

From: **Gary Cook, Cabinet Member for Corporate and Democratic Services**

**Geoff Wild, Director of Governance and Law**

To: **Policy and Resources Cabinet Committee – 12 December 2014**

Subject: **Decision making process**

Classification: **Unrestricted**

**Summary:** This report provides an overview of the governance arrangements that apply to executive decision making at KCC and in particular the adherence to the local governance principle that decisions should be considered, wherever possible, by the relevant Cabinet Committee before being taken.

In addition, new decision making structures, designed by central government, such as the LEP and successful Regional Growth Fund bids are also included for consideration as the result of a request from Committee members.

**Recommendations:**

The Cabinet Committee is asked to note the information presented and make recommendations to the Cabinet and Leader. In addition the committee is asked to take a view on the new arrangements described and agree next steps as set out in the report.

**1. Introduction**

1.1 The principal aim of this report is to assess the performance of governance arrangements at Kent County Council that seek to ensure pre-decision consideration of executive matters by committees set up for that purpose.

1.2 The report analyses data from the last two years, from 1 December 2012 to 30 November 2014. Two years is considered to be a reasonable length of time in which to provide a complete picture. Decisions taken, but not considered by cabinet committees, will be detailed and suggestions to further improve member oversight will be included for consideration.

1.3 In addition, as a result of a further request from committee members, the report will briefly consider new arrangements and decision making structures such as Regional Growth Fund allocations and LEP and KMEP structures. These arrangements are separate from the processes set out in the Council's constitution and are likely to require a fuller discussion in the future as distinct from the council's normal

governance arrangements. This report will consider the next steps for ensuring that Members are informed of decisions and actions agreed outside of the traditional local government processes

## **2. Background**

### **2.1 Traditional Governance and Decision Making**

The Cabinet Committee System was established by decision of County Council on 29 March 2012 and took effect from 1 April 2012. The report to council asked Cabinet and CMT to “ensure that proposed statutory Key Decisions and significant strategic decisions are, wherever possible, considered by the relevant Cabinet Committee prior to the decision being taken. This will require disciplined preparation to achieve an effective, robust and responsive decision-making process”.

2.2 The wording of the agreement included the words ‘wherever possible’ within the arrangements in order to reflect the commitment to the new system but also to allow that decisions were not delayed unduly by the arrangements. It was not intended that decision making be delayed by the desired pre-decision consideration to the detriment of the council’s interests or to timely decision making.

2.2 The key to identifying those decisions that would go to Cabinet Committee was regarded at that time as the Forward Plan, now called the Forthcoming Executive Decisions list (FED). The Forward Plan would include ‘Key’ and ‘significant strategic’ decisions and these would be considered by cabinet committee before being taken by the Cabinet Member. In fact the FED now contains almost all decisions to be taken by a Cabinet Member even where they are not key or strategically significant and consequently any decision is now considered relevant for cabinet committee consideration unless it is urgent.

2.3 It is on this basis that the analysis of decisions has been undertaken. No distinction has been made between the types of decision.

2.4 Concerns have been expressed by Members, on occasion, that decisions have been taken by the Cabinet Member before being considered by the cabinet committee and as a result an informal review was undertaken by the Cabinet Member for Corporate and Democratic Services and the results shared with opposition leaders. The conclusion at that time was that the number of decisions not considered by cabinet committee was running at an acceptable level. However, following the decision to contract for Managed Print Services being taken outside of committee cycle and reported to the last meeting of the Policy and Resources Cabinet Committee, further assurance was requested.

### 3. Statistics

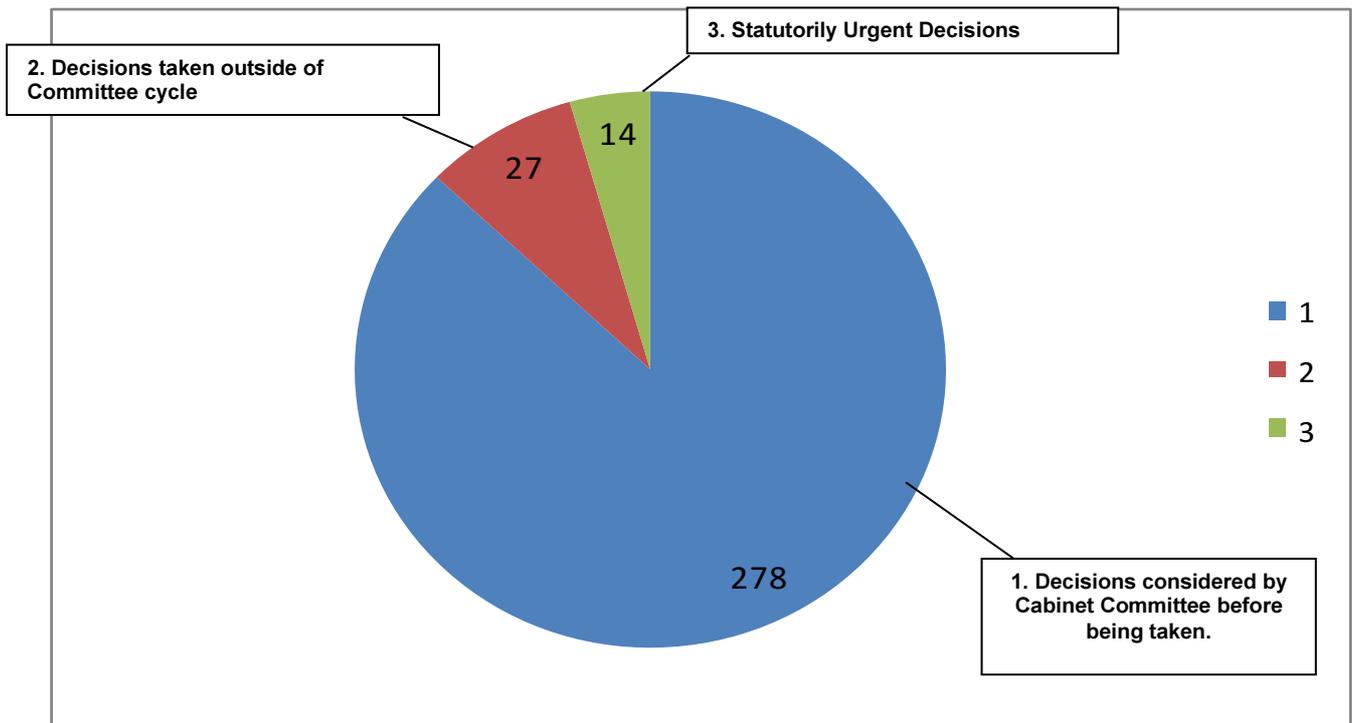
3.1 278 Executive Decisions have been taken in the last two years

3.2 41 of those decisions have not been considered by a Cabinet Committee before being taken by the relevant Cabinet member or Cabinet and without it being agreed by the Cabinet Committee beforehand or there being another relevant pre-decision consideration mechanism available.

3.3 27 of the decisions not considered by a Cabinet Committee were published, and all 84 Members notified of the publication in order to make comment, for 5 clear working days before being taken by the Cabinet Member. It has been unusual to receive any comments during that time. When comments are received they normally raise concerns regarding the lack of pre-decision consideration as opposed to questions or comments about the decision content. These decisions were all available for call-in for 5 clear days after the decision was taken.

3.4 14 of the decisions not considered by Cabinet Committee were also statutorily urgent and therefore were not published for comment before being taken and were not available for call-in. However, as per the council's constitution all 14 were agreed as urgent by the Chairman of the Scrutiny Committee and the relevant Senior Manager and the Group Spokesmen of the Scrutiny Committee, the Chairman and Group Spokesmen of the relevant Cabinet Committee and Local Members affected were contacted and, as a minimum, informed of the intention to take the decision and given an opportunity to comment. The period for comment is often short in these cases as by their nature they need to be resolved quickly.

#### Visual Breakdown



3.4. The categories displayed are as follows:

1. Decisions considered by Cabinet Committee before being taken

2. Decisions not considered by Cabinet Committee before being taken:

- These decisions will conform to all statutory requirements. They will normally have been published on the FED for the appropriate period, will have been published for 5 clear working days to all members for comment before being taken and have been available for call-in for 5 clear days after the decision is taken.
- In order to take a decision without consideration by a Cabinet Committee the Cabinet Committee Chairman, Group Spokesmen and affected Local Members are given notice in writing in accordance with the Council's constitution. Any comments received about the absence of pre-decision consideration or about the decision itself are considered by the Cabinet Member before taking the decision and included in the decision papers.

3. Statutorily urgent decisions:

- These decisions will not normally have been published on the FED, or for comment and are not available for call-in.
- In order to take an urgent decision the Chairman of the Scrutiny Committee and relevant Senior Manager must have agreed that the decision cannot reasonably be deferred and the Group Spokesmen of the Scrutiny Committee, the Chairman and Group Spokesmen of the relevant Cabinet Committee and Local Members affected must have been given written notice that the decision is to be taken and given an opportunity for any comments they may have to be included in the Record of Decision.

3.5 Expressed as a percentage, 86% of all executive decisions were considered by the appropriate body prior to the Cabinet Member making the decision. In all but two cases this appropriate body was the Cabinet Committee and in the two other cases, both approvals of grants or loans from the TIGER fund, consideration was undertaken by the relevant advisory panel for the TIGER fund.

3.6 Conversely, 14% have not been considered by a Cabinet Committee and 5% have been 'urgent' in the statutory sense.

#### **4. Adherence to local procedures**

4.1 Democratic Services are working hard to improve adherence to both statutory and local procedures. Training programmes for officers have been established and Democratic Services officers regularly attend departmental meetings to discuss governance and decision making. To

complement the training programme, an e-learning package has been designed and a Knet page is to go live shortly which will contain tools and advice for officers who may need authority to pursue a particular course of action.

4.2 The Cabinet Committee may wish to consider making further recommendations for increased adherence to local procedures to the Cabinet Member for Corporate and Democratic Services and the Leader. Increasing the number of meetings per year has been mooted on several occasions, in particular an additional meeting in March might be considered. Decisions have sometimes been taken outside of the committee cycle around this time as contracts and financial arrangements often come to an end in this month and decisions are needed to ensure continuity of service. Alternatively, adhoc meetings or sub-committees for the purpose of reviewing decisions that might otherwise miss a meeting could be considered.

4.3 Chairmen and Group spokespeople may also consider utilising the FED at agenda setting meetings and during the work programme item at committee to identify upcoming decisions and to make requests for information to meetings at a point in the process that is considered to be most useful.

## **5 New governance arrangements**

5.1 These arrangements are separate from those discussed above and are included at the request of Committee members; the arrangements are at a very early stage of development and Members may wish to recommend that further work on the matter be undertaken, by an appropriate committee such as the Scrutiny Committee.

5.2 New working arrangements bring excellent new opportunities associated with private sector membership and partnership working but they also provide challenges for traditional governance and assurance.

5.3 In recent years the government has introduced new funds and mechanisms for distributing those funds. These have not always been accompanied by relevant legislative changes in order that new practices can run alongside the established local government legislation. Ensuring that the intention of the scheme is met *and* elected members are informed is an issue to which the development of a solution is in its infancy, not only in Kent but nationally.

5.4 An example of such a scheme is the Regional Growth Fund and the successful bids made by KCC for schemes to administer grants and loans to local applicants who meet certain criteria.

5.5 The governance arrangements agreed with the Department for Business, Innovation and Skills (BIS) involved the creation and utilisation for pre-decision consideration of a panel made up of both private and public sector members.

5.6 The detailed governance for one such fund (TIGER) are as follows:

- Stage 1: Applicants submit an online pre-application. All pre-applications are assessed for eligibility by the Programme Management Team (KCC).
- Stage 2: All eligible applications are provided with the full application form, and are also contacted by an independent Business Support Advisor, who explain the application process and provide up to one day's equivalent of advice on the development of the project. Once submitted, the application form is checked for completeness by the Programme Management Team.
- Stage 3: All applications are independently (PwC) appraised. The applicants may be contacted by the appraisers for clarification where needed.
- Stage 4: Appraisers provide a report which includes a RAG rating, this report is considered by an Approvals Panel. The Panel consists of both local authority members (KCC and District) as well as private sector representatives.
- Stage 5: Applicants are given the opportunity to make a presentation to the Panel. The Panel use the appraisers report as guide for additional questions.
- Stage 6: After the meeting the Panel makes a recommendation on whether or not a project should be supported for funding, and may also propose specific conditions and repayment terms based on the appraisers report and the discussions.
- Stage 7: Following the Approvals Panel's recommendation, the formal approval is granted by Kent County Council as the accountable body for the scheme. If the Grant or Loan is under £1million it is signed off by the relevant Director, Barbara Cooper. If it is over £1million it is taken as a formal decision by the Cabinet Member in accordance with statutory guidelines only – i.e. it does not go to Cabinet Committee. This is in order that the decision is not unnecessarily delayed and to reflect the fact that there is already a pre-decision advisory body established by the terms of the successful bid. The Leader and Cabinet Member would normally act on the advice of the relevant panel.

5.7 Stage 7 was added by KCC to the governance arrangements required by BIS in order to create a bridge between the scheme and the traditional governance arrangements of the council. It was agreed that the decisions taken by a Cabinet Member would only follow statutory procedures as set out in the relevant regulations. This was to reflect the existence of the panel and to avoid duplicating pre-consideration of grants by a Cabinet Committee where a method already existed.

- 5.8 Although these governance arrangements are an innovative best practice model, agreed with central government and further amended by KCC to enable all party elected member involvement without circumventing the original central government aim when establishing these funds - promoting business involvement - there are still issues that need to be resolved, not least how to ensure that decision making is not unduly delayed whilst respecting and valuing the role of elected members in scrutinising such projects.
- 5.9 Indicative research suggests that many councils are not taking these decisions in this way but are instead relying on the letter of the law, rather than the intention, to avoid formal decision making as the funds may not be considered as strictly part of the Council's budget having been bid for and won for one purpose.
- 5.10 The issues associated with these schemes are also reflected in the Local Enterprise Partnership and federated body, KMEP, procedures. Currently in order to ensure that members are involved in the work of these bodies decisions are run in parallel and entries can be seen on the FED that are also subject to KMEP / LEP consideration.
- 5.11 However, further work will be needed to create a permanent and satisfactory solution. The request for this report is timely in this respect, as a review of LEP Governance is being conducted by a former senior civil servant and local authority Chief Executive, Irene Lucas. Should the Committee wish it, the findings of that review and the implications for KCC could form part of a report to the Scrutiny Committee for consideration.

## **5. Conclusions**

- 5.1 The pre-consideration of decisions by Cabinet Committees before they are taken has been relatively successful, with a high percentage conforming to local procedures, but there is room for improvement. How members wish to facilitate that improvement is open to further debate.
- 5.2 The wider issue of non-traditional arrangements and member involvement is at its earliest stages and a recommendation for further investigation and consideration by an appropriate Committee might be considered by the committee to assess the current practice and potential for improvement at a later date.

## **6. Recommendation**

### **Recommendation**

The Cabinet Committee is asked to note the information presented and make recommendations to the Cabinet Member and the Leader.

In addition the committee is asked to take a view on the new arrangements described and agree next steps as set out in the report.

## **8. Contact details**

Report Author

- Lou Whitaker
- 03000 416824
- Louise.whitaker:kent.gov.uk

Relevant Director:

- Geoff Wild
- Geoff.wild@kent.gov.uk