised that proposals have been drawn up and where they can be inspected.

2016	
Election Timetable	Referendum to run in parallel with Police and Crime Commissioner Elections.
5 May 2015	Date of poll/election
Within 28 days of the referendum being held	<p>If the referendum approves a change in governance, a Special Council meeting is convened for Council to pass a resolution to change.</p> <p>If there is a no vote, the vote must be recorded, but the Council cannot change its governance model. A notice must be published in the Herald Express summarising the proposals and stating that the referendum did not approve the proposals, and that the existing model [i.e. Mayor and Cabinet] will continue to operate.</p>
2019	If a yes vote, then the new arrangements are implemented at the end of the term of office of the current Mayor

11. Risks

- 11.1 If the Council does not make a decision as to the holding of a referendum and the question to be asked in the same, there is the possibility of a petition being received from the electorate which will determine these issues.

12.1. Alternative Options

- 12.1 No one option is recommended by officers as it is for the Council to determine how it wishes to proceed. The options are outlined throughout this report which can be summarised as follows:
- Progress to holding a referendum and prepare proposals for a Leader and Cabinet system of governance; or
 - Progress to holding a referendum and prepare proposals for a Committee system of governance; or
 - Decide not to proceed with a referendum and do nothing, leaving the current Elected Mayor and Cabinet system in place.

Appendices

Appendix 1: Torbay Council Committee Structure 2000

Appendix 2: Consultation results

Background Documents

'Rethinking governance – practical steps for councils considering changes to their governance arrangements' published jointly by the Local Government Association (LGA) and the Centre for Public Scrutiny (CfPS) - <http://www.local.gov.uk/documents/10180/5854661/Rethinking+governance+-+practical+steps+for+councils+considering+changes+to+their+governance+arrangements/6f1edbeb-dbc7-453f-b8d8-bd7a7cbf3bd3>