

WYRE FOREST DISTRICT COUNCIL

COUNCIL MEETING

23RD FEBRUARY 2011

Corporate Governance

OPEN	
SUSTAINABLE COMMUNITY STRATEGY THEME:	None
CORPORATE PLAN AIM:	A Well Run and Responsive Council
CABINET MEMBER:	Councillor John Campion Councillor Anne Hingley
DIRECTOR:	Caroline Newlands Director of Legal and Corporate Services
CONTACT OFFICER:	Penny Williams, Democratic Services Manager Tel: 01562-732728 Email: Penelope.williams@wyreforestdc.gov.uk
APPENDICES:	Appendix A : Timetable for submission of questions, public speaking and notices of motion at Council and Cabinet meetings Appendix B : Amendments relating to “Strong leader and Cabinet Model” Appendix C : Contract Procedure Rules <i>(This appendix has been circulated electronically and a public inspection copy is available on request. (See front cover for details).</i>

1. PURPOSE OF REPORT

- 1.1 To consider revisions to the Council’s constitution following a programme of work undertaken by the Transformation Board, to appoint two Members to an outside body and to amend the contract procedure rules.

2. RECOMMENDATION

The Council is asked to **DECIDE:**

- 2.1 To approve the amendments to the Council’s Constitution as set out in Appendices A and B of this report.
- 2.2 To approve the amendments to the Contract Procedure Rules as set out in Appendix C of this report to take effect on 1st April 2011.
- 2.2 To appoint to the Wyre Forest GP Commissioning Consortia Advisory Group.

3. BACKGROUND

- 3.1 The Transformation Board has commenced a programme of work to review the constitution. This report presents two sets of amendments that the Board is recommending to Council for adoption.
- 3.2 The first group of amendments in Appendix A relate to the timetable for submission of questions, public speaking and notices of motion. The proposals here arise from issues encountered at the meeting of Council on 1 December 2010 in respect of awareness of matters that were to be discussed at that meeting.
- 3.3 The second group of amendments in Appendix B flow from the legislation and the Council's decision on 1 December 2010 to adopt the "strong leader and Cabinet" model. These amendments have to be settled now as they are intended to come into force on the day of the Council's Annual General Meeting on 18 May 2011.
- 3.4 The third group of amendments in Appendix C relate to the Contract Procedure Rules. The current Standing Orders were updated in a piecemeal fashion and although amendments were adopted at the Council meeting in May 2010 it is considered that a restructure and redraft of the rules would be beneficial. The Corporate Resources Scrutiny Committee, at the time of writing the report has not decided whether or not to scrutinise the revisions; should the Scrutiny Committee decide that they wish to scrutinise the contract procedure rules, consideration by the Council would be delayed to its Annual General Meeting in May.

3.5 Outside Body – Wyre Forest GP Commissioning Consortia Advisory Group

Wyre Forest District Council has 2 representatives on this Group. Meetings of the Group are held bi-monthly on Wednesdays commencing at 6.30 pm and approximately 5 meetings per annum will be held.

4. KEY ISSUES

Strong Leader and Cabinet Model

- 4.1 The Local Government and Public Involvement in Health Act 2007 required Councils to decide to adopt one of two new governance models before 31st December 2010:
- (a) an elected Mayor and Cabinet Executive or
 - (b) a new style Leader and Cabinet Executive (the so called "Strong Leader" model)
- 4.2 At the Extraordinary Council meeting on 1st December 2010 the Council decided to adopt the "Strong Leader and Cabinet" model of corporate governance.

Standing Orders Relating to Contracts

- 4.3 Since the last full review of the Standing orders Relating to Contracts, the Remedies Directive has been adopted into UK legislation by the Public Contracts (Amendments) Regulations 2009. The Remedies Directive has simplified the process for aggrieved contractors to launch a legal challenge and have contracts made ineffective. The proposed “Contract Procedure Rules” fully incorporate these changes in legislation.
- 4.4 The use of technology to send and receive tenders and quotes has become more common. The proposed contract Procedure rules offer guidance for Council employees in the use of electronic documents.
- 4.5 The use of ‘Framework’ agreements to ensure best value for the Council has become more common. The proposed rules are more supportive of using pre-existing framework agreements and provide more guidance as to the process.
- 4.6 The removal of the Miscellaneous Functions Committee from the Council’s structure has impacted on the delegations and approvals relating to the tendering process, including the procedure for opening tenders, these procedures are clearly set out in the proposed rules.
- 4.7 The change in the lower threshold (from £1,000 to £3,000) will allow greater freedom in purchases below £3,000. Necessary controls are still in place and purchases over £500 require publication but the current threshold of £1,000 can be unnecessarily restrictive.
- 4.8 Other key changes within the Rules are: the removal of the distinction between estimates and quotations which will provide greater consistency for contracts between the value of £3,000 and £50,000 and the introduction of the Tender Receipt Officer role which will provide one central point for quotations and tender receipt and opening.
- 4.9 In addition, the plain English approach and the inclusion of tables and diagrams should assist those officers undertaking a procurement exercise. The intention is that once adopted the intranet version of the rules will include links to all related papers for example the standard quotation and tender documents. This should lead to greater consistency in approach.
- 4.10 By the Council approving the proposed rules any procedure to select a contractor commenced prior to the 1st April 2011 will be subject to the previous rules, any procedure to select a contractor on or after 1st April 2011 will be subject to the new rules.

5. FINANCIAL IMPLICATIONS

- 5.1 The proposed revisions to the constitution can be met from existing budgets.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 The relevant provisions of the Local Government and Public Involvement in Health Act 2007 are set out in Section 4 above.
- 6.2. The proposed Contract Procedure Rules will help to ensure that the Council is complaint with procurement legislation and the EU required principles of transparency and non-discrimination.

7. EQUALITY IMPACT NEEDS ASSESSMENT

- 7.1 An equality impact assessment has been undertaken and it is considered that there are no discernable impacts on the six equality strands.

8. RISK MANAGEMENT

- 8.1 There are no significant risk management issues identified with this report.

9. CONCLUSION

- 9.1 The Review of the Council's constitution will ensure that it is up to date, robust and in line with good practice.

10. CONSULTEES

- 10.1 Leader of the Council
- 10.2 Corporate Management Team
- 10.3 Transformation Board

11. BACKGROUND PAPERS

- 11.1 Reports to Transformation Board on Constitution 14 December 2010 and 1 February 2011
- 11.2 Report to Extraordinary Council meeting on governance models 1 December 2010

Timetable for submission of questions, public speaking and notices of motion at Council and Cabinet meetings

Explanation of amendments

- A.1 The amendments move forward the deadline for questions, motions etc. from 9am two working days before the Council’s meeting to 12 noon seven working days before the Council’s meeting. For example, for a Council meeting being held on a Wednesday in week 2, the deadline would usually be 12 noon on Monday in week 1 instead of 9am on Monday in week 2.
- A.2 This change will allow questions, motions etc. to appear on the printed agenda so that members, press and public have fuller information about what business is to be transacted at the Council’s meeting. It will therefore help to prompt engagement with or awareness of the work of Council. The dates of Council meetings are generally known a long time in advance, and therefore setting an earlier deadline would not present individuals with difficulty in meeting them.
- A.3 Provision is also being made for urgent questions to be asked about issues that arise between the deadline set above and the date of the Council meeting.
- A.4 The opportunity is being taken to clarify that another member should, with consent, be allowed to put a question on behalf of a member who is absent.

Amendments to the Constitution

Reference	Amendment/Insertion
Section 7, Council Procedure Rules (Standing Orders)	<p>Substitute paragraph (iv)(a) of Standing Order 1.9 “Members’ Questions at Council Meetings” as follows:</p> <p>“(iv) A question</p> <p>(a1) Must be delivered in writing to the Director of Legal and Corporate Services no later than 12 noon on the day 7 working days before the meeting of Council; or</p> <p>(a2) in the case of an urgent matter that has arisen since the deadline mentioned in sub-paragraph (a1) and could not reasonably have been known about at that time, must be delivered in writing to the Director of Legal and Corporate Services no later than 9am on the day of the meeting of the Council; and”</p> <p>Insert at the end of Standing Order 1.9:</p> <p>(vii) If a Member who has submitted a question is not present when the question is called, the question may, with the</p>

consent of the Chairman, be asked by another Member. Paragraph (iv) (b) above shall apply but there will be no right to ask a supplementary question.

In Standing Order 3.13 “Public Speaking at meetings”, **amend** the deadlines for registering an interest in speaking as follows:

Council “no later than 12 noon on the day 7 working days before the meeting of Council. If you wish to speak on an urgent matter that has arisen since the deadline and you could not reasonably have known about it at that time, you should register your interest in speaking no later than 9am on the day of the meeting of the Council. In the case of a request to speak on an urgent matter, the Director of Legal and Corporate Services’ will rule on whether or not the matter is urgent and that ruling will be final.”

Cabinet “no later than 12 noon on the day 7 working days before the meeting of Cabinet. If you wish to speak on an urgent matter that has arisen since the deadline and you could not reasonably have known about it at that time, you should register your interest in speaking no later than 9am on the day of the meeting of the Cabinet. In the case of a request to speak on an urgent matter, the Director of Legal and Corporate Services’ will rule on whether or not the matter is urgent and that ruling will be final.”

Substitute paragraph (i) of Standing Order 4.1 “Notices of Motion” as follows:

(i) A Motion, not listed in Standing Order 4.2, signed by the Member(s) giving the Notice must be delivered in writing to the Director of Legal and Corporate Services no later than 12 noon on the day 7 working days before the meeting of Council.

Amendments relating to “strong leader and Cabinet” model

Explanation of amendments

- B.1 The amendments reflect the legislation which provide for:
- the Leader to be elected for a period of up to 4 years;
 - the Leader to appoint members of the Cabinet;
 - the Leader to allocate responsibility for executive functions.
- B.2 It is not proposed to make any changes to much of the current practice for electing the Leader. Accordingly there is no deadline for nominations to be received in advance of a meeting where the Leader is elected; and there is no special provision about the number of supporters that a candidate must have in order to be nominated. As with any motion, there needs to be a proposer and seconder and there is nothing to prevent the candidate filling one of those roles. A candidate must enjoy the support of at least one other member of the Council.
- B.3 The term of office of the Leader is set out by the provisions in sections 44E and 44F of the Local Government Act 2000. These provide that the Leader leaves office “on the day when the council holds its first annual meeting after the leader's normal day of retirement as a Councillor” and that he or she remains a Councillor until that date even if not elected in the elections that would be held prior to the annual meeting. For example, if in May the Council elected as its Leader a Councillor who was elected in 2009, that individual would hold office as Leader until the AGM in May 2013 (two years). He or she would continue to be a member of the Council until the AGM in May 2013, even if not elected as a Councillor at the elections earlier in May 2013. Overall the effect is that the maximum term of appointment as Leader is four years but, because we have elections by thirds, the precise term of office can be shorter than that depending on when the Leader was elected as a Councilor.
- B.4 In most circumstances, it is appropriate for the functions of the Leader temporarily to devolve upon the Deputy Leader pending election of a new Leader. The drafting makes provision for this. There is one circumstance where different provision is appropriate, namely where the Leader is removed from office by resolution of the Council. Because the Leader appoints the Cabinet, it would be appropriate that the Council’s lack of confidence in the Leader should be reflected in the removal of the whole Cabinet. Accordingly, there would be no Cabinet member left to discharge executive functions. To cater for this exceptional situation, which would arise only if the Council had not elected a new Leader at the meeting where it removed the previous Leader from office, provision is needed to specify who would be responsible for discharge of the Cabinet’s functions until a new Leader is elected. This is necessary so that any pressing matters which cannot wait until a new Leader is in post can be dealt with. The drafting reflects the Transformation Board’s recommendation that, in these

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exceptional circumstances, the powers should be discharged by the Head of Paid Service in consultation with group leaders.

- B.5 Finally, the first amendment clarifies the power of the Cabinet to decide delegation of executive functions, pending the new arrangements that will come into force in May under the “strong leader and Cabinet” model.

Amendments to Constitution

With effect from 23 February 2011

In Section 2 (Articles of the Constitution), **replace** the final paragraph of Article 7 (Responsibility for Functions) as follows:

“The Cabinet may decide to delegate executive functions to individual members of the Cabinet, Committees of the Cabinet, officers or joint committees. The Monitoring Officer will maintain a list in Sections 3 and 6 of this Constitution setting out decisions about delegation of particular executive functions.”

With effect from 18 May 2011

In Section 2 (Articles of the Constitution), Article 4 – The Full Council, **amend** item 5 in “What does the Council do?” to read “appointing the Leader”

In Section 2 (Articles of the Constitution), **omit** Article 7 – The Cabinet and **replace** with the following text:

“Article 7 – The Cabinet

Role

The Cabinet will carry out all of the local authority’s functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

Leader

The Leader will be a Councillor elected to the position of Leader by the Council. The Leader will hold office until:

- (i) the day when the council holds its first annual meeting after the leader's normal day of retirement as a Councillor, as provided by section 44E of the Local Government Act 2000; or
- (ii) he/she resigns from the office; or
- (iii) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or

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- (iv) he/she ceases to be a Councillor before the normal date of retirement as a councillor including as a result of statutory provisions; or
- (v) he/she is removed from office by resolution of the Council.

Procedures if the Leader ceases to hold office for various reasons

If the Leader ceases to hold office as mentioned in paragraphs (ii), (iii) or (iv) above, the functions of the Leader (other than appointment and dismissal of Cabinet members and decisions on allocation of executive functions) shall be discharged by the Deputy Leader until the election of a new Leader. In these circumstances, if an ordinary meeting of the Council is not scheduled to take place within the following 21 days, an extraordinary meeting of the Council shall be held within 21 days in order to elect a new Leader.

Procedures following resolution of the Council to remove the Leader from office

If the Council resolves to remove the Leader from office and unless a new Leader is elected at the same meeting, the following procedures will be followed:

- an extraordinary meeting of the Council shall be held within 10 days to elect a new Leader;
- until the election of a new Leader, the executive functions of the Cabinet shall be discharged by the Head of Paid Service in consultation with Group Leaders.

Appointment of Cabinet

The Local Government Act 2000 requires that the Cabinet consists of the Leader together with at least 2, but not more than 9, other Councillors appointed to the Cabinet by the Leader. The precise number of Cabinet members, allocation of portfolios and term of office are for decision by the Leader and shall be set out in writing, except that the term of office may not extend beyond the third day after the leader's normal day of retirement as a councillor. The Leader shall designate one of the Cabinet members as Deputy Leader.

Other Cabinet Members

Other Cabinet members shall hold office until:

- (i) the expiry date of a fixed term specified by the Leader when appointing them; or
- (ii) they resign from office; or
- (iii) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (iv) they are no longer Councillors; or

- (v) they are removed from office by the Leader, such a decision to be set out in writing and to have immediate effect; or
- (vi) the day on which the Leader is removed from office by resolution of the Council.

Proceedings of the Cabinet

Proceedings of the Cabinet shall take place in accordance with the Procedure Rules relevant to the Cabinet set out in Section 7 of this Constitution.

Responsibility for Functions

The Leader of the Council:

- (a) may discharge any executive function, or
- (b) may arrange for the discharge of any executive function
 - (i) by the Cabinet,
 - (ii) by another member of the Cabinet,
 - (iii) by a committee of the Cabinet,
 - (iv) by a joint committee, or
 - (iv) by an officer of the authority.

The Monitoring Officer will maintain a list in Sections 3 and 6 of this Constitution setting out decisions about delegation of particular executive functions to a member of the Cabinet, a Committee of the Cabinet, joint committees or an officer of the authority.”

In Section 3 – Responsibility for functions, **omit** paragraph 1.1