
MEETING: THE COUNCIL
DATE: 26 March 2008
SUBJECT: MAYORAL REFERENDUM 2008
REPORT FROM: THE LEADER OF THE COUNCIL
CONTACT OFFICER: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

TYPE OF DECISION: COUNCIL

**FREEDOM OF INFORMATION/
STATUS:** (This paper is within the public domain)

SUMMARY:

Following receipt of a Valid Petition requesting a Referendum for an Elected Mayor with Cabinet, the Council is required under statute to prepare proposals to be submitted to the Secretary of State for the governance of the Council under that Model and also, in the event of the rejection of the proposals in the Petition by the Referendum, Fall Back Proposals for the governance of the Council. If the Referendum result is in favour of an Elected Mayor with Cabinet, the Council will then be required to hold an election for an Elected Mayor in line with the Timetable appended to this report.

The Council is invited to consider a programme of consultation leading up to the Referendum.

OPTIONS AND RECOMMENDED OPTION:

1. To consider the draft Timetable for the Referendum (Appendix A to this report).
2. To consider the Draft Proposals for an Elected Mayor with Cabinet (appended to this report) as a basis for consultation taking into account the recommendations set out in this report in respect of:-
 - i) The Policy Framework (Paragraphs 2.8 of this report)
 - ii) The Scheme of Delegation (Paragraph 2.9 of this report)
 - iii) Key Decisions (Paragraph 2.10 of this report)
 - iv) Local Choice Functions (Paragraph 2.11 of this report)
 - v) Overview and Scrutiny Arrangements (Paragraph 2.12 of this report)
 - vi) The 'Ceremonial' Mayor (Paragraph 2.13 of this report)
 - vii) Term of Office of the Elected Mayor (Paragraph 2.14 of this report)

3. To consider:
The draft questionnaire and method of consultation (Paragraphs 2.18 and Appendix B)
List of Consultees (Paragraph 2.19 of this report)
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IMPLICATIONS -

Corporate Aims/Policy Framework:

Do the proposals accord with the Policy Framework? Yes No

The proposals in this report do not affect the Policy Framework, however, issues within this report require approval by the full Council.

The Council has included provision of £150,000 within the Revenue Budget 2008/2009 in respect of the costs of the Referendum and, if required based on its outcome, an election for an Elected Mayor.

Statement by Director of Finance and E-Government:

The provision made in the Budget is based on information from other local authorities that have held a Referendum. If the provision turns out to be inadequate then 'top up' funding will be made available from the Transformation Reserve.

Equality/Diversity implications

Yes No

The proposals in this report do not affect directly any of the Equality/Diversity Policies and Strategies of the Authority

Considered by Monitoring Officer:

Yes

Are there any legal implications?

Yes No

The Council is under a statutory duty to hold a Referendum the outcome of which may amend the arrangements for the governance of the Council.

Staffing/ICT/Property:

There are no staffing/ICT/Property issues from this report.

Wards Affected:

All Wards

Scrutiny Interest:

All

TRACKING/PROCESS**DIRECTOR:**

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Chief Executive	Leader		
Scrutiny Commission	Executive	Committee	Council
	19 March 2008		26 March 2008

1.0 BACKGROUND

1.1 The Council received a Petition on 3 January 2008 requesting a Referendum on an Elected Mayor with Cabinet to be adopted by the Council.

1.2 The Petition states:-

“We the undersigned being local government electors of Bury MBC, to whom this Petition is addressed, seek a Referendum on whether the electors for that area should elect a Mayor who, with a Cabinet, will be in charge of our local services and lead Bury MBC.’

1.3 The Petition contained a total of 9460 signatures and the Council was required to validate the signatures as those of local government electors of the Borough and the Council was allowed one month to validate the Petition. To be regarded as valid, the Petition must contain at least 6,961 signatures of the Borough’s electors. This figure is described as the Verification Number and is calculated as 5% of the electorate.

1.4 The outcome of the Petition validation was:-

Total number of signatures in the Petition	9460
Total number of signatures rejected because of lack of name, date or signature	- 49
Rejected as duplicate signatures	- 118
Rejected as not electors for the Borough	- <u>1086</u>
TOTAL NUMBER OF VALID SIGNATURES	<u>8207</u>

1.5 The Petition Organiser, Mr G Berg and the Secretary of State were then informed that a Valid Petition requesting a Referendum for an Elected Mayor with Cabinet had been received. Public Notice has been given of the validity of the Petition and it was placed on deposit for public inspection.

1.6 Under the provisions of Section 34 of the Local Government Act 2000, the Council is required to hold a Referendum and, depending on its outcome, an election for an Elected Mayor within the timescale set out in Appendix A of this report.

2. KEY STAGES IN THE PROCESS**Stage One – Consultation on the Draft Proposals**

2.1 The Council must draw up proposals about how the Council will operate under a Mayor but before doing so, the Council must consult the public about those proposals. The simplest way of achieving this is to draw up Draft Proposals prior to the consultation period, consult on those proposals and to

reflect the results of the consultation in the final proposals. The Council does not have to decide on a final set of proposals until 24 April 2008 at the Special Council meeting.

- 2.2 In order to draw up the proposals, the Council will need to make decisions about how the Council will operate under an Elected Mayor with Cabinet. In making these decisions, the Authority must consider 'To what extent the proposals, if implemented, are likely to assist in securing continuous improvement in the way in which the Authority's functions are exercised having regard to a combination of economy, efficiency and effectiveness'.
- 2.3 Governance under an Elected Mayor with Cabinet will be based on similar requirements to the existing Executive arrangements and therefore the responsibilities of Regulatory Committees, the operation of many of the Rules of Procedure, and many other aspects of the Constitution will remain unaltered.
- 2.4 The main changes will be in the Executive and how the Executive works with Council and other Committees. There are, however, a number of areas where the Council has discretion to decide how the Authority will operate. When drawing up proposals for new arrangements the Council should consider the following areas:

Policy Framework
Scheme of Delegation
Key Decisions
Local Choice Functions
Overview and Scrutiny
The Ceremonial Mayor
The term of office of the Mayor

- 2.5 The key areas for consideration are:

- **Policy Framework**

- 2.6 Within legislation Council must approve certain plans and strategies and their approval can not be delegated to the Executive. The Executive proposes the plans to Council for approval and if the plans are approved must make decisions within the agreed plans and strategies. There are also a number of plans which guidance strongly recommends are approved by Council. If Councils wish they may add discretionary plans and strategies to the Policy Framework. Bury has added a small number of discretionary plans and strategies to the Policy Framework and these are set out in the Council's Constitution. In drawing up proposals for new mayoral arrangements, a draft policy framework could include a wide range of discretionary plans or remove the existing discretionary plans.
- 2.7 It is considered that if the Policy Framework includes a large number of discretionary plans this will have an impact on the economy and efficiency of the Council, because any changes to these plans could only be approved by Council. This will also make it more difficult to hold individual members accountable for key plans and strategies when the decision is made collectively. At the awareness raising stage it will be easier for the public to compare the merits of an Elected Mayor with those of a Leader and Cabinet, if the policy framework is the same.

It is recommended that the existing Policy Framework should be included in the Draft Proposals.

- **Scheme of Delegation**

- 2.8 When drawing up proposals, the Council can decide to delegate significant powers to officers or have a limited scheme of delegation. If broad this will pass responsibility for decision making to officers, it may increase efficiency but will reduce accountability. This scheme can be amended by the Elected Mayor and this does not require the support of Council, as the decision to delegate powers to officers rests with the Mayor. There is limited benefit in drawing up a new scheme of delegation to include within the draft proposals.

It is recommended that the existing scheme of delegation to officers and committees is incorporated into the draft proposals.

- **Key Decisions**

- 2.9 A broad definition will ensure that a wide range of decisions would be required to be included on the Forward Plan, it will also ensure that a wide range of officer decisions would be subject to scrutiny. This could reduce efficiency but does make decision making more publicly transparent. The Council sets the definition of a Key Decision, so the Mayor would require the support of a Council majority to change this definition. The Council considered the definition of a Key Decision when Executive arrangements were introduced and has since refined the definition which is set out in the Council Constitution (to accord with definitions across AGMA). It is considered that the current definition achieves an appropriate balance between efficiency and accountability.

It is recommended that the existing definition of a Key Decision is included within the Draft Proposals.

- **Local Choice Functions**

- 2.10 There are a small number of functions which statute says can be decided by local choice. This means that the Council can decide whether the Council or the Executive is responsible for these areas of decision making. The areas are limited (a full list of the Local Choice Functions is attached to the draft proposals in **Appendix 1 to this report**).

It is recommended that the Council review the existing list of Local Choice Functions which is included as an appendix to the draft proposals.

- **Overview and Scrutiny Arrangements**

- 2.11 As with a Leader and Cabinet arrangement the Council must have at least one Scrutiny Committee. The arrangements for Scrutiny are well established in Bury. Scrutiny continues to have the same powers under an Elected Mayor to scrutinise decisions of the Executive. The current arrangements for Scrutiny have been worked out in detail.

It is recommended that the current arrangements for Overview and Scrutiny be included within the draft proposals.

- **The 'Ceremonial' Mayor**

- 2.12 There are three issues:-

- (a) the duties of the 'Ceremonial Mayor'
- (b) the title of the 'Ceremonial Mayor'
- (c) Social Precedence

- (a) **The Ceremonial Duties**

The Elected Mayor cannot chair meetings of Council. However, it is a matter for local choice whether the Elected Mayor discharges the ceremonial duties previously performed by the ceremonial Mayor. The guidance states that in a Constitution which involves a Mayor and Cabinet form of executive in particular, it is unlikely that the Elected Mayor will have enough time to discharge many ceremonial duties and therefore the Secretary of State considers it would be appropriate for these duties to remain with the 'Ceremonial Mayor' of the Authority.

- (b) **The Title of Mayor**

The guidance says that 'where there is an Elected Mayor and Deputy Mayor the titles can only be used by the Elected Mayor or his/her chosen Deputy'. The title of Mayor cannot be used for the current role of 'Ceremonial Mayor'. The 'Ceremonial Mayor' can continue to carry out the same roles and duties, including charring meetings of full Council, but must

have a new title. The draft proposals attached to this report have left this question open, to be decided following public consultation.

(c) Precedence

The 'Ceremonial Mayor' currently has social precedence in the district. This will be passed to the Elected Mayor unless the Council opts to include in the arrangements that the 'Ceremonial Mayor' (under a new title) will have precedence. The issue of social precedence is associated with the status of the 'Ceremonial Mayor'.

It is recommended that the 'Ceremonial Mayor' should continue to have the same duties and responsibilities, including charring meetings of full Council, and that the 'Ceremonial Mayor' should have social precedence. It is further recommended that the draft proposals should indicate that the new title of the 'Ceremonial Mayor' should be a matter for public consultation without recommendation.

• **Term of office of the Elected Mayor**

2.13 Regulations provide that Mayoral Elections take place in the 'fallow year' when there are no Municipal Elections. The next 'fallow year' is 2009 and the next following is 2013.

2.14 The term of office of the Elected Mayor begins on the fourth day after she or he is elected and she or he holds office until the successor comes into office on the fourth day after the next election.

It is recommended that the initial term of office, assuming a Mayoral Election is held on 16 October 2008 following a 'Yes' vote in the Referendum, be the remainder of the term up to May 2013 when the second Mayoral Election will be held. Thereafter, Mayoral Elections would take place every 4 years.

• **Points for Consultation**

2.15 The Council is required to consult with inhabitants of the area and other interested parties about the proposals it puts forward. Many of the issues detailed are technical and it may prove difficult to engage people in a debate about them. The attached Draft Proposals can be compared easily with the Fall-back proposals which are also attached.

2.16 In the Draft Proposals the Executive arrangements change to the extent that the Leader and Cabinet is replaced by an Elected Mayor and Cabinet. Otherwise, all arrangements remain as they are, subject to Council's recommendation, with the same Committees and Scrutiny arrangements.

2.17 These are matters that will need to be addressed prior to submission of the Proposals to the Secretary of State. It is open to the Council to decide that there is a limit to the number of issues in which it is possible to engage in meaningful consultation. The Council can focus consultation on these areas, whilst providing a broad overview in the proposals to enable anyone who wished to do so, to comment in detail, on those arrangements.

2.18 It is suggested that the consultation includes:-

1. **Community Voice (Citizens' Panel) 1650 members including young people and other groups of people from all areas of Bury.**
2. **Consultation in Bury Times and other local newspapers**
3. **Council's Website.**
4. **Focus Groups including 'hard to reach' groups.**
5. **Consult all Members of the Council.**
6. **Local Strategic Partnership.**
7. **Employees of the local authority.**
8. **Local Area Partnerships**

2.19 During the consultation exercise, the Authority must:

Describe and represent in a fair and balanced way the form of Executive with an Elected Mayor with Cabinet.

Ensure that in responding to that consultation local electors and other interested parties in the Authority's area have an opportunity to express their views clearly.

Use a combination of qualitative and quantitative methods of consultation.

Ensure that all electors and other interested parties have an opportunity to respond to the consultation, and

Ensure that the consultation does not include consultation on the Council's existing Executive arrangements, i.e. Leader and Cabinet. (which can be discussed at the next stage).

Stage 2: Proposals to the Secretary of State

2.20 Following the consultation, the Council, at its meeting on 24 April 2008 will consider the results of the consultation when making these decisions. At that meeting, the Council will consider a final draft of the Proposals. The Final Proposals will then be submitted to the Secretary of State on 1 May 2008. The Proposals submitted to the Secretary of State must include a statement which describes what steps the Authority took to consult; the outcome of the consultation and how the outcome is reflected in the Proposals. These Proposals will be implemented if the Referendum results in a 'yes' vote.

2.21 Once the Proposals have been submitted, a stage of information-sharing and awareness raising will take place which will inform the public about the implications of governance by an Elected Mayor with Cabinet to be determined in the Referendum.

Stage 3: Awareness-Raising

3.1 The awareness-raising will focus on the governance arrangements to be put to the Referendum. These are the Draft Proposals for an Elected Mayor with Cabinet and the Fall Back proposals which are our current arrangements. The awareness-raising can also focus on the Referendum itself, and encourage debate and participation in the vote.

3.2 At this stage the Authority has greater discretion about the format of the information, but there is increasing restriction on publicity.

• Restrictions on Publicity throughout the period leading to the Referendum

At all Times

3.3 Consultation material is publicity within the meaning of the Code on Local Authority Publicity. This imposes various restrictions on publicity issued by local authority which apply at all times. The Code has specific provisions about referendums which require that at all times leading up to a referendum any information published by the authority is 'factually accurate and objective'.

During Consultation

3.4 There is also specific guidance about the consultation process which emphasises the need to avoid bias in the presentation of facts. If a statement is factual it does not mean that it is safe to use in consultation. It is also important that the statement is balanced. For example, if a statement is made that a feature of Mayoral arrangements will have a particular outcome, which may be perceived to be negative, then it must be balanced with a statement about any positive effects of that feature. The guidance provides examples of statements that display bias which should be

avoided.

During the Referendum Period

- 3.5 The submission of the proposals to the Secretary of State (1 May 2008) marks the start of the 'Referendum Period', greater care is required during this period and 'the publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the Referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group'.

In the last 28 days

- 3.6 In the final 28 days prior to the Referendum the local authority cannot publish any material which :-
- a. provides general information about the Referendum
 - b. deals with any of the issues raised by the question to be asked in the Referendum; or
 - c. puts any arguments for or against a particular answer to that question

Although the authority can :-

- d. respond to questions asked by individuals
- e. publicise the poll itself
- f. issue press releases to correct factual inaccuracies published by someone else.

Council Members

- 3.7 The Council Members are not bound by these rules and can make their own personal statements in the press or in personally-produced newsletters or in direct conversation, provided that Council resources are not used to make those statements. Individuals are subject to a general restriction on Referendum expenses of £2,000 and 5p for every elector.

Stage 4: The Referendum

- 4.1 All local government electors can vote at the Referendum. The question which will be put to the electorate is

'Are you in favour of the proposal for Bury Metropolitan Borough Council to be run in a new way, which includes a Mayor, who will be elected by the voters of that borough, to be in charge of the Council's services and to lead Bury Metropolitan Borough Council and the community which it serves?'

- 4.2 There is no discretion about the question to be put, as this is prescribed by Regulations.
- (a) If a majority of voters reply 'no' to the questions, the existing arrangements will continue and there will be no change (our Fall-Back Proposals)
 - (b) If the majority of voters vote 'yes', an election will be held for a Mayor on 16 October 2008 and the Proposals that the Authority put forward to the electorate will be implemented in accordance with the timetable set out in Appendix A to this report.

Conclusion

- 5.1 The report explains the process leading up to a Referendum for an Elected Mayor. The report presents a programme of consultation for approval and a set of Draft Proposals. Members will need to consider whether they are content to proceed with consultation on the basis of the programme and Draft Proposals put forward including the Fall-Back Proposals in the event of a 'No' vote in the Referendum.

Reasons

The recommendations are supported by the following reasons :-

- (a) The Council is required to consult with the public prior to the referendum, and the programme follows the guidance for effective consultation.
 - (b) There is a requirement to carry out the consultation, raise public awareness and to conduct the Referendum itself.
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List of Background Papers:-

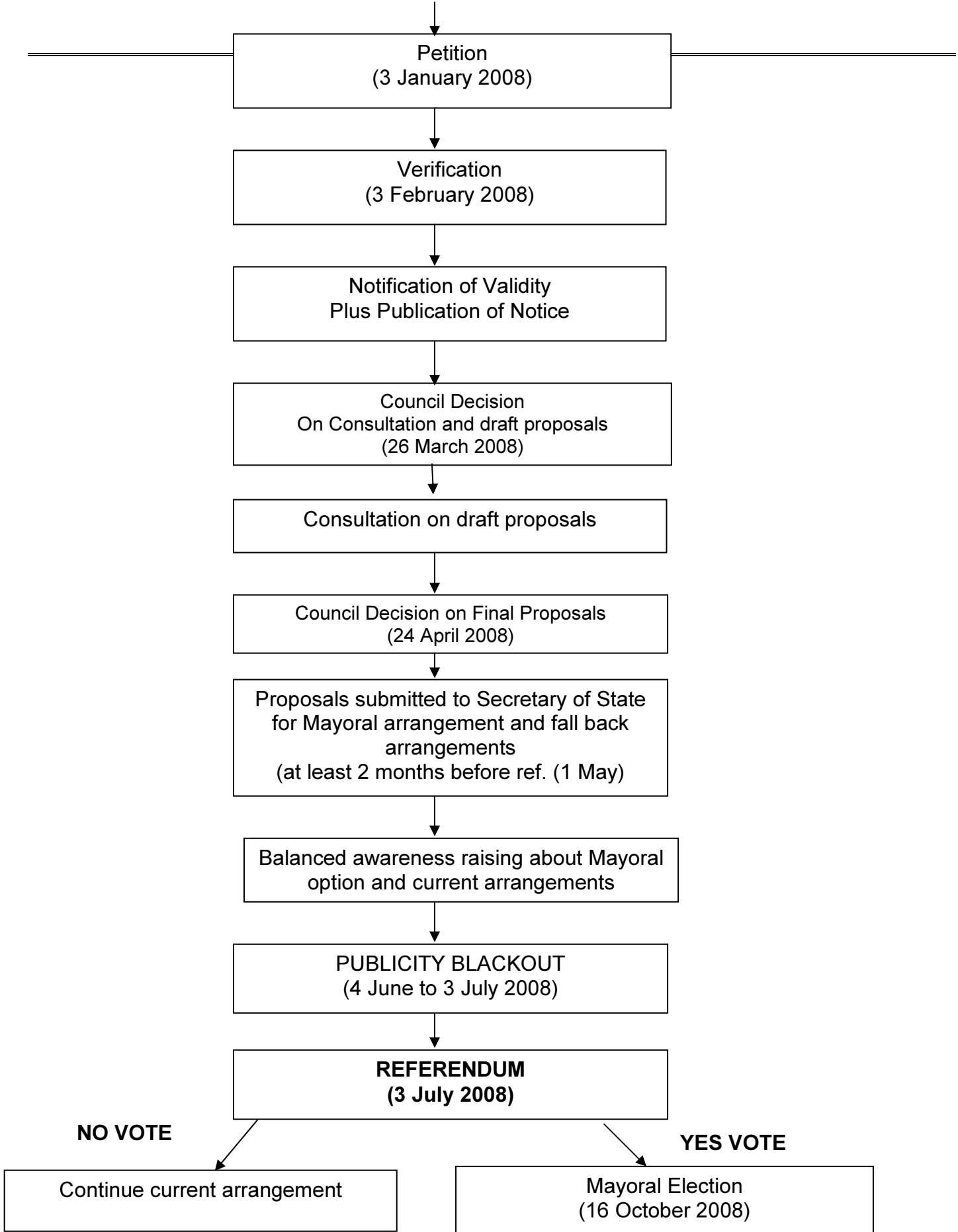
The Petition and Government Guidance

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MAYORAL REFERENDUM TIMETABLE

Elected Mayor and Cabinet

The Council needs your views on how you think decision-making would need to be managed if the referendum is in favour of a directly Elected Mayor and Cabinet. Much of the way of working is set down by law but there are a few areas where the Mayor and Council can choose how to work. The information you give us will help us to put together a model for an Elected Mayor and Cabinet which would be recommended to the Mayor and Council for adoption.

The Cabinet

The Mayor must appoint a Cabinet of between 2 and 9 elected Members of the Council to support him or her.

- 1 **What do you think the Mayor should take into account when deciding the size of the cabinet? Please tick one box only**

The Mayor would not need a lot of other Councillors to help make decisions

The Mayor would need as many Cabinet Members as possible to help make decisions

- 2 **What do you think the Mayor would need to take into account when considering the political make-up of the Cabinet? Please tick one box only.**

Irrespective of the political views of the Mayor, the political party with the most elected Members should take all the seats in the Cabinet

The make-up of the Cabinet should reflect the political views of all parties on the Council

The make-up of the Cabinet should reflect the political views of the Mayor

The Mayor should choose those elected Members they want, regardless of political views

Decision Making

- 3 **The Elected Mayor can choose to make all major decisions alone, to make them jointly with the Cabinet or to appoint other Cabinet members to make decisions in specific areas of Council activity. What do you think an Elected Mayor should do? Please tick one box only.**

Retain all major decision making responsibility and have an advisory Cabinet only

Delegate some major decision making responsibilities to Cabinet members

Take all major decisions jointly with members of the Cabinet

Overview and Scrutiny

- 4 The Council must appoint at least one Overview and Scrutiny Committee. The way in which the Council currently operates its overview and scrutiny function is explained in the accompanying leaflet. If the referendum for an Elected Mayor and cabinet is successful, should the existing overview and scrutiny arrangements be enhanced? Please tick one box only.

Yes

No

Ceremonial Duties

- 5 The ceremonial duties of the existing Mayor are explained in the accompanying leaflet. Do you think these ceremonial duties should be carried out by: (Please tick one box only)

The Elected Mayor

By the longest serving member of the Council (other than the elected Mayor)

Jointly by the Elected Mayor and the longest serving Member

By another Councillor (please state whom)

6. What title should the Council adopt for the 'Ceremonial Mayor'?

- 7 If you have any other comments you would like to make, please write them here (Please bear in mind that the areas outlined above are the only areas where the Council has discretion)

Thank you for completing this questionnaire. Please return it in the envelope provided.