



ADUR & WORTHING
COUNCILS

Joint Governance Committee
31 July 2018
Agenda Item 14

Ward(s) Affected: All

Budget Procedure Rules

Report by the Solicitor to the Councils & Monitoring Officer

Executive Summary

1. Purpose

- 1.1. Neither Council currently has procedure rules specifically relating to the Budget process and the more generalised Council Procedure Rules are not really appropriate for dealing with this item.
- 1.2. It is therefore proposed that the attached budget procedure rules are adopted by each Council to form part of their Constitutions to ensure a fair, efficient and consistent process is followed when considering the Council's Budget.

2. Recommendations

- 2.1. The Joint Governance Committee is asked to consider the Budget Procedure Rules for both Adur and Worthing Councils, as attached at Appendix A and B, and to recommend to each Council the adoption of the respective rules as part of each Council's Constitution.

3. Context

- 3.1. Each Council has adopted Council Procedure Rules which govern decision making and processes around Council meetings. Rules include those relating to the rules of debate, the length of time Members may speak at meetings, how they may propose amendments and what the voting arrangements are.
- 3.2. These rules, whilst effective for most ordinary business of the Council, are not appropriate for the process of setting the annual budget. In particular, it is considered that amendments to the budget need to be received by Officers in advance of the meeting so that professional advice can be provided on proposals; this opportunity is denied, if, in accordance with the Council Procedure Rules, amendments are allowed during the meeting with no notice provided. Further it is considered that the usual length of time allowed for proposing a recommendation to the Council by the Leader is insufficient in respect of proposing the budget. Also, there are different statutory rules regarding voting on the budget item which need to be incorporated.
- 3.3. Each Council has in recent years operated the budget process by means of protocol and convention but for good, fair, consistent governance, these arrangements should be documented and formally adopted into the Constitution.

4. Issues for consideration

- 4.1. Budget Procedure Rules for Worthing Borough Council provide for greater involvement by the Joint Overview and Scrutiny Committee, than those for Adur District Council in accordance with Members wishes.
- 4.2. The new rules provide that any amendments to the proposed budget may be made by Group Leaders and Independent Members. Those amendments must be provided to the Chief Financial Officer in advance to allow Finance Officers to provide professional advice to the Council on any amendments. The Chief Financial Officer has the right to reject any proposed amendments which are unlawful. All proposed amendments, signed off by Finance Officers, will not be shared with other political parties until 3 clear working days before the Council meeting. All signed off proposals will be shared with all Members of the Council by noon on the day of the Council meeting.

- 4.3. At the Budget setting Council meeting the Leader is provided with unlimited time to present his budget and other Group Leaders with 15 minutes for their proposal speech, and any member exercising a right of reply has 10 minutes. All other speeches are limited to 5 minutes in length.
- 4.4. The Budget Procedure Rules provide for a recorded vote to be taken on the substantive proposal before the Council, and on each proposed amendment, to comply with legislation.

5. Engagement and Communication

- 5.1. In drafting these Budget Procedure Rules engagement has been taken with other Local Authorities, and with the Chief Financial Officer, Democratic Services Manager, and Chief Executive.

6. Financial Implications

- 6.1. There are no financial implications arising from the adoption of the proposed procedure rules.

7. Legal Implications

- 7.1. Section 30(6) of the Local Government Finance Act 1992 provides that the Council has to set the budget before 11th March in the financial year preceding the one in respect of which the budget is set. .

Background Papers

- Adur District Council Constitution
- Worthing Borough Council Constitution

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Sustainability & Risk Assessment

1. Economic

- Matter considered and no issues identified

2. Social

2.1 Social Value

- Matter considered and no issues identified

2.2 Equality Issues

- Matter considered and no issues identified

2.3 Community Safety Issues (Section 17)

- Matter considered and no issues identified

2.4 Human Rights Issues

Matter considered and no issues identified

3. Environmental

- Matter considered and no issues identified

4. Governance

- Good governance procedures are important for the efficient smooth running of the Councils, to ensure transparency, to provide a clear, fair and consistent procedure for sound decision making, and to uphold the Council's good reputation.

BUDGET PROCEDURE RULES

1.0 SUMMARY

- 1.1 The Council has a duty under section 30(6) Local Government Finance Act 1982 to set a lawful budget in a timely manner.
- 1.2 Members have a fiduciary duty to Council Tax payers.
- 1.3 This means they have a duty to facilitate the setting of a lawful budget; a process that requires flexibility and compromise.
- 1.4 Failure to set a lawful budget in time may lead to a loss of revenue, significant additional administrative costs, as well as reputational damage.
- 1.5 Failure to set a budget may lead to intervention from the Secretary of State under section 15 Local Government Act 1999.

2.0 THE LEGAL DUTY

- 2.1 Section 30(6) of the Local Government Finance Act 1992 provides that the Council has to set its budget before 11 March in the financial year preceding the one in respect of which the budget is set. This means the Council has a duty to set the budget before 11 March each year.
- 2.2 If the budget is set after that date, the Act says the failure to set a budget within the deadline does not, in itself, invalidate the budget. However, such delay may have significant financial, administrative and legal implications, including potential individual liability of any Member who contributed to the failure to set a budget.
- 2.3 Section 66 of the 1992 Act provides that failure to set a Council tax (or delay in setting a Council tax) shall not be challenged except by an application for judicial review. The Secretary of State and any other person with an interest or “standing” may apply for judicial review.

3.0 FINANCIAL IMPLICATIONS OF DELAY

- 3.1 Delay in setting the Council Tax means a delay in collecting the Tax due not only to the Council, but also the precepting authorities such as West Sussex County Council, the Police, and others such as Parish Council (where appropriate) on whose behalf the Council acts as a collection authority.
- 3.2 The Council has a legal duty to provide a range of statutory services (such as refuse collection, homeless etc.) and is not absolved from its duty because of the

late setting of the Tax. It also has to pay the monies due to the precepting authorities whether or not it collects any Council Tax.

- 3.3 Even if the Council sets the budget before the deadline but much later than the planned Budget Council meeting, there is still likely to be some disruption to the administrative arrangements relating to the collection of Council Tax (such as printing, posting, delivery of demands) that have cost implication.

4.0 DUTY TO TAKE ADVICE OF THE CHIEF FINANCIAL OFFICER

- 4.1 Sections 25 to 29 of the Local Government Act 2003 impose duties on the Council in relation to how it sets and monitors its budget. These provisions require the Council to make prudent allowance for the risk and uncertainties in its budget and regularly monitor its finances during the year. The legislation leaves discretion to the Council about the allowances to be made and action to be taken.
- 4.2 Section 25 also requires the Council's Chief Financial Officer to make a report to Full Council when it is considering its budget and Council Tax. The report must deal with the robustness of the estimates and the adequacy of the reserves allowed for in the budget proposals, so Members will have authoritative advice available to them when they make their decisions on the Executive's budget proposals and any alternative proposals.
- 4.3 The section, and the Council's Constitution, requires Members to have regard to the report in making their decisions. Any decision that ignores this professional advice, including the implications of delay, is potentially challengeable.

5.0 THE BUDGET FRAMEWORK

- 5.1 The Council will be responsible for the adoption of its Budget, as set out in Article 4 of the Constitution. Once a Budget is in place, it will be the responsibility of the Executive to implement it.

6.0 ANNUAL PROCESS FOR SETTING THE BUDGET

The process by which the Budget shall be set is as follows:

- 6.1 The budget strategy for the forthcoming year is considered and agreed by the Council in July each year.
- 6.2 In December each year detailed financial proposals to meet that budget strategy for the forthcoming year are considered by Joint Strategic Committee, after having being considered by the Council's Joint Overview and Scrutiny Committee by way of consultation.

- 6.3 These proposals are fed, by the Chief Financial Officer, into the draft budget proposals for the Council and the draft Budget Strategy is updated accordingly.
- 6.4 In January each year the Joint Strategic Committee will meet to consider the draft budget for the joint services of the Council, which it wishes to provide jointly with Adur District Council. The decisions in relation to joint services are then used to produce the revenue estimates and draft budget proposals for Worthing Borough Council which will be considered by a meeting of the Executive in early February.
- 6.5 The meeting of the Executive will recommend a draft budget to the Council, and level of Council Tax. The Proper Officer (Director for Communities) will then refer them, at the earliest opportunity, to the Council for decision.
- 6.6 The Executive meeting held to determine the Executive's budget proposals to Council must be held a minimum of 12 working days prior to the Council meeting being held to consider the budget for the Council.

7.0 THE BUDGET SETTING COUNCIL MEETING

- 7.1 The Executive's proposals will be presented to the Council under cover of a report from the Chief Financial Officer, together with a budget pack and professional financial advice upon the proposal.
- 7.2 The Council will be asked to agree to suspend Council Procedure Rules for the meeting, where they conflict with these Budget Procedure Rules, to allow these Budget Procedure Rules to prevail.
- 7.3 The Council Budget Setting Meeting will be held in February of each year to set the budget for the forthcoming year. At the Council budget setting meeting the Executive submits to the Council for its consideration in relation to the following financial year:
- (a) Estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49, of the Local Government Finance Act 1992;
 - (b) Estimates of other amounts to be used for the purposes of such a calculation;
 - (c) Estimates of such a calculation; or
 - (d) Amounts required to be stated in a precept under Chapter IV of Part I of the Local Government Finance Act 1992.
- 7.4 The Executive will propose its recommendations relating to the above matters to the Council, which if seconded, will be debated by Full Council, in accordance with the provisions below and voted upon.
- 7.5 The Council may:

- (a) Adopt the Executive's proposals; or
- (b) Amend them in accordance with the provisions set out below; or
- (c) Refer them back to the Executive for further consideration.

Budget proposals can only be submitted to the Council by the Executive; others can propose amendments to the Executive's proposals. The decision will be made by way of a recorded vote in accordance with Council Procedure Rule 24 and statutory requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014. The Leader must confirm that he/she accepts the budget as agreed by Council or it has to be resubmitted to Council with the Executive's revised proposals, causing an inevitable delay.

- 7.6 If the Council accepts the recommendation of the Executive without amendment, the Council may make a decision which has immediate effect. Otherwise, it may only make an in-principle decision, and the Leader's verbal confirmation will be sought at the meeting that the Leader accepts the budget as agreed by the Council.
- 7.7 The decision will be publicised in accordance with Article 4 and a copy shall be given to the Leader.
- 7.8 Members should put forward any amendments to the Executive's budget proposal through their Group Leader. Any Group Leader or Member who is not in a Group may put forward amended proposals to Council. However Members should not put forward proposals that would mean setting an unlawful budget and they must take Officer advice to ensure their proposals are in order. To this end any proposed amendments must be evaluated by the Chief Finance Officer, or an Officer appointed by her for the purpose, to determine the service, financial and legal implications of implementing the amended proposals. The amended proposals are required to be submitted to the Chief Financial Officer, via the Democratic Services Manager by email to democratic.services@adur-worthing.gov.uk, by no later than 12 noon 10 clear working days before the Council budget setting meeting, excluding the date of the meeting itself.
- 7.9 The amended proposals, once received by the Chief Financial Officer, will be held confidentially and not shared with other political parties, by the Finance Officers involved. All amended proposals will be considered by Finance Officers by no later than 12 noon 5 clear working days before the day of the Council meeting, excluding the day of the meeting itself. Finance Officers will confirm the legality and impact of all proposed amendments. Any that in the Chief Financial Officer's opinion are unlawful shall be rejected. The Chief Financial Officer will then share all amended proposals, together with Finance sign off and comments, with the Chief Executive, Monitoring Officer and Director for Digital and Resources, by 5pm 5 clear working days before the day of the Council meeting, excluding the day of the meeting itself.

- 7.10 All proposed amendments will be shared with Group Leaders and Independent Members, by email, by the Chief Financial Officer at 12 noon 3 clear working days before the Council meeting, excluding the day of the meeting itself.
- 7.11 By noon on the day of the Council meeting Democratic Services Officers will circulate copies of all remaining proposed amendments to all Members of the Council, by email. At the Council meeting, the Chairman will refuse to accept any proposals for amendment that have not been through the above process, and signed off as being lawful proposals by the Council's Finance Officers.
- 7.12 At the Council budget setting meeting the Executive will propose their budget, with the Leader of the Council having an unlimited time for his speech. The proposal will need to be seconded and the Member seconding has 5 minutes available for this purpose. The seconder may speak at the time of seconding or reserve their speech for later on in the debate.
- 7.13 The Leader of the next largest Group on the Council will have the right to speak first on the Executive's proposal and may propose any amendment which has been signed off by the Chief Financial Officer, and has 15 minutes maximum for their speech. The proposal will need to be seconded and the Member seconding the amendment has 5 minutes for this purpose and may make their speech at the time of seconding or reserve it for later in the debate on this amendment.
- 7.14 The Leader of the next largest Group will have the right to speak next on the earlier proposals put before Council, and may have 15 minutes to propose their own amendment, provided it has been signed off by the Chief Financial Officer, which shall need to be seconded with the seconder having a maximum of 5 minutes for this purpose and the right to reserve their speech until later in the debate.
- 7.15 This process continues until the Leader of each Group and all Members who are not in a Group have had the opportunity to speak, and the budget and all proposed amendments have been proposed and seconded.
- 7.16 The matter is then open to full debate from all Members of the Council. Each Member may speak only once on this item, other than the Executive Leader who has a right of reply. Each speaker, other than as set out above, has a maximum of 5 minutes to speak.

The debate is managed by the Chairman who has control of the debate and may use his or her discretion to ensure the effective, efficient, fair and orderly conduct of the business. The Chairman's interpretation of these procedure rules and their application will be final.

- 7.17 At the end of the debate the Leader of the Council, as the proposer of the substantive motion, will have a right of reply on behalf of the Executive and has up to 10 minutes to respond.

- 7.18 When the debate has concluded, the Chairman will if he/she thinks fit, sum up the debate before putting the amendments to the vote. In doing so he/she may request the Chief Financial Officer to draw the attention of the meeting to any relevant factors.
- 7.19 The Chairman will then put the amendments to the vote in the order of the amendments proposed by the largest Opposition Group Leader first, followed by the next largest etc. Each amendment will be voted on in turn, with a recorded vote being taken, and administered by the Democratic Services Officer, on each amendment.
- 7.20 Some proposed amendments may impact on others and there may be inter dependencies between them. For example, if one amendment is lost it may result in others automatically being lost, whilst some amendments may have no impact on others and may stand alone regardless of the outcome of voting on other amendments. The Chief Financial Officer will advise accordingly and the Chairman may adjourn the meeting to facilitate the provision of that advice.
- 7.21 Following the conclusion of the voting on the amendments, the Chief Financial Officer will confirm how the individual amendments that have been carried affect the Council Tax proposal as necessary.
- 7.22 There may be a need for a short adjournment to allow for the preparation of the Council Tax resolutions to reflect the budget proposals as amended/if amended to be printed and circulated prior to the substantive vote.
- 7.23 Once the amendments have each been voted upon and determined, the Chief Financial Officer will clarify any amendments that have been agreed and how they affect the budget proposal. The Chairman will then put the substantive motions, as amended if they have been amended, to the Council for a vote. A recorded vote will be taken and recorded by the Democratic Services Officer present.
- 7.24 If the budget proposal is accepted without amendment by Council, the Council may make a decision which has immediate effect. If the budget proposal is amended, and is approved as amended by Full Council, the Leader of the Council will be asked by the Chairman if they accept the budget as agreed by Council.
- 7.25 (a) If the Leader of the Council confirms that they do accept the budget proposals as amended by Council, the Council decision will have immediate effect.
- (b) If the Leader of the Council does not accept the budget proposal as amended and agreed by the Council, the matter will be referred back to the Executive for further consideration and revised Executive proposals will need to be submitted to Council at a future meeting; this will cause an inevitable delay to the lawful setting of the budget and the Council Tax and

the associated consequences of such a delay will need to be considered.

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- 6.3 These proposals are fed, by the Chief Financial Officer, into the draft budget proposals for the Council and the draft Budget Strategy is updated accordingly.
- 6.4 In January each year the Joint Strategic Committee will meet to consider the draft budget for the joint services of the Council, which it wishes to provide jointly with Adur District Council. The decisions in relation to joint services are then used to produce the revenue estimates and draft budget proposals for Worthing Borough Council which will be considered by a meeting of the Executive in early February.
- 6.5 The proposals may be considered by the Joint Overview and Scrutiny Committee prior to the February meeting of the Executive and if the Joint Overview and Scrutiny Committee wish to make representations to the Executive upon the proposals, then it may do so, and such representations may be made verbally at the Executive meeting. The Executive will take any representations from the Joint Overview and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and the report to the Council will reflect the comments made by any consultees and the Executive's response.
- 6.6 The meeting of the Executive will recommend a draft budget to the Council, and level of Council Tax. The Proper Officer (Director for Communities) will then refer them, at the earliest opportunity, to the Council for decision.
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7.7 The decision will be publicised in accordance with Article 4 and a copy shall be given to the Leader.

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7.9 The amended proposals, once received by the Chief Financial Officer, will be held confidentially and not shared with other political parties, by the Finance Officers involved. All amended proposals will be considered by Finance Officers

by no later than 12 noon 5 clear working days before the day of the Council meeting, excluding the day of the meeting itself. Finance Officers will confirm the legality and impact of all proposed amendments. Any that in the Chief Financial Officer's opinion are unlawful shall be rejected. The Chief Financial Officer will then share all amended proposals, together with Finance sign off and comments, with the Chief Executive, Monitoring Officer and Director for Digital and Resources, by 5pm 5 clear working days before the day of the Council meeting, excluding the day of the meeting itself.

- 7.10 All proposed amendments will be shared with Group Leaders and Independent Members, by email, by the Chief Financial Officer at 12 noon 3 clear working days before the Council meeting, excluding the day of the meeting itself.
- 7.11 By noon on the day of the Council meeting Democratic Services Officers will circulate copies of all remaining proposed amendments to all Members of the Council, by email. At the Council meeting, the Mayor will refuse to accept any proposals for amendment that have not been through the above process, and signed off as being lawful proposals by the Council's Finance Officers.
- 7.12 At the Council budget setting meeting the Executive will propose their budget, with the Leader of the Council having an unlimited time for his speech. The proposal will need to be seconded and the Member seconding has 5 minutes available for this purpose. The seconder may speak at the time of seconding or reserve their speech for later on in the debate.
- 7.13 The Leader of the next largest Group on the Council will have the right to speak first on the Executive's proposal and may propose any amendment which has been signed off by the Chief Financial Officer, and has 15 minutes maximum for their speech. The proposal will need to be seconded and the Member seconding the amendment has 5 minutes for this purpose and may make their speech at the time of seconding or reserve it for later in the debate on this amendment.
- 7.14 The Leader of the next largest Group will have the right to speak next on the earlier proposals put before Council, and may have 15 minutes to propose their own amendment, provided it has been signed off by the Chief Financial Officer, which shall need to be seconded with the seconder having a maximum of 5 minutes for this purpose and the right to reserve their speech until later in the debate.
- 7.15 This process continues until the Leader of each Group and all Members who are not in a Group have had the opportunity to speak, and the budget and all proposed amendments have been proposed and seconded.
- 7.16 The matter is then open to full debate from all Members of the Council. Each Member may speak only once on this item, other than the Executive Leader who has a right of reply. Each speaker, other than as set out above, has a maximum of 5 minutes to speak.

The debate is managed by the Mayor who has control of the debate and may use his or her discretion to ensure the effective, efficient, fair and orderly conduct of the business. The Mayor's interpretation of these procedure rules and their application will be final.

- 7.17 At the end of the debate the Leader of the Council, as the proposer of the substantive motion, will have a right of reply on behalf of the Executive and has up to 10 minutes to respond.
- 7.18 When the debate has concluded, the Mayor will if he/she thinks fit, sum up the debate before putting the amendments to the vote. In doing so he/she may request the Chief Financial Officer to draw the attention of the meeting to any relevant factors.
- 7.19 The Mayor will then put the amendments to the vote in the order of the amendments proposed by the largest Opposition Group Leader first, followed by the next largest etc. Each amendment will be voted on in turn, with a recorded vote being taken, and administered by the Democratic Services Officer, on each amendment.
- 7.20 Some proposed amendments may impact on others and there may be inter dependencies between them. For example, if one amendment is lost it may result in others automatically being lost, whilst some amendments may have no impact on others and may stand alone regardless of the outcome of voting on other amendments. The Chief Financial Officer will advise accordingly and the Mayor may adjourn the meeting to facilitate the provision of that advice.
- 7.21 Following the conclusion of the voting on the amendments, the Chief Financial Officer will confirm how the individual amendments that have been carried affect the Council Tax proposal as necessary.
- 7.22 There may be a need for a short adjournment to allow for the preparation of the Council Tax resolutions to reflect the budget proposals as amended/if amended to be printed and circulated prior to the substantive vote.
- 7.23 Once the amendments have each been voted upon and determined, the Chief Financial Officer will clarify any amendments that have been agreed and how they affect the budget proposal. The Mayor will then put the substantive motions, as amended if they have been amended, to the Council for a vote. A recorded vote will be taken and recorded by the Democratic Services Officer present.
- 7.24 If the budget proposal is accepted without amendment by Council, the Council may make a decision which has immediate effect. If the budget proposal is amended, and is approved as amended by Full Council, the Leader of the Council will be asked by the Mayor if they accept the budget as agreed by Council.
- 7.25 (a) If the Leader of the Council confirms that they do accept the budget

proposals as amended by Council, the Council decision will have immediate effect.

- (b) If the Leader of the Council does not accept the budget proposal as amended and agreed by the Council, the matter will be referred back to the Executive for further consideration and revised Executive proposals will need to be submitted to Council at a future meeting; this will cause an inevitable delay to the lawful setting of the budget and the Council Tax and the associated consequences of such a delay will need to be considered.