

## **CITY COUNCIL – 12 MAY 2008**

### **JOINT REPORT OF THE LEADER AND CHAIR OF THE OVERVIEW AND SCRUTINY COMMITTEE**

#### **AMENDMENTS TO THE CONSTITUTION**

##### **1 SUMMARY**

- 1.1 This report sets out proposed changes to the constitution designed to further the development of the council's overview and scrutiny function, to take into account legislative changes, to correct an identified anomaly and to ensure the Constitution provides the governance framework and processes required for the Council to lead, direct and control its functions effectively and to best support its relationship with communities and partners.
- 1.2 The proposed substantive amendments to the Constitution have been highlighted as tracked changes in the appendix to this report, which has been circulated to Members separately. Any other consequential changes to the Constitution will be made by the Monitoring Officer.
- 1.3 Appointments to Committees, with the exception of Select Committees, are the subject of a separate report of the Leader later on this agenda. Any appointments to, and terms of reference for, Select Committees will be a matter for determination by the Overview and Scrutiny Committee at its meeting at the rising of Council on 12 May and the Constitution will be updated accordingly.

##### **2 RECOMMENDATIONS**

IT IS RECOMMENDED that, in accordance with the details set out in this report and reflected as tracked changes in the appendix to the report:-

- (1) the proposed changes to overview and scrutiny structures, procedures and revised protocol, as set out in section 4, be approved;

- (2) the following arrangements for establishing a Joint East Midlands Health Scrutiny Committee, as set out in section 5, be approved:-
  - (i) that on behalf of the City Council, the Health and Adult Social Care Select Committee be authorised to approve the Protocol which will govern the operation of the Joint Committee, prior to its submission to the Joint Committee for adoption; and
  - (ii) that two City Council members for the Joint Committee be drawn from the membership of the Health and Adult Social Care Select Committee;
- (3) the establishment of an Audit Committee to replace the Accounts Committee, as set out in section 6, be approved;
- (4) the establishment of a City Centre Area Committee to replace the City Centre Working Group, as set out in section 7, be approved;
- (5) the revised Protocol to govern the operation of the Joint Planning and Transportation Committee, as set out in section 8, be adopted;
- (6) the amendments to the terms of reference for the Appointments and Conditions of Service Committee, the Officer Employment Procedure Rules and the general Human Resources delegations, as set out in section 9, be approved;
- (7) responsibility for approving a draft Local Area Agreement, as set out in section 10, be delegated to the Executive Board;
- (8) the removal of the Youth Justice Plan and Best Value Performance Plan from the Policy Framework, as set out in section 11, be approved;

- (9) the anomaly that exists in the definition of a key decision contained in the Core Constitution, details of which are set out in section 12, be corrected.

### **3 BACKGROUND**

A detailed review of the Constitution, led by the Overview and Scrutiny Committee, was undertaken in early 2005 with the current Constitution approved by Council on 18 July 2005. Since then a number of revisions have been approved by full Council to ensure the Constitution provides the governance framework and processes required for the Council to lead, direct and control its functions effectively and to support its relationship with communities and partners. Regular review of the Constitution and how the Council conducts its business will ensure that decisions are effective, efficient and transparent and that the Council remains accountable to local people.

### **4 OVERVIEW AND SCRUTINY – PROPOSED CHANGES**

- 4.1 In the context of growing expertise within overview and scrutiny, changes in legislation, corporate priorities and also observations by Professor Steve Leach of De Montfort University, a number of desirable changes to the current overview and scrutiny structures and procedures have been identified.
- 4.2 The Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007 provided for new powers and responsibilities to Overview and Scrutiny in a number of areas and, in order to accommodate these new provisions, it was considered that the structure of Overview and Scrutiny should be reviewed. After an initial consideration of the issues, Professor Leach, an expert in local authority overview and scrutiny, was commissioned to review Nottingham's Overview and Scrutiny function and make recommendations.
- 4.3 Professor Leach's recommendations form the basis of the following revised structure:-

- (i) The Overview and Scrutiny Committee to retain its oversight of the whole function and its role relating to corporate policies and documents and to take responsibility for performance scrutiny across Council services and the Local Area Agreement, for financial scrutiny (excepting those matters which would be the responsibility of the proposed Audit Committee) and for the scrutiny of all other resource issues such as personnel and property.
- (ii) A Community Wellbeing Select Committee be established to undertake the Overview and Scrutiny role for community facilities, community cohesion, equalities, social housing and other generic community issues not falling to other select committees and to fulfill the statutory crime and disorder scrutiny role.
- (iii) A Health and Adult Social Care Select Committee be established to assume the remit of the Health Scrutiny Panel (including the statutory health scrutiny role) and to undertake the Overview and Scrutiny role for adult social care.
- (iv) The Joint City and County Health Scrutiny Committee to continue its role in scrutinising conurbation wide health issues, including the statutory role for those NHS services provided across Greater Nottingham. At its meeting of 15 April, the Joint City and County Health Scrutiny Committee proposed that amendments be made to the protocol governing its operation. The revised Protocol is included in the appendix, which has been circulated separately to members, and it includes expanding the Committee's remit to cover issues that impact upon the whole of the City of Nottingham and the County of Nottinghamshire, rather than just the conurbation. The primary focus of the Committee will remain the conurbation but, where relevant issues arise, the focus will be expanded to cover the whole County. The County Councillors on the Committee also agreed not to appoint co-opted Members from the conurbation District Councils and accordingly the reference to them is deleted.

- (v) A Regeneration and Sustainability Select Committee be established to assume the remit of the Regeneration, Infrastructure and Sustainability Panel and undertake the Overview and Scrutiny role for strategic housing and city centre arts, cultural and leisure facilities as part of its remit for inward investment and infrastructure.
- (vi) A Young Nottingham Select Committee be established to assume the remit of the Children and Young People Panel and undertake the Overview and Scrutiny role for children's and young people's health and social care.
- (vii) The Overview and Scrutiny Committee to have 14 members, politically balanced, to include the Chairs of Select Committees in its membership. The Vice-Chair to be selected from any Councillor eligible to serve on an Overview and Scrutiny body. Each Select Committee to have nine members. The Health and Adult Social Care to have two Vice-Chairs, one to support the health focus and one to support the social care focus.

If the proposed scrutiny structure is approved, any appointments to, and terms of reference for Select Committees will be a matter for determination by the Overview and Scrutiny Committee at its meeting at the rising of Council on 12 May. Details of the proposed terms of reference for Select Committees have been included in the appendix to this report to provide members with a full picture of the revised structure being proposed. It is further intended that in order to address members' capacity and to facilitate more effective scrutiny, all committee membership should be 9 members.

## **5 JOINT EAST MIDLANDS HEALTH SCRUTINY COMMITTEE**

- 5.1 Under the Health and Social Care Act 2001 NHS bodies have a duty to consult their local overview and scrutiny committees on any proposals they may have under consideration for substantial development and or variation in service. Under a Local Authority Directive issued by the Secretary of State for Health in 2003, where an NHS body consults more than one committee then the local authorities of those committees are required to appoint a joint overview and scrutiny committee. Only the joint committee may:

- (a) make comments on the proposal consulted on to the local NHS body under regulation 4(4) of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002;
- (b) require the local NHS body to provide information about the proposal under regulation 5 of the Regulations;
- (c) require an officer of the local NHS body to attend before it under regulation 6 of the Regulations; or
- (d) refer an issue of concern to the Secretary of State for Health for further consideration.

5.2 The power to scrutinise NHS health services is exercisable only by overview and scrutiny committees of local authorities that have social services responsibilities. The Local Government Act 2000 and associated regulations enable local authorities to make use of joint arrangements with other authorities.

5.3 It is envisaged that health scrutiny committees across the East Midlands will be consulted on proposals for substantial developments or variations in health services over the coming months. These are likely to include work streams arising from the 'Our NHS Our Future' review and/ or the Commissioning of Specialised Services (broadly defined as those services with low patient numbers that require a critical mass of patients to make treatment centres effective. These tend to be commissioned on a regional basis).

5.4 The standard period for consultation on substantial variations usually runs for three months. However past experience from other authorities within the region shows that it can take a considerable amount of time to establish a joint committee, not least because of differing Council meetings cycles but also approving protocols. If all authorities within the region establish a regional Committee to consider such consultations prior to it being required to meet, the time taken to call a meeting will be significantly shortened allowing the maximum possible time for Members to consider the proposals.

5.5 A steering group of members and officers of local authorities in the East Midlands with health scrutiny responsibilities has been

meeting to develop a framework for a Joint East Midlands Health Scrutiny Committee to respond to future proposals for substantial variations or developments. The proposed Joint East Midlands Health Scrutiny Committee will act as statutory consultee for consultation on substantial variations/ development in the area covered by the local authorities of Derby, Derbyshire, Leicester, Leicestershire, Lincolnshire, Northamptonshire, Nottingham, Nottinghamshire and Rutland. Consideration of substantial variations and developments within any of these geographical areas remains the responsibility of the relevant local authority.

- 5.6 If approved, the Joint Committee will only be convened when a NHS health body consults more than one Committee. The Committee will determine whether the proposal is substantial and whether it affects the region. A protocol on how the committee will function is being developed by the steering group and will be agreed by the Joint Committee at its inaugural meeting.
- 5.7 The Council is requested to approve the proposal to establish a Joint East Midlands Health Scrutiny Committee, to authorise the Health and Adult Social Care Select Committee (see section 4.3 (iii) above) to approve, on behalf of Nottingham City Council, the Protocol which will govern the operation of the Joint Committee, prior to it being submitted to the Joint Committee for adoption and to approve the proposal that two members be drawn from the Health and Adult Social Care Select Committee to form the City Council membership of the Joint Committee. It is suggested that these two Members could be the Chair of the Health and Adult Social Care Select Committee and the Vice Chair with responsibility for Health.

## **6 ESTABLISHMENT OF AN AUDIT COMMITTEE**

- 6.1 It is normally a function of City Council to receive and consider the Annual Governance Report and other related reports and over the last few years it has been necessary for an Accounts Committee to undertake this role in order to meet the legislative reporting timetable. However, it is now proposed that an Audit Committee be established which would replace the Accounts Committee. Although an Audit Committee is not a legal requirement, it is

increasingly recognised that high performing authorities develop effective financial and non-financial control mechanisms through the ongoing liaison and development of expertise made available by the establishment of a Committee, meeting on a regular cycle, and with terms of reference focused on the key audit control and risk management areas critical to the Council's performance. The terms of reference for this committee concentrate focus on a governance and probity role and do not replicate the role of Overview and Scrutiny who review and scrutinise the functions and services provided by the Council.

- 6.2 For the Council to continue to improve its Use of Resources assessments, it is considered essential that an Audit Committee be established. In accordance with CIPFA guidance, the proposed Committee will not have executive membership and would remain as 8 members to be appointed with a ratio of (6:1:1). The proposed terms of reference for the Committee can be found in an appendix to this report which has been circulated to Members separately.

## **7 CITY CENTRE AREA COMMITTEE**

- 7.1 Nottingham's city centre is key to the City's long term prosperity. Alongside its positive attributes it brings a number of challenging operational issues for which the City Council, more often than not, has lead responsibility. It is proposed that an area committee for the City Centre be established to co-ordinate the Council's operational activities with those of key partners. The existing City Centre Working Group would be disestablished.
- 7.2 The City Centre is distinctive from other areas of the city in that residents' concerns and priorities are not the exclusive driver, but increasingly it shares a number of cross-cutting challenges not dissimilar to those co-ordinated through area committees. Given that three existing area committees overlap into the City Centre, it is proposed to draw member representation from those areas and provide additional balance from beyond those three area committees.
- 7.3 Proposed membership of the area committee is at least one Councillor from each of the Area Committees four, six and eight



and five Councillors from across the City. The purposes of the Committee would be to articulate the City's ambition for a City Centre supported by high quality services, events and environment for local people, investors, retailers and visitors. In this context the Committee's terms of reference would be similar to other area committees and can be found in an appendix to this report which has been circulated separately to Members.

- 7.4 A range of operational officers from across and beyond the Council will co-ordinate their activity and report through the City Centre Area Committee. This would be supported by a small group of officers liaising closely with the Chair of the Committee. Service areas who will report through the Committee in this way include City Centre Management, Licensing, Street Scene, Neighbourhood Management, Highways, Traffic Management, Crime and Drugs Partnership and Arts and Events.

## **8 JOINT PLANNING AND TRANSPORTATION COMMITTEE**

- 8.1 The operation of the Joint Committee is governed by a Protocol, which is subject to a biennial review. At its meeting on 21 December 2007, the Joint Committee approved a revised protocol for adoption by the two Councils.
- 8.2 The revised Protocol is included in the appendix to this report which has been circulated separately to members. It includes the New Growth Point within the remit of the Joint Committee, and has been generally updated to reflect the demise of Structure Plans and the new role of the Regional Spatial Strategy. The Committee's membership and advisory role remain unchanged, with decisions being referred as recommendations back to the Executive Bodies of the constituent authorities.

## **9 REVISED OFFICER EMPLOYMENT PROCEDURE RULES, TERMS OF REFERENCE FOR APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE AND GENERAL HUMAN RESOURCES DELEGATIONS**

- 9.1 The majority of the proposals are required to reflect recent changes in job titles and to more clearly reflect the provisions of the Local

Authorities (Standing Orders) Regulations 2001. The proposed restriction on Corporate Directors' authority to implement changes to employees' remuneration is designed to reduce the risk of equal pay liabilities being created. The new proposals for Corporate Directors and the Director of Human Resources to settle employment cases and equal pay claims and suggested as a means of reducing bureaucracy and costs in the majority of the cases settled. The detailed proposals can be found in the appendix to this report which has been circulated separately to members.

## **10 LOCAL AREA AGREEMENT – LOCAL CHOICE FUNCTION**

10.1 Regulations under the Local Government Act 2000 have been made that place the approval of a draft Local Area Agreement (LAA) as a matter for 'local choice', that is, the approval may be, but need not be, the responsibility of an authority's executive. The decision as to where this responsibility should rest needs to be taken by full Council.

10.2 Government guidance is clear that the new LAA forms the delivery plan for the Sustainable Community Strategy. The latter is already included within the policy framework and is therefore subject to approval by Council. It is appropriate that responsibility for the delivery plan is delegated to the Executive Board as this reflects responsibility for most functions within the LAA and allows for a flexible approach to refreshing the agreement on an annual basis.

## **11 POLICY FRAMEWORK**

11.1 Since the adoption of the revised Constitution in July 2005 there has been a legislative change in the form of the Local Government and Public Involvement in Health Act 2007 that removed the requirement for an Authority to produce a Best Value Performance Plan and Guidance for Youth Offending Team Management Boards in the form of the Youth Justice Planning Framework 2008/09 that radically changes the format of the Youth Justice Plan. As there is no longer a requirement to produce the Best Value Performance Plan and the format for the Youth Justice Plan has been radically changed, it is proposed that they be deleted from the Policy Framework as set out in section 2.4 of the Core Constitution.

- 11.2 Developments in the performance management framework for local authorities, and the promise to reduce the burden caused by central government, have led to the removal of the requirement to produce a Best Value Performance Plan. Councils are still expected to publish performance information, which is done through the regular performance reports presented to Executive Board. These performance reports are also publicly available on the website.
- 11.3 The requirement to produce an annual Youth Justice Plan in accordance with section 40 of the Crime and Disorder Act 1998 remains, but its format will be subject to major change from 2008 onwards. Its focus will be on a technical assessment of the capacity and capability of the City Council and its partners to deliver the six national youth crime indicators, and it will contribute to the Comprehensive Area Assessment self-assessment including LAA targets (see section 10 above), from 2009 onwards. As the latter is not a part of the Policy Framework, it is suggested that it would be inconsistent for a subsidiary element of it to be part of the Policy Framework. It is therefore proposed that the Youth Justice Plan be removed from the Policy Framework, although it will remain a key decision requiring approval by the Executive Board and its obligations will remain within the overall Community Strategy which is a Policy Framework document.

## 12 KEY DECISION CRITERIA

- 12.1 An anomaly has come to light in the definition of a key decision in the core constitution and its definition in Appendix 6 (d) Responsibility for Functions. In the latter, a key decision is correctly defined as an executive decision which is likely:-
- (i) to result in the Council incurring expenditure or making **income** or savings of more than £500,000 revenue, taking account of the impact for a full year; or £1,000,000 capital (see section 3 for explanation of revenue and capital expenditure);
  - (ii) to be significant in terms of its effects on communities living or working in an area consisting of two or more wards in the City.

However, in the Core Constitution the words 'income' have been omitted from the definition included and approval is sought to correct this anomaly.

13 **LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

None.

14 **PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

Police and Justice Act 2006

Crime and Disorder Act 1998

Local Government Act 2000

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000/2853)

Local Authorities (Standing Orders) Regulations 2001

Health and Social Care Act 2001

The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002

The Council's Constitution, July 2005

Local Government and Public Involvement Act 2007

The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008 (SI 2008/516)

The Local Authorities (Functions and Responsibilities) (England) (Amendment No. 2) Regulations 2008 (SI 2008/744)

Advice note from the Chartered Institute of Public Finance and Accountancy Technical

Youth Justice Planning Framework 2008/09: Guidance for Youth Offending Team Managers and Management Boards (YJB 2008)

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