

| <b>Committee</b>                                                                                                                          | <b>Date</b>  | <b>Classification</b>                                                                                                             | <b>Report No</b> | <b>Agenda Item No</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------|
| Extraordinary Council Meeting                                                                                                             | 3 March 2010 | Unrestricted                                                                                                                      |                  |                       |
| <b>Report of:</b><br><br>Chief Executive<br><br><b>Originating Officer(s)</b><br><br>John Williams, Service Head,<br>Democratic Services. |              | <b>Title:</b><br><br>New executive arrangements: Proposals and constitutional amendments<br><br><b>Wards Affected:</b><br><br>All |                  |                       |

## 1. SUMMARY

1.1 Council on 2 December 2009 agreed:-

- (i) In accordance with the requirements of the Local Government & Public Involvement in Health Act 2007 to introduce a 'Leader and Cabinet (England)' form of executive with effect from 6 May 2010; and
- (ii) Following receipt of a valid petition under the Local Government Act 2000, to hold a referendum on 6 May 2010 to determine whether the Authority will make a further change, to a Directly Elected Mayor and Cabinet, from 21 October 2010.

1.2 Section 4 and Appendix A to this report set out the detailed constitutional amendments required to implement the new-style Leader and Cabinet model from 6 May as at (i) above.

1.3 Sections 5 and 6 of the report, together with Appendices B and C, set out the results of the statutory consultation undertaken on the possible future Mayoral system and recommend the formal adoption of proposals for the operation of that system should the referendum in May return a majority 'yes' vote.

## 2. RECOMMENDATIONS

The Council is recommended:-

- 2.1 To agree the amendments to the Council's constitution required to introduce the new-style Leader and Cabinet (England) form of executive, as set out at Appendix A, to take effect from 6 May 2010;
- 2.2 To note the results of consultation on the draft proposals for a Mayoral form of executive as set out at Appendix B;

- 2.3 To adopt the proposals for executive arrangements including a Directly Elected Mayor, to be introduced with effect from 21 October 2010 subject to approval at the referendum on 6 May 2010, as set out at Appendix C;
- 2.4 To formally adopt the outline fallback proposals based on the 'Leader and Cabinet (England)' model that will continue to operate if the Mayoral system is not approved at the referendum on 6 May 2010, as at Appendix D;
- 2.5 To note that the proposed new executive arrangements will be likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness; and
- 2.6 To agree that the proposals and fallback proposals, together with a statement of the consultation undertaken, be sent to the Secretary of State, made available for inspection and advertised as required by statute.

### **3. BACKGROUND**

- 3.1 The Local Government and Public Involvement in Health Act 2007 ('the 2007 Act') requires all local authorities with a population of more than 85,000 to adopt one of two forms of executive arrangements:-
  - **Either** a new style 'Leader and Cabinet (England)' model, in which the Leader of the Council is elected by the Council for a four year term of office (although the Council may retain the power to remove the Leader from office) and selects other Councillors to form the Cabinet;
  - **Or** a 'Directly Elected Mayor and Cabinet' model, in which an Executive Mayor is elected by the residents of the borough in a separate poll. The Mayor would also serve a four year term and would select the Cabinet members from amongst the elected Councillors. An Elected Mayor cannot be removed from office during his/her term by the Council.
- 3.2 The Council conducted public consultation as required by the 2007 Act and on 2 December 2009 agreed to introduce a Leader and Cabinet (England) form of Executive from 6 May 2010. However, following the close of consultation, the Council had received a valid petition under the Local Government Act 2000, calling for a referendum on the adoption of a Mayoral form of executive. The Council on 2 December therefore also agreed that the referendum will be held on 6 May 2010. If a majority of those voting at the referendum vote 'yes', the Mayoral system will be introduced as from 21 October 2010 and an election will be held on that date for the position of Elected Mayor. If on the other hand the referendum returns a majority 'no' vote, the new-style Leader and Cabinet system will continue and the Leader elected at the Annual Council Meeting in May 2010 will remain in office for a four year term.
- 3.3 Section 4 of this report sets out the constitutional amendments required to implement the new-style Leader and Cabinet model from 6 May 2010. Sections 5 and 6 set out the results of consultation on the possible future Mayoral system and recommend the matters to be included in the formal proposals, which the

Council is now required to adopt, for the operation of that system should the referendum return a majority 'yes' vote.

#### **4. CONSTITUTION AMENDMENTS: FOUR YEAR LEADER AND CABINET**

- 4.1 In order to introduce the Leader and Cabinet (England) model from 6 May 2010 as agreed by the Council, a number of constitutional amendments are required. These are set out at Appendix A and are now presented for adoption.
- 4.2 The main differences between the new style Leader and Cabinet model and the Council's existing arrangements are:-
- The Leader will be elected by the Council for four years rather than annually (but the Council may retain the power to remove the Leader by majority vote);
  - The Leader, rather than the Council, will decide how many Cabinet Members shall be appointed and will make those appointments;
  - The Deputy Leader will be appointed by the Leader and will serve for the duration of the Leader's term of office unless removed by the Leader;
  - All executive functions of the Council will be vested in the Leader, who will decide which functions shall be delegated to the Cabinet Members and/or officers.

#### **5. CONSULTATION ON MAYORAL PROPOSALS TO BE PUT TO THE REFERENDUM**

- 5.1 The 2000 Act requires that at least two months before the referendum, the Council must draw up, adopt and send to the Secretary of State:-
- a) Proposals for executive arrangements involving an Elected Mayor, including the allocation of 'local choice' functions between the Mayor and the Council, associated constitutional provisions and an implementation timetable, to be introduced if the referendum results in a majority 'Yes' vote; and
  - b) 'Fallback' proposals, not involving an Elected Mayor, to apply if the referendum returns a majority 'no' vote. (NB: These will be a continuation of the new-style Leader and Cabinet arrangements that the Council has already agreed to introduce from 6 May 2010);
- 5.2 Before agreeing the proposals at (a) above the Council must take reasonable steps to consult local electors and other interested persons in the borough on the proposals. The authority must take into account the results of that consultation as well as 'the extent to which the proposed new executive arrangements would be likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness'.
- 5.3 Consultation has been undertaken as required on draft Mayoral proposals. The 2000 Act does not prescribe the method or duration of consultation but states that the consultation can build on previous relevant work. The Council has only recently conducted a comprehensive consultation exercise on new executive arrangements, which attracted over 2,000 responses prior to the receipt of the

referendum petition. In view of this, and the fact that many of the outstanding issues in relation to the Mayoral proposals are quite technical in nature, the current consultation has been a light-touch and primarily web-based exercise. A full report on the methods used and the results of the consultation is attached at Appendix B.

## **6. MAYORAL PROPOSALS: ISSUES FOR CONSIDERATION**

6.1 The main areas of discretion that the authority must decide at this stage about a possible future Mayoral system are listed below and these formed the main issues for consultation:-

- a) The allocation of functions between the Council and the Mayor, including the Policy Framework and the 'local choice' functions;
- b) Overview and Scrutiny arrangements including 'call-in' and the definition of a Key Decision;
- c) The allocation of civic/ceremonial functions and social precedence; and
- d) The scheme of delegation

6.2 The following paragraphs address these issues in turn and suggest the approach to be taken in the proposals, informed by the consultation responses.

### **The allocation of functions between the Mayor and the Council**

6.3 Under the 2000 Act the local authority's functions are split between the Council and the Executive. Most functions are the responsibility of the Executive, whichever form that takes. The exceptions are in two categories - (i) certain specific functions that must be reserved to the Council or to non-executive committees (e.g. agreeing the Budget and Policy Framework, the Council's Constitution, Development and Licensing functions etc); and (ii) a further list of functions each of which the Council can choose either to reserve to itself or to allocate to the Executive. These latter functions are known as 'local choice' functions.

### **The Policy Framework**

6.4 By law the Council must approve certain plans and strategies and this cannot be delegated to the Executive. The Executive proposes the plans to Council for approval and if the plans are approved the Executive must make decisions within the agreed plan. The following documents currently fall into this category:

- The Children and Young People's Plan
- The Crime and Disorder Reduction Strategy
- The Development Plan Documents
- The Licensing Authority Policy Statement
- The Local Transport Plan
- The Plans and Alterations which together comprise the Development Plan
- The Sustainable Community Strategy
- The Youth Justice Plan

6.5 If Councils wish they may add discretionary plans and strategies to the Policy Framework. However this could have an impact on efficient decision making,

because any changes to these plans could only be approved by Council, and it could also blur Executive accountability. It is therefore suggested that the existing Policy Framework should be included unchanged in the proposals.

This proposal was endorsed by a majority of respondents to the consultation who expressed a view on the matter.

### **Local Choice Functions**

- 6.6 There are a small number of functions which Council can either reserve to itself or allocate responsibility for decision making to the Executive. Examples include the determination of appeals; functions relating to contaminated land, pollution or air quality; investigation of statutory nuisances; and functions relating to Local Area Agreements. Currently at Tower Hamlets some of these functions are allocated to the Council and some to the Executive. A full list of the 'local choice' functions and their current allocation is at Appendix E.
- 6.7 In view of the concerns raised by some respondents to the previous consultation regarding the concentration of powers in a Mayoral model, it is proposed that under such a model in the first instance all 'local choice' functions should be allocated to the Council. It would be open to the Council at any future point to review this allocation in respect of one or more of the functions. It should also be noted that in practice the discharge of most of the functions is delegated to officers on behalf of the Council and it is proposed that this remain the same.

This proposal was endorsed by a majority of respondents to the consultation who expressed a view on the matter.

### **Overview and Scrutiny Arrangements**

- 6.8 The statutory requirements for, and powers of, Overview and Scrutiny are unchanged under a Mayoral executive. As with a Leader and Cabinet arrangement the Council must have at least one Scrutiny Committee. The arrangements for Overview and Scrutiny are well established in Tower Hamlets and are widely regarded as efficient and effective. It is recommended that the current arrangements for Overview and Scrutiny, including the provision for any five councillors to 'call-in' an executive key decision within five working days of the decision being published, should be included unchanged in the proposals.

This proposal was endorsed by a majority of respondents to the consultation who expressed a view on the matter.

### **Key Decisions**

- 6.9 Certain executive decisions – those which are likely to result in the local authority incurring expenditure or making savings which are significant in the context of the budget for the service to which the decision relates; or which are significant in terms of the effect on communities living or working in two or more wards in the borough – are called 'Key Decisions' and are subject to additional legal requirements including advance publication on the Executive's Forward Plan and potential 'call-in' to the Overview and Scrutiny Committee.

6.10 The precise definition of a 'Key Decision' is a matter for each local authority. Some councils have set a specific financial threshold above which any decision is automatically a Key Decision. Tower Hamlets has not done so but instead each decision is judged on its merits taking into account:-

- Whether the decision may incur a significant social, economic or environmental risk;
- The likely extent of the impact of the decision both within and outside of the borough;
- Whether the decision is likely to be a matter of political controversy; and
- The extent to which the decision is likely to result in substantial public interest.

6.11 It is considered that the above definition of a Key Decision promotes effective and efficient decision making, taking into account the context of each individual decision and should therefore be retained under any mayoral system.

This proposal was endorsed by a majority of respondents to the consultation who expressed a view on the matter.

#### **Civic and ceremonial duties**

6.12 The Council may decide whether or not the Elected Mayor will discharge the ceremonial duties currently performed by the Civic Mayor (except for chairing the Council Meeting, which may not be undertaken by the Elected Mayor). If a 'Civic' position is retained, it cannot be known as 'Mayor' as that title may only be used by the Elected Mayor. The 'Civic Mayor' currently has social precedence in the borough. This will be passed to the Elected Mayor unless the Council opts to include in the arrangements that the 'Civic Mayor' (under a new title) will have precedence. The issue of social precedence is associated with the status of the ceremonial role.

6.13 Government guidance suggests that it will usually be difficult for a busy Elected Mayor to take on the full range of ceremonial duties as well as his/her executive role. It is therefore proposed that the ceremonial duties, including chairing the Council Meeting, should remain the responsibility of a separate post, who would undertake the same duties and responsibilities as the current 'Civic Mayor' and would have social precedence.

This proposal was endorsed by a majority of respondents to the consultation who expressed a view on the matter.

6.14 The consultation sought views on the most appropriate title for this post. Suggestions included 'Chair of Council', 'Speaker' and 'First Citizen'. It is proposed that 'Chair of Council', a title which summarises clearly one of the key roles of this position and is used by a number of other authorities, should be adopted at Tower Hamlets for the purposes of the mayoral proposals. This proposal was also endorsed by a majority of respondents to the consultation who expressed a view on the matter.

## **Scheme of Delegation**

- 6.15 The Council's Constitution sets out the arrangements for delegation of certain Executive and Non-Executive (Council) functions to committees, other sub-groups of Members and/or Chief Officers. Under a Mayoral system the delegation of Executive functions to the Cabinet, individual Cabinet Members, Cabinet Committees or officers is a matter for the Mayor to decide following his/her election.
- 6.16 The discharge of Non-Executive (Council) functions such as Development, Licensing and the functions currently delegated to the Audit, Human Resources, Pensions, Standards, Appeals and General Purposes Committees are unaffected by any change to a Mayoral executive.
- 6.17 It is therefore proposed that if a mayoral system is introduced at Tower Hamlets, the existing Executive and Non-Executive schemes of delegation should initially be retained unchanged pending any variations to be agreed by the Elected Mayor or Council respectively.

This proposal was endorsed by a majority of respondents to the consultation who expressed a view on the matter.

## **The proposals**

- 6.18 A draft of the Mayoral proposals, reflecting the recommendations above and the results of the consultation, is attached at Appendix C.

## **7. FALLBACK PROPOSALS**

- 7.1 The Council must also formally agree 'fallback' proposals, based on a new-style Leader and Cabinet model, which will apply if the referendum does not approve the Mayoral proposals. It is proposed that these fallback proposals should be a continuation in identical form of the Leader & Cabinet (England) model that the Council has already agreed to introduce from 6 May 2010. A draft of the fallback proposals is attached at Appendix D.

## **8. SECURING CONTINUOUS IMPROVEMENT**

- 8.1 In adopting the proposals the Council must consider 'the extent to which the proposed executive arrangements will assist in securing continuous improvement in the way the Council's functions are exercised, having regard to economy, efficiency and effectiveness'.
- 8.2 Supporters of the Elected Mayoral model state that it can provide for strong leadership, stability and direct personal accountability for decision making. Opponents state that it can concentrate power in a single official and diminish the role of councillors representing the community. The proposals at Appendix C seek to secure the advantages claimed for the model whilst ameliorating any disadvantages by including appropriate checks and balances, with the aim of securing continuous improvement in the exercise of the Council's functions.

## **9. ACTION NOW REQUIRED/FURTHER INFORMATION PROVISION**

- 9.1 Once the Council has adopted the proposals, they must be sent to the Secretary of State, made available for inspection and advertised in a local newspaper.
- 9.2 From the date of submission of the proposals the Council may not promote support for, or opposition to, the referendum proposals. However, the Council will wish to conduct a major programme of information provision with the aim of explaining the differences between the two options, promoting an informed debate and encouraging electors to vote at the referendum, up until the final 28 days before the poll, when further restrictions on publicity apply.

## **10. CONCURRENT REPORT OF THE CHIEF LEGAL OFFICER**

- 10.1 The legal context and implications are incorporated in the main body of the report. If the Council does not adopt the proposals, or fails to hold a referendum in accordance with the regulations, statute provides for the Secretary of State to direct the authority in this regard.

## **11. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 11.1 The costs associated with the referendum and possible subsequent mayoral election have previously been reported to the Council. There are no further direct financial implications of the current report. The cost of advertising the proposals will be met from existing provision in the Chief Executive's directorate.

## **12. IMPLICATIONS FOR ONE TOWER HAMLETS**

- 12.1 The new executive arrangements are designed to promote effective leadership and accountability, to the benefit of the whole borough and all its communities.

## **13. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 13.1 The proposals are designed to enable effective decision making and a longer-term view on all matters including measures to enhance the local environment.

## **14. RISK MANAGEMENT IMPLICATIONS**

- 14.1 There are no direct risk management implications arising from this report.

## **15. APPENDICES ATTACHED**

- Appendix A: Constitutional amendments: Leader and Cabinet (England)  
Appendix B: Mayoral Proposals - report on consultation  
Appendix C: Proposals for Executive Arrangements including an Elected Mayor  
Appendix D: Fallback proposals for Executive Arrangements including a Leader and Cabinet  
Appendix E: 'Local Choice' functions – current and proposed allocation



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**LOCAL GOVERNMENT ACT, 1972 SECTION 100D (AS AMENDED)**

**LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT**

| <b>Brief description of background papers:</b>                                                                                                                                                                                                                                                                                                         | <b>Name and telephone number of holder and address where open to inspection</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>Local Government Act 2000 (as amended) and Guidance to Authorities on consultation.</li><li>LBTH consultation material and responses July – October 2009 and January – February 2010</li><li>Petition for a Mayoral Referendum delivered on 23<sup>rd</sup> October and 16<sup>th</sup> November 2009.</li></ul> | John Williams x 4204, 1 <sup>st</sup> floor, Mulberry Place.                    |