

OVERVIEW AND SCRUTINY COMMISSION

Agenda Item 29

Brighton & Hove City Council

Subject:	Call in of Provision of the Commercial Portfolio's Estate Management Consultancy Contract		
Date of Meeting:	21 July 2011		
Report of:	Strategic Director, Resources		
Contact Officer:	Name: Tom Hook	Tel: 29-1110	
	E-mail: Tom.Hook@brighton-hove.gov.uk		
Wards Affected:	All		

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 7, Access to Information Rule 5 and Section 100B (4) of the Local Government Act as amended (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) was the information contained within the reports was not available in time to meet dispatch deadlines.

1. PURPOSE OF REPORT:

- 1.1 To determine whether to ask the Cabinet to reconsider its decision in relation to the Provision of the Commercial Portfolio's Estate Management Consultancy Contract which was taken at the Cabinet Meeting on July 14 2011.
- 1.2 The following information is contained in the appendices to this report:
 - a. **Appendix 1** contains the Call-In request;
 - b. **Appendix 2** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet meeting;
 - c. **Appendix 3** contains the official record of Cabinet's Decision in relation to this report;
 - d. **Appendix 4** contains an extract from the draft minutes of the Cabinet meeting;
 - e. **Appendix 5** contains further information on this issue supplied by the Strategic Director, Resources.

2. RECOMMENDATIONS:

- 2.1 (a) To note the decision taken by the Cabinet on the 14 July 2011 in relation to the Provision of the Commercial Portfolio's Estate Management Consultancy Contract;
- (b) To note the subsequent Call-In request;
- (c) To note the additional information supplied by the Strategic Director, Resources.
- 2.2 Having regard to the grounds for Call-In, to determine whether to refer the decision back to the Cabinet for reconsideration.

3. BACKGROUND INFORMATION

- 3.1 On 14 July 2011 the Cabinet agreed a report on Provision of the Commercial Portfolio's Estate Management Consultancy Contract (This report is reprinted in **Appendix 2**).
- 3.2 Further information relating to this matter from the Strategic Director, Resources is contained in **Appendix 5**.
- 3.3 On 15 July, Councillor Peltzer Dunn wrote to the Chief Executive, requesting that the Cabinet decision be called in. (The Call-In request is reprinted as **Appendix 1** to this report.)
- 3.4 The Chief Executive accepted the Call-In request on 15 July and asked for the issue to be considered at the Overview and Scrutiny Commission within seven working days.
- 3.5 Call-In is the process by which Overview & Scrutiny Committees can recommend that a decision made (in connection with Executive functions) but not yet implemented be reconsidered by the body which originally took the decision.
- 3.6 Call-In should only be used in exceptional circumstances, for instance where there is evidence that an important decision was not taken in accordance with the Council's constitution.
- 3.7 An Overview & Scrutiny Committee examining a decision which has been Called-In does not have the option of substituting its own decision for that of the original decision. The Overview & Scrutiny Committee may only determine whether or not to refer the matter back to the original decision making body for reconsideration.
- 3.8 In referring the decision back to Cabinet the Overview and Scrutiny Committee may attach recommendations for the Cabinet as to a new

course of action or a preferred alternate decision. Cabinet is however free to take the same decision again, or amend the decision in the light of the issues raised by the Overview and Scrutiny Committee.

3.9 In determining whether to refer a decision back to its originating body for reconsideration, the Overview & Scrutiny Committee should have regard to the criteria for Scrutiny reviews, as set out in the Council's constitution (Part 6.4.2) namely,

- The importance of the matter raised and the extent to which it relates to the achievement of the Council's strategic priorities, the implementation of its policies or other key issues affecting the well being of the City or its communities;
- Whether there is evidence that the decision-making rules in Article 11 of the constitution have been breached; that the agreed consultation processes have not been followed; or that a decision or action proposed or taken is not in accordance with a policy agreed by the Council;
- The potential benefits of a review especially in terms of possible improvements to future procedures and/or the quality of Council services;
- What other avenues may be available to deal with the issue and the extent to which the Councillor or body submitting the request has already tried to resolve the issue through these channels (e.g. a letter to the relevant Executive Member, the complaints procedure, enquiry to the Chief Executive or Chief Officer, Council question etc.);
- The proposed scrutiny approach (a brief synopsis) and resources required, resources available and the need to ensure that the Overview and Scrutiny process as a whole is not overloaded by requests.

3.10 In addition, the Committee should take into account:

- Any further information which may have become available since the decision was made
- The implications of any delay; and
- Whether reconsideration is likely to result in a different decision.

4. CONSULTATION

4.1 No formal consultation has been undertaken in regard to this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 Please see the original Cabinet report for the financial implications relating to the decision.

Finance Officer Consulted: Rob Allen

Date: 18 July 2011

Legal Implications:

- 5.2 Call-in is a process by which overview and scrutiny ('O & S') committees can recommend that an executive decision made but not yet implemented be reconsidered by the decision-maker. Call-in does not provide for the O & S committee to substitute its own decision, but merely to refer the matter back to the decision-maker. That person or body can only be asked to reconsider any particular decision once.

In deciding whether or not to refer the decision back, the relevant O & S committee (here the O & S Commission), shall have regard to the following criteria:

- (i) the importance of the decision called-in, and the extent to which it relates to the achievement of the council's strategic priorities, the implementation of its policies or other key issues affecting the well-being of the City or its communities
- (ii) whether there is evidence that the decision-making rules in Article 13 of the constitution have been breached; that the agreed consultation processes have not been followed; or that a decision made is not in accordance with a policy agreed by Full Council
- (iii) any further information that may have become available since the decision was made
- (iv) the implications of any delay in implementing the decision
- (v) whether reconsideration is likely to result in a different decision

If, having scrutinised the decision taken by 14 July Cabinet, OSC is still concerned about it, OSC may refer the decision back to Cabinet for reconsideration, setting out in writing the nature of its concerns.

If the decision is referred back, the Cabinet shall reconsider whether to amend the decision or not before reaching a final decision and implementing it. This reconsideration shall take place either at the next programmed meeting of the Cabinet or at a special meeting called for the purpose.

Lawyer Consulted: Oliver Dixon

Date: 18 July 2011

Equalities Implications:

- 5.3 There are no direct equality implications to this report, although the 14 July Cabinet decision was made with regard to the equality implications contained within the original report of the Strategic Director, Resources.

Sustainability Implications:

- 5.4 There are no direct sustainability implications to this report, although the 14 July Cabinet decision was made with regard to the sustainability implications contained within the original report of the Strategic Director, Resources.

Crime & Disorder Implications:

- 5.5 There are no direct crime & disorder implications to this report, although the 14 July Cabinet decision was made with regard to the crime & disorder implications contained within the original report of the Strategic Director, Resources.

Risk and Opportunity Management Implications:

- 5.6 The Call-In procedure seeks to provide a system via which important decisions can be re-examined in a timely fashion, so as to ensure that the Council is not unnecessarily exposed to risk associated with taking decisions contrary to established procedure, whilst also minimising risk inherent in unduly delaying the decision making process.

Corporate / Citywide Implications:

- 5.7 There are no direct corporate/citywide implications to this report, although the 14 July Cabinet decision was made with regard to the corporate/citywide implications contained within the original report of the Strategic Director, Resources.

SUPPORTING DOCUMENTATION

Appendices:

1. **Appendix 1** contains the Call-In request;
2. **Appendix 2** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet ;
3. **Appendix 3** contains the official record of the Cabinet's Decision in relation to this report;
4. **Appendix 4** contains the minutes of the Cabinet;
5. **Appendix 5** contains further information on this issue supplied by the Strategic Director, Resources.

Documents in Members' Rooms:

There are none.

Background Documents:

1. The Council's Constitution