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| Non-Executive Report of the: Council 18 November 2020 |  TOWER HAMLETS |
| Report of: Asmat Hussain, Corporate Director, Governance and Monitoring Officer | Classification: Unrestricted |
| Governance Model Referendum | |

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| Originating Officer(s) | Vanessa Morgridge, Lawyer |
| Wards affected | All Wards |

Executive Summary

Following a referendum, the Council changed its governance model to the ‘Elected Mayor and Cabinet’ model in 2010. A ten-year moratorium on changing that model has now elapsed. Council is therefore asked to consider this report and determine what, if any, action should be taken to review the model.

Should Council determine it wishes to consider a change, this report sets out the legal process for implementing a change to the governance model through a motion at a council meeting or if a Petition meeting the relevant threshold is met.

This report further sets out the process to be followed should the Council formally resolve to hold a referendum on 6 May 2021 (or at a later date) on the question of whether or not to change Tower Hamlet’s governance model.

It should be noted that Will Tuckley, Chief Executive as ‘Counting Officer’ should be consulted and be in agreement with the polling date agreed by Council.

Recommendations:

The full Council is recommended to:

1. Note the contents of this report and in particular the comments of the 'Counting Officer' in Paragraph 3.22
2. On the basis of this report and its appendices determine whether to formally ask the Counting Officer to hold a referendum on the Council's governance arrangements. Should Council determine not to request to hold a referendum it must determine alternative recommendation 8.
3. If Council agrees Recommendation 2, to then further agree the model of governance to be available to electors to choose at the referendum as the alternative to the current Mayor & Cabinet Model;

to choose an alternative from either:

- a) The leader and cabinet model of executive; OR
 - b) The committee model of governance.
4. To determine to hold the referendum on Thursday 6 May 2021 at the same time as the elections for the London Mayor and Assembly and the Neighbourhood Planning Referendum to be held on the Isle of Dogs or to propose an alternative date.
 5. If a governance referendum is to be held on Thursday 6 May 2021, to agree:
 - a) the referendum timetable at Appendix 2; and
 - b) to receive a report at its next meeting to agree the referendum proposals based on the council's decision and as required by the Local Government Act 2000 (LGA 2000) for publication.
 6. If a referendum is to be held after agreeing the proposals in 2-4 above to make them available for inspection and to publish them as required by LGA 2000.
 7. To note the financial cost to the Council of holding a referendum either in conjunction with other polls and elections or separately as set out in the comments of the Chief Finance Officer.

Alternative Recommendation

8. To agree either;
 - a) that no change should be made to the current governance model; or
 - b) that no change should be made to the current governance model and

that a governance review should be held to consider alternative executive arrangements within the current model or to propose to Council for agreement a model for a referendum to be held at a later date.

1. REASONS FOR THE DECISIONS

- 1.1 As the ten year moratorium on changing the Council's governance model has now expired, this report is presented to give members a chance to determine whether they wish to continue with the current model or whether the Council should consider changing to an alternative model. Any proposal will have to be put to residents in a referendum. The results of the referendum would be binding on the Council.

2. ALTERNATIVE OPTIONS

- 2.1 Members can determine to retain the existing governance arrangements with no changes.
- 2.2 Instead of determining the issue immediately, Members can vote to set up a Commission to prepare a report on which governance model would work best in Tower Hamlets. The report may take up to a year to prepare to give proper analysis and recommendations to the Council before formally resolving to hold a referendum. It is therefore likely not to report before the autumn 2021 and may not give time to hold a referendum before the 2022 Local Elections.

3. DETAILS OF THE REPORT

Background

- 3.1 The Council has operated the Mayor and Cabinet model of governance since May 2010.
- 3.2 The governance model was established through a referendum therefore it can only be changed through another referendum.
- 3.3 A further referendum to change the governance model cannot take place before 10 years of the date of the first referendum to change the governance model. The relevant date for Tower Hamlets was 5 May 2020.
- 3.4 The Local Government Act 2000 (as amended) sets out the statutory process which Councils must follow before they can change their governance arrangements.
- 3.5 Councils can only change from one available governance model to another and any referendum can therefore only be a choice between two of the available governance models below.

Available Governance Models

- 3.6 The following Governance Models are available to councils:
- 3.6.1 The directly elected Mayor & Cabinet executive model, as currently in place.
 - 3.6.2 The Leader & Cabinet executive model; this model has similarities with the Mayor & Cabinet model in that an executive holds most decision-making power with some powers reserved for Council and its Committees. However, the Leader is a Councillor indirectly elected as leader by full Council, whereas the Mayor is directly chosen by electors.
 - 3.6.3 The Committee model, which removes all forms of executive governance and members make decisions through Committees usually established on subject areas such as housing or finance.
 - 3.6.4 The Council can also propose a new governance model (known as Prescribed Arrangements in the Act) for approval by the Secretary of State. Any proposal for new governance arrangements must demonstrate that:
 - a. They are an improvement on the current model in place;
 - b. would be likely to ensure that decisions are taken in an efficient, transparent and accountable way; and
 - c. would be appropriate for other councils to consider.
- 3.7 No Council has proposed any new model of governance to the Secretary of state to date so the only currently available models are 3.6.2 and 3.6.3.
- 3.8 It is also possible to vary existing governance arrangements so that they operate differently in any respect but are still the same model i.e. Mayor and Cabinet model in Tower Hamlets. A resolution and publication of a notice will also be required.
- 3.9 It should also be noted that within each model there are additional governance arrangements that can be adopted including the delegation of powers.
- 3.10 Members could decide to establish a governance commission to review all options including any potential changes within the existing system. Council could then decide a further course of action once that commission had reported. It should be noted that such a commission would likely take a year to report and so may not provide an opportunity to hold a referendum before the local elections in 2022. Any agreed change of governance model is only implemented at the following scheduled date of local elections.

- 3.11 The Council therefore has a range of options available to it for changing its governance model and these should all be taken into account when considering a formal resolution to undertake a referendum.

The legal Framework

- 3.12 The council has power under s9K of the LGA 2000 to pass a resolution to change governance arrangements.
- 3.13 The Council's Mayor and Cabinet executive model can only be changed through a referendum because it was first adopted after a referendum.
- 3.14 If a referendum is approved, it must be conducted in accordance with the Local Authorities (Conduct of Referendums) (England) Regulations 2012) as amended by the Local Authorities (Conduct of Referendums) (England) (Amendment) Regulations 2014.
- 3.15 The Chief Executive as the Borough's Returning Officer is responsible for the administration and running of the referendum. For a governance referendum and Neighbourhood Planning Referendum he is referred to as the 'Counting Officer' and for the GLA his role is as the Borough Returning Officer (BRO).
- 3.16 The mandatory statutory process which Councils must follow to change the governance arrangements is set out in Part 1A, Chapter 4, ss.9K to 9OA of the LGA 2000. The Key features of the procedure in Tower Hamlets are:
- 3.16.1 The referendum can only be a binary choice between the current Mayor and Cabinet Executive model and either the Leader and Cabinet executive model or Committee model;
 - 3.16.2 The wording of the referendum question is set by the legislation and cannot be changed, see the prescribed questions available to the Council and Ballot paper at Appendix 1.
 - 3.16.3 Statutory notice requirements and a timetable must be followed, see the timetable based on Thursday 6 May 2021 at Appendix 2.
 - 3.16.4 Those registered to vote in local elections (Local Government franchise) in Tower Hamlets on the eligible date are able to vote in a referendum and the result is determined by a simple majority vote.
 - 3.16.5 If the referendum were to vote for a change in governance arrangements then the council would resolve to make the change within 28 days of the resolution and implement the changes at the elections in May 2022.

The date of the Referendum

- 3.17 The Council is required to determine the date of the referendum and within the following limitations this is at the Council's discretion.¹
- 3.17.1 It cannot be held before Thursday 6 May 2021 due to the statutory postponement of all elections to no earlier than this date (Local Government and Police and Crime Commissioner (Coronavirus) Postponement of Elections and Referendums) (England and Wales) Regulations 2020.
- 3.17.2 It cannot be held on a weekend or public holiday;
- 3.17.3 If the Council's governance model was to be changed at the next local elections then the referendum must be held before the next ordinary council elections on 5 May 2022 with time factored in to take into account the possible need to plan for the implantation of a new governance model if that is the outcome.
- 3.17.4 If the date set is within 28 days of another election, it must be combined with that election and held on the same day.
- 3.18 Combing the referendum with the London Mayoral and Assembly elections on Thursday 6 May 2021 and the Neighbourhood Planning Referendum on the Isle of Dogs complies with these requirements.
- 3.19 If the date of Thursday 6 May 2021 is agreed, the Council can agree the timetable at Appendix 2. Should a different referendum date be agreed a further report to Council will set out the necessary timetable.
- 3.20 If a resolution to hold a referendum is approved to be held on Thursday 6 May 2021, the Council must also determine the following:
- 3.20.1 Proposals for the change/the referendum proposals. A further report will be required to agree final proposals once a decision to hold a referendum and the alternative model of governance is known.
- 3.21 If a referendum is held and there is a majority vote in favour for a change of governance arrangements, within 28 days of the poll date, the Council must pass a second resolution to implement the change in a Special Council Meeting held for this purpose and if necessary transitional arrangements agreed.

¹ Regulation 4 of the Local Authorities (Conduct of Referendums) (England) Regulations 2012 as amended).

Counting Officer's Comments

- 3.22 Statutory Guidance on holding referenda state that the Counting Officer's views should be taken into account when setting the date (Local Government Act 2000 Guidance to local authorities, 2000 para 13), these views are set out here:
- 3.23 The returning officer's overarching view is that any poll should aim to maximise participation and turnout by all electors and also facilitate an accurate and valid result. Some factors for consideration on setting the date are:
- i. Public health factors: currently, all elections are postponed until Thursday 6 May 2021 due to the risks created by the Covid-19 pandemic. Significant work across London is taking place to minimise the risks in the London elections but the voting system by its nature creates a risk to public health by requiring non-postal voters to attend in person at polling stations and ordinarily there would be multiple use of equipment, poll booths etc. There is an equivalent risk to staff in stations and also at the count, both of which are ordinarily not suited to social distancing or avoiding multiple contact of potential infected equipment, ballot papers etc. Any change in polling methodology e.g. to a postal vote only ballot, would require changes in primary legislation and there is no such proposal or appetite at present being suggesting by government.
 - ii. Logically, the later the date for the referendum, the less likely it is to be affected but the risk of disruption may affect any date. (It is also noted that this may also have a broader impact on democratic participation and campaigning in the run up to polling day – although this is a matter outside of the Council's control).
 - iii. Equality of Access: elections are almost always held between April and July in part because the combination of better weather and lighter evenings makes voters' access to stations easier and safer. This will particularly benefit those with mobility difficulties. Scheduled Local and regional elections, as opposed to unscheduled by elections, are primarily fixed as the first Thursday in May in part for this reason. School holidays should be avoided and ideally school examination periods but it is important to note that the legislation supports and encourages the use of schools as polling places as specified in the RPA Act 1983, Chapter 2, Schedule 1, Part 111, paragraph 22. The December 2019 election by contrast caused a significant strain on resources due to weather and short-day length.
 - iv. With respect to the date of Thursday 6 May 2021, this would require combination of the referendum with the London Elections on the same day and with a Neighbourhood Planning Referendum on the Isle of Dogs. The Statutory Guidance cited above further advises to combine referenda with other polls where available and also the local authority should take steps to

maximise turnout, including the timing of the turnout of the referendum². From the Counting Officer's perspective, there are benefits and risks to this option. The benefits are the potential for maximising turnout; early May increases the chance of good weather and long daylight hours and minimises the disruption to voters, schools and other stakeholders by avoiding two polling days. The main risks are the public health risks identified above disrupting the election and the added complexity for voters of completing 4 ballot papers with differing voting systems (and 5 ballot papers in the Neighbourhood Planning Area on the Isle of Dogs)

- v. It is important to note that the City and East constituency has historically had one of the highest rates of rejected ballot papers in London elections. The Counting Officer and staff are working closely with the GLA Returning officer to put in place measures to mitigate risks, so far as is possible.

²Local Government Act 2000 Guidance to local authorities, 2000 4.13 and 4.16

4. EQUALITIES IMPLICATIONS

- 4.1 The Council decision must be informed by compliance with the Council's general equality duty under s149 of the Equality Act 2010. If a democracy commission was established, it would need to consider equalities matters as part of its assessment work.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

- 5.2 There is no statutory duty to consult but members may consider it appropriate to hold a public consultation exercise to take into account residents' views of the options available. This can also be achieved by setting up a commission to prepare a report.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 The financial impact of holding a referendum will result in significant cost to the Council. A full breakdown of costs is not possible at this stage due to the level of planning that needs to be undertaken, the lack of many comparator

referenda and due to the potential additional costs caused by other events such as the Covid-19 Pandemic.

- 6.2 However, holding two referenda at the same time as the Greater London Authority elections on 6 May 2021 will allow the Council to share some costs with the GLA but a substantial cost will still fall to the Council.
- 6.3 It is estimated that holding a referendum at the same time as the GLA elections will result in the Council incurring expenditure of at least £300k whilst holding a stand-alone election is expected to cost at least £450k.
- 6.4 This cost is not budgeted for and cannot be contained within any existing budget. If agreed, a budget will need to be identified to meet the costs.
- 6.5 In accordance with the Representation of the People Act 1983 the cost of local elections/referenda are met from the local authority's budgets. The local authority is required to appoint a Returning Officer to conduct these elections on their behalf and the Returning Officer is personally (not corporately) responsible for the management of elections. For Referenda the role of the Returning Officer is known as the Counting Officer. Each local authority is required to place the services of its staff at the disposal of the Returning Officer to help run the polls.
- 6.6 Even though the Returning Officer is an employee of the council, at the time of an election their responsibility is completely separate.
- 6.7 Fees for conducting the election, giving the prescribed notices, preparing and supplying nomination papers where applicable, distributing, filling up, verifying and adjudicating upon the same, appointing Deputy Returning Officers, arranging for or conducting the poll, counting the votes, declaring results and making return of same, and generally performing all the duties which a Returning Officer is required to perform under the Act or the Rules and Regulations made under it, and including all disbursements and expenses other than those for which special provision has been herein before made, shall be as set out in the adopted and agreed London Scale of Fees and Charges compiled by the London Elections Management Board.
- 6.8 London Boroughs were first empowered to fix their own scales of election fees in 1974 and Tower Hamlets Returning Officer has used this scale for the determination of fees paid. The London fees and charges scale is reviewed on an annual basis.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The legal framework is set out at 3.12 to 3.16 and sets out the procedure to be followed to change from one governance model to another. If a referendum is held, a subsequent referendum cannot be held within a period of 10 years beginning with the date of the first referendum unless the first referendum was held because of an order of the Secretary of State or the first referendum was rejected by the voters.

- 7.2 There is no statutory duty to consult on the decision to change governance arrangements and or to hold a referendum. If the council decide to make this decision, it must follow the statutory procedure for the referendum. The returning officer is responsible for ensuring the duty is complied with in administering the election.
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Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 Sample ballot paper for Governance referendum
- Appendix 2 Timetable – GLA and Referendum 6 May 2021

List of “Background Papers” used in the preparation of this report

- None

Officer contact details for documents:

N/A

BALLOT PAPERS FOR GOVERNANCE REFERENDUM

The format and wording of the ballot paper is prescribed by law. Depending on the alternative proposal, this what the front of the ballot paper would look like:

Option One: Mayoral Model v Leader and Cabinet

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| Referendum on how the London Borough of Tower Hamlets is run | |
| Vote only once by marking a cross (X) in the box next to your choice | |
| How would you like the London Borough of Tower Hamlets to be run? | |
| By a mayor who is elected by voters. This is how the council is run now. | <input type="checkbox"/> |
| By a leader who is an elected councillor chosen by a vote of the other elected councillors. This would be a change from how the council is run now. | <input type="checkbox"/> |

Option Two: Mayoral Model v Committee Model

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|--|--------------------------|
| Referendum on how the London Borough of Tower Hamlets is run | |
| Vote only once by marking a cross (X) in the box next to your choice | |
| How would you like the London Borough of Tower Hamlets to be run? | |
| By a mayor who is elected by voters. This is how the council is run now. | <input type="checkbox"/> |
| By one or more committees made up of elected Councillors. This would be a change from how the council is run now. | <input type="checkbox"/> |

APPENDIX 2

Timetable – GLA and Referendum 6 May 2021

Days to be disregarded when calculating the timetable are as follows

- (a) Saturday or Sunday;
- (b) Christmas Eve, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England; and
- (c) any day appointed as a day of public thanksgiving or mourning.

| Event | Working days before poll (deadline if not midnight) | Date (deadline if not midnight) |
|--|---|---|
| Publication of notice of election | Not later than 30 days | Monday 22 March 2021 |
| Publication of Notice of Referendum | -25 | Not later than Monday 29 th March 2021 |
| Delivery of nomination papers | From the date stated on the notice of election until 4pm on the 24th working day before polling day | On any working day during the hours stated on the notice of election until 4pm on Tuesday 30 March 2021 |
| Deadline for delivery of nomination papers | -24 (4pm) | 4pm on Tuesday 30 March 2021 |
| Deadline for withdrawals of nomination | -24 (4pm) | 4pm on Tuesday 30 March 2021 |
| Deadline for notification of appointment of election agents | -24 (4pm) | 4pm on Tuesday 30 March 2021 |
| Publication of first interim election notice of alteration | -24 | Tuesday 30 March 2021 |
| Publication of statement of persons (and parties) nominated | -22 (4pm) | Not later than 4pm on Thursday 1 April 2021 |
| Deadline for receiving applications for registration | -12 | Monday 19 April 2021 |
| Deadline for new postal vote applications and for changes to existing postal or proxy votes | -11 (5pm) | 5pm on Tuesday 20 April 2021 |
| Deadline for receiving new applications to vote by proxy (not postal proxy or emergency proxies) | -6 (5pm) | 5pm on Tuesday 27 April 2021 |
| Publication of second interim election notice of alteration | Between -23 and -6 | Between Wednesday 31 March and Tuesday 27 April 2021 (inclusive) |
| Publication of notice of poll | Not later than -6 | Not later than Tuesday 27 April 2021 |
| Publication of Notice of Poll | Not later than -6 | Not later than Tuesday 27 April 2021 |
| Publication of final election notice of alteration | -5 | Wednesday 28 April 2021 |
| Deadline for notification of appointment of polling and counting agents | -5 | Wednesday 28 April 2021 |
| First date that electors can apply for | -4 | Thursday 29 April 2021 |

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| replacements for lost postal votes | | |
| Deadline for notification of appointment of sub-agents | -2 | Tuesday 4 May 2021 |
| Polling day | 0 (7am - 10pm) | 7am to 10pm on Thursday 6 May 2021 |
| Last time that electors can apply for a replacement for spoilt or lost postal votes | 0 (5pm) | 5pm on Thursday 6 May 2021 |
| Last day for new applications to vote by proxy on grounds of medical emergency / business | 0 (5pm) | 5pm on Thursday 6 May 2021 |
| Last day to make alterations to the Register to correct a clerical error or to implement a court (registration appeal) decision | 0 (9pm) | 9pm on Thursday 6 May 2021 |