

Meeting: Council

Date: 5 December 2018

Wards Affected: All wards in Torbay

**Report Title: Review of Constitution for Leader and Cabinet System of Governance
May 2019 – Constitution Working Party Recommendations**

Is the decision a key decision? No

When does the decision need to be implemented? May 2019

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1. Proposal and Introduction

1.1 Following the Governance Referendum held in 2016, the Leader and Cabinet system of governance will be implemented after the all-out local elections in May 2019. This report sets out a provisional Constitution to enable the new the Leader and Cabinet system to be in place from May 2019. The new Council will be able to further review the Constitution once it is established following the elections.

2. Reason for Proposal and associated financial commitments

- 2.1 To ensure that the Constitution complies with the statutory requirements for a leader and cabinet system of governance.
- 2.2 The proposals contained in this report will not directly commit the Council financially.
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3. Recommendation(s) / Proposed Decision

- 3.1 That the provisional Constitution, as appended to this report, be approved and to be effective from the commencement of the Council's new Leader and Cabinet governance arrangements from 5 May 2019. (A summary of key changes is outlined in Section 1, paragraph 3 below), with the newly elected Council (post May 2019) requested to consider and review the following:
- a) The Council's decision-making structure and terms of reference of committees etc. to reflect the Leader and Cabinet System of Governance;

- b) The Council's Local Choice Functions under the Leader and Cabinet system. Specific areas to consider:

- 15. Appointments to other bodies; and

- 17. Function of Harbour Authority (e.g. whether the Harbour Committee continues as a Council function or the Harbour function transfers to the Cabinet);

- c) The operation of Members' Questions at Council meetings;
- d) The scope of Notice of Motions for Council meetings;
- e) The Outside Body Reporting Protocol (E23.2 and Appendix 1); and
- f) The approach for appointments to outside organisations and the application of cross party principles (links to the review of Local Choice functions).

- 3.2 That the new Administration in May 2019 be recommended to prepare a new Policy Framework structure and hierarchy alongside the new Corporate Plan.
- 3.3 That the Chairman/woman and Vice-Chairman/woman of the Council be referred to as Ceremonial Mayor and Deputy Ceremonial Mayor from May 2019 onwards, to ensure the role is clear for the community.
- 3.4 That delegations are given to the Chief Executive on Executive Functions on grounds of urgency during circumstances where there is no appointed Leader by the Council (e.g. during the interim period of a Local Election and Annual Council to appoint the new Leader of the Council; or in absence of the Leader of the Cabinet and where no Deputy Leader is appointed and/or where the delegation arrangements by the Leader to Cabinet members are not in place; or during the period where the Council has removed the Leader of the Council by resolution and the new Leader is to be appointed at the subsequent Council.) (Para 1.20 of Chief Executive's specific delegations refers).
- 3.5 That delegated authority be given to the Monitoring Officer to make any further technical changes and/or changes to existing Constitution which apply changes to the provisional Constitution for May 2019, in consultation with the Chairman of the Constitution Working Party, prior to recommending the new Constitution for approval to the new Council in May 2019.
- 3.6 That the Independent Remuneration Panel (IRP) undertake its review of the Members' Allowances Scheme for the new Leader and Cabinet system and make recommendations to Council at its meeting on 31 January 2019. The IRP be recommended to make recommendations to Council that keep the Scheme within the current budget.
- 3.7 That the current Members' Allowances Scheme be extended to 5 May 2019.

Appendices

Appendices 1 to 55: Provisional Constitution for May 2019

Background Documents

Local Government Act 2000

Local Authorities (Functions and Responsibilities) (England) Regulations 2000

Local Authorities (Standing Orders) (England) Regulations 2001

Local Government and Public Involvement in Health Act 2007

Localism Act 2011

Section 1: Background Information

1.

Background

The Constitution Working Party met on 6 occasions to review the entire Constitution for the new system of governance. Membership over these meetings of the Working Party (including substitutions) included: Councillors Hill (Chairman), Bye, Darling (S), Ellery, Kingscote, Morey, Sanders, Stocks, Thomas (D), Tolchard, Tyerman.

The current Constitution is based on the model constitution arising from the Local Government Act 2000. In undertaking the review of Constitution for 2019, advice was sought from the LGA as to best practice, along with external legal advice on the practicalities of the Leader and Cabinet system of governance. A review of other councils' constitutions was also undertaken to establish best practice. The LGA advised that the Torbay's Constitution was a good and workable document. Other councils follow pretty much the same format. Therefore, it is proposed that the current Constitution is not changed significantly as it follows best practice and members and officers are familiar with its contents and layout.

The Working Party requested a particular focus on Council Standing Orders and the Civic/ceremonial role. Best practice obtained from other Councils, along with our current practice in Council meetings has been reflected in the revised Council Standing Orders. Also, a new Local Protocol for Civic and Ceremonial has been drafted.

2.

Outline of Leader and Cabinet Form of Governance and Role of the Leader

Following the governance referendum held in 2016, the Leader and Cabinet system of governance will be implemented at the next all out local elections in May 2019. The system comes into force on the third day after the day of the election (5 May 2019). The Elected Mayor's term of office ceases on 5 May 2019.

The full Council will elect a Leader from its membership of 36 councillors. The term of office of the Leader is dictated in legislation and will be for the four year term of office until the Annual Council meeting following the next all-Council election. An early Annual Council meeting following 5 May 2019 to elect the Chairman (Ceremonial Mayor) and Leader of the Council is recommended. In addition it is recommended the Chief Executive is given delegated authority to take any urgent Executive decisions after the local elections and before the appointment of the new Leader, along with other circumstances where a Leader is not in post and there are no other delegation arrangements in place.

The Leader (once appointed) has the same powers as an elected Mayor and is responsible for exercising all executive functions within the budget and policy framework approved by Council.

	<p>The Leader appoints a Cabinet of between 2 and 9 elected councillors and must appoint one of those as a Deputy Leader. The maximum number on the Cabinet is 10 (including the Leader). The Cabinet need <u>not</u> be politically balanced.</p> <p>The Leader is responsible for delegating individual or collective decision-making powers to the Cabinet members at his/her discretion. The Deputy Leader acts in the place of the Leader when the Leader is not available.</p> <p>The Council specifies in the Constitution how the Leader can be removed. The Leader can only be removed if there is a vote to do this which is supported by the majority of councillors at a Council meeting. If the Leader is removed another Leader must be elected at that Council meeting or the next Council meeting. Where the Leader is removed by the Council, his/her Cabinet is also deemed to be removed and a new Cabinet shall be appointed by the newly appointed Leader.</p> <p>As with the elected Mayor system of governance, 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 the Leader and Cabinet system.</p> <p>The Leader and his/her Cabinet must not include the ceremonial Chairman and Vice-Chairman of the Council (or proposed new name of Ceremonial Mayor and Ceremonial Deputy Mayor).</p> <p>A table at the foot of this report sets out main differences between the Council's current arrangements with a directly elected Mayor and the new form of Governance of a Leader and Cabinet.</p>
<p>3.</p>	<p>Summary of main changes to current Constitution</p> <p>The proposed provisional Constitution is appended to this report and reflects the new governance arrangements which will apply from May 2019. Throughout the provisional Constitution references to the Elected Mayor have been removed and replaced where appropriate with the Leader of the Council.</p> <p>Set out below are the most significant changes being proposed or required under statute for each major section of the Constitution. However, it is not an absolute list of all those changes and Members are requested to endeavour to read the entire updated Constitution that has been circulated.</p> <p>Part 1 – Introduction No major changes.</p> <p>The new Council (post May 2019) is recommended to review decision-making structure and terms of reference to reflect Leader and Cabinet system.</p> <p>Part 2 – Articles General updating to reflect Leader and Cabinet system, including appointment and removal of Leader of Council by the Council (Articles 4 and</p>

6). The removal of the Leader of Council by the Council results in Cabinet members and the Deputy Leader ceasing to be a member of the Cabinet.

The Council is recommended to consider renaming the Chairman/woman and Vice-Chairman/woman to Ceremonial Mayor and Deputy Ceremonial Mayor to ensure the role is clear and distinct from the current Elected Mayor and the role description is understandable for the community. (Note: If accepted by the Council, the references to Chairman/woman and Vice Chairman/woman will be updated throughout the new Constitution).

The Working Party reviewed the current provisions for the Chairman/woman not to be a member of any committee, sub-committee or working party or attend at any meeting as a substitute. For good governance, it was felt important for the Chairman/woman to maintain neutrality and have sufficient capacity to accommodate civic functions and therefore, the Working Party concluded that the current provisions should remain.

It is recommended the new Administration prepare a new Policy Framework structure and hierarchy alongside the new Corporate Plan.

The Forward Plan currently includes all key decisions for both the Executive and Council. Under the Leader and Council system this is not necessary and other authorities do not follow this practice. Therefore, to reflect best practice and efficient decision-making processes it is proposed that the new Constitution only requires Executive decisions to be published in the Leader of the Council's Forward Plan.

Part 3 – Responsibility for functions

General updating to reflect the Leader and Cabinet system.

The new Council is recommended to review the Council's Local Choice functions under the Leader and Cabinet system, specifically Appointments to other bodies and function of the Harbour Authority. The functions of the Harbour Authority are currently a Council function and delegated to the Harbour Committee. The new Council may wish to consider whether these functions are transferred to the Cabinet.

The new Council is also recommended to review the decision-making structure and terms of reference to reflect the Leader and Cabinet system.

New provisions are recommended for delegations to the Chief Executive to make decisions on Executive functions on grounds of urgency where there is no appointed Leader by the Council (Para 1.20 of Chief Executive's specific delegations refers). These circumstances include:

- during the interim period of a Local Election and Annual Council to appoint the new Leader of the Council; or
- in absence of the Leader of the Cabinet and where no Deputy Leader is appointed and/or where the delegation arrangements by the Leader to Cabinet members are not in place; or

- during the period where the Council has removed the Leader of the Council by resolution and the new Leader is to be appointed at the subsequent Council.)

Part 4 – Standing Orders and Financial Regulations

Overall general updating to reflect legislation for Leader and Cabinet system and current practice.

Council Standing Orders have been reviewed to reflect current and best practice, provide clarity and make general improvements to the running of Council meetings. Main changes include:

A1.2 – Election of Leader for four year term

A1.2 and A2.1 – Introduction of a 4 year calendar of meetings to assist with forward planning

A2 – Order of Business for Ordinary Meeting to be determined by Chairman/woman

A3.2 – Extraordinary meetings to only include business for the purpose for the meeting being called

A10.1 – Quorum will reduce to 9 members under Leader and Cabinet system

A11.1 – Duration of meeting includes adjourned meeting

A12 – Petitions moved to sit with Public Question Time, so public participation Standing Orders are together (Note: the Council Standing Orders to be renumbered and references updated throughout the rest of the Constitution once approved by Council.)

A13.10 – Responses to members questions to be published 1 hour before the meeting to reflect current practice

A13.10 – Member asking question not present at meeting to seek agreement from Chairman/woman for another member to present the question or the question will be withdrawn

A13.11 – Supplementary question introducing time limits to ensure 30 minutes allocated for members' questions is used effectively

A14.2(a)/A14.3 – Motions for Cabinet or Council Committee to be included on relevant agendas and without introductory speeches at Council meeting

A14.2(d) – If Motion includes financial implications for the Council it requires advice from Council's Chief Finance Officer, with provision for Motion to be deferred to a subsequent meeting to ensure sufficient time for officers to assess proposals

A16 – Clarification note that Rules of Debate are different for Licensing and Planning applications considered by Council meeting

A16.7 – Process for preparing amendments in advance of meeting

A16.10 – Clarification that the mover of the original motion retains the right of reply on substantive motions and new provision providing mover of amendment right of reply prior to mover of original motion

A16.11 – Explanatory notes moved to sit with list procedural motions for ease of reference

A16.12/A16.3 – Point of Order/Personal Explanation: clarification when these will be heard by the Chairman/woman

A16.14 – Introduction of briefings by officers during meeting in exceptional circumstances and with consent of the Chairman/woman

A18.1 – Clarification that this Standing Order does not to apply to decisions previously rescinded

A18.2 – Motion similar to one previously rejected updated to include amendments at meetings to apply (in line with A18.1 Motion to rescind a previous decision)

A19.1 – Chairman/woman will read out motion or amendment if complex and clarity is needed before voting

A19.7 – Party Whip: The Constitution Working Party reviewed options following Council's decision in February 2011 to introduce a restriction of party political whips at any decision making committee while the elected mayor system of governance was in use in Torbay. The Working Party recommends the removal of this Standing Order A19.7 in its entirety as it does not apply under the Leader and Cabinet system.

A21.1 – Governance Support taking attendance to reflect current practice

A24.1 – Public question updated to reflect current practice of the Chairman/woman accepting public questions/statements after deadline in exceptional circumstances with 2 clear working day deadline

A24.5 and A24.7 – Updated to reflect public statements do not get a response from the relevant member as this is not necessary

A25.7 – Members leaving during the meeting to be recorded in the minutes, to reflect current practice

A27.1 – live stream recordings on social media included

The Constitution Working Party recommend that the new Council reviews: the operation of Members' Questions at Council meetings; and the scope of Notice of Motions for Council meetings.

Cabinet Standing Orders have been updated to reflect the introduction of Cabinet meetings and working parties.

New Standing Order (B5) for Committee and Sub-Committee meetings has been introduced for Rules of Debate to reflect current practice.

Access to Information Standing Orders – the Constitution Working Party recommend that the new Council review the Outside Body Reporting Protocol.

(Note: Updating of application of Council Standing Orders to Standing Orders for Committees and Sub-Committees (B6), Cabinet (C13), Overview and Scrutiny (D15), Standing Orders for Health and Wellbeing Board (H9) and Local Protocol – Working Parties (para 9) to be completed once document approved by Council)

Part 5 – Codes and Protocols

General updating to reflect Leader and Cabinet system, minor improvements and current practice.

Member Code of Conduct includes reference to bias, predetermination and predisposition.

Local Protocol for Member and Officer Relations includes reference to: the Council's arms length companies; current practice with the member casework system; external advisors to political groups where officers are attending group meetings; guidance on complaints in respect of the Chief Executive; and references for breaching the Code of Conduct.

The Constitution Working Party reviewed the Local Protocol for Relations Between the Elected Mayor and Political Groups. This protocol was introduced in 2011 under the Mayoral system of governance. The Working Party considered that this protocol should continue under the Leader and Cabinet system as it promotes good practice between political groups and mirrors the Local Protocol for Member and Officer Relations. A number of minor changes are proposed to reflect the Leader and Cabinet system. Linking to references above to outside organisations, the Working Party recommend that the new Council be requested to review the approach for appointments to outside organisations and the application of cross party principles.

A complete review of the Local Protocol for Licensing Matters has been undertaken to ensure it is up to date and reflects current practice, along with removing duplication.

The Local Protocol for Gifts and Hospitality has been updated to strengthen integrity and further protect members in respect of the offer of gifts to the Council whereby they are referred to the Chief Executive or relevant Director for acceptance where appropriate.

The Local Protocol for Members IT will be updated once members' IT provision for 2019 has been confirmed. The recommended changes in the Protocol also strengthens the use of members' private emails addresses for Council business linking to members' Data Protection responsibilities (paragraph 11.8 refers).

	<p>The Local Protocol for DBS Checks for Members includes provision for the Leader of the Council to be informed of positive disclosures in respect of Cabinet members (so he/she is aware of any potential conflict with Cabinet member portfolios for children and adults).</p> <p>The Local Protocol for Members of the Harbour Committee includes the removal of the TDA External Advisor appointment as it is considered this appointment could generate a conflict of interest in respect of tendering processes.</p> <p>A new local protocol for Civic and Ceremonial is proposed by the Working Party. This new protocol provides clarity and a consistent approach in respect of civic and ceremonial events and ensures the correct etiquette is applied to the Council's civic function. The Protocol includes reference to the proposed naming of Ceremonial Mayor and Deputy Ceremonial Mayor throughout.</p> <p>Part 6 – Members' Allowances and Job Descriptions Minor updating has been made to these sections to reflect the Leader and Cabinet system and current practice.</p> <p>The Working Party considered the timing for the four yearly review of the Members' Allowances Scheme by the Independent Remuneration Panel. The Working Party recommend that: (a) the Independent Remuneration Panel undertake its review of the Members' Allowances Scheme for the new Leader and Cabinet system and make recommendations to Council at its meeting on 31 January 2019 (note the IRP be recommended to make recommendations to Council that keep the Scheme within the current budget); and (b) the current Members' Allowances Scheme be extended to 5 May 2019.</p>
<p>4.</p>	<p>What are the alternative options?</p> <p>Not to accept some or all of the suggested changes to the Constitution. However, Members will need to be aware that the majority of the changes are required by law.</p>
<p>5.</p>	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</p> <p>The changes proposed to the Constitution for May 2019 arise from statutory requirements for a leader and cabinet system of governance. The revisions also assist with the Corporate Plan principle of using resources to best effect.</p>
<p>6.</p>	<p>What are the financial and legal implications?</p> <p>The Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007) requires the Council to have a constitution. The provisional Constitution set out in Appendix 1 to 55 reflects</p>

	<p>the new governance model of Leader and Cabinet due to be introduced in May 2019.</p> <p>There are no direct financial implications arising out this report. It is recommended the Independent Remuneration Panel recommend a new Members' Allowances Scheme encompassing the Leader and Cabinet model to the Council meeting on 31 January 2019, and this to be within existing budget.</p>
7.	<p>What are the risks?</p> <p>The risks associated with the recommendations are low. The majority of the proposed changes to the Constitution are required by law to reflect the Leader and Cabinet system of governance. The opportunity has been taken to review the whole Constitution and a number of changes have been made for clarity and to reflect best practice.</p>

The table below sets out the differences between the Council's current arrangements with a directly elected Mayor and the new form of Governance of a Leader and Cabinet:

Function	Current Elected Mayoral Executive Arrangements	New Leader and Cabinet System
Division of functions between Council and Executive	<p>Council sets Budget and Policy Framework. The Elected Mayor's Executive is responsible for implementing this and for other non-regulatory functions of the Council.</p> <p>The Elected Mayor submits budget or policy framework proposals. Council can then reject by 2/3rds majority vote after giving its objections to the Elected Mayor.</p>	<p>No change</p> <p>The Leader submits budget or policy framework proposals. Council can then reject by simple majority vote after giving its objections to the Leader.</p>
Election and term of office of Elected Mayor/Leader	Mayor is elected by Torbay's electors for a four year term at each Mayoral election.	Leader is elected by the Council from among the councillors for a four year term.
Removal of Elected Mayor/Leader	Elected Mayor cannot be removed by vote of Council. If Elected Mayor resigns during term, Mayoral election is triggered.	<p>The Constitution must provide for full Council to have power to remove the Leader by resolution.</p> <p>The Leader cannot be removed other than by resolution by full Council.</p> <p>If a Council passes a resolution to remove the Leader, a new Leader is to be elected at that meeting or at a subsequent meeting.</p>
Status	Elected Mayor is not a councillor.	Leader is a councillor and can only remain Leader if still a councillor.

Function	Current Elected Mayoral Executive Arrangements	New Leader and Cabinet System
Appointment of Executive/Cabinet Members	<p>Elected Mayor appoints two or more councillors to the Executive/Cabinet, not exceeding 10 including the Elected Mayor.</p> <p>Executive must not include Chairman/woman or Vice-Chairman/woman or Overview and Scrutiny Board members.</p>	<p>No change (Leader appoints)</p> <p>No change</p> <p>The Executive is referred to as the Cabinet under the Leader and Cabinet system.</p>
Allocation of Executive/Cabinet Portfolios	Elected Mayor allocates portfolios.	No change (Leader).
Appointment of Deputy Mayor/Deputy Leader	The Elected Mayor must appoint a Deputy Mayor who will be a member of the Executive and can exercise the Elected Mayor's functions if the Elected Mayor is unable to act. Deputy Mayor serves the same term as the Elected Mayor, but can be removed by the Elected Mayor.	No change (Leader).
Exercise of Executive functions	<p>All Executive powers are vested in the Elected Mayor.</p> <p>The Elected Mayor may exercise any Executive function personally or may delegate to the Executive, an Executive committee, Executive Member of an Officer.</p> <p>Executive members are accountable to the</p>	<p>No change (Leader).</p> <p>No change (Leader).</p> <p>Cabinet members are accountable to the</p>

Function	Current Elected Mayoral Executive Arrangements	New Leader and Cabinet System
	Elected Mayor who in turn is directly accountable for the discharge of Executive functions.	Leader who in turn is directly accountable to the Council for discharge of executive functions.
Role of Non-Executive Councillors	<p>Hold the Executive to account for decisions and participate in policy development via overview and scrutiny.</p> <p>Can call-in Executive decisions.</p>	No change.
Appointments to outside bodies	<p>Outside body appointments made by Council following all council election for a four year period (unless appointment is an Executive function or has been delegated by Council) in accordance with political balance.</p> <p>Chief Executive, in consultation with Mayor and Group Leaders, makes new appointments within 4 year term of office or may refer to Council for determination.</p>	<p>Appointments to Outside Bodies are a Local Choice Function.</p> <p>New Council to review.</p>
Civic role	Chairman/woman appointed at Annual Council. Chairs Council meeting and is first citizen undertaking civic role.	No change, except renaming and the Leader of the Council can not be the Chairman/woman of Council.