

# WEST NORTHAMPTONSHIRE SHADOW AUTHORITY

## OVERVIEW AND SCRUTINY COMMITTEE

25 January 2021

<b>Report Title</b>	<b>A new Constitution for West Northamptonshire Council</b>
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### **1. Purpose**

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- 1.1 The new West Northamptonshire Council is required to have a constitution and this report sets out the process followed to prepare the draft constitution. The report seeks the Overview and Scrutiny Committee's views on the proposed Constitution based on this process.

### **2. Recommendations**

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- 2.1 To consider and comment on the proposed Constitution for West Northamptonshire Council.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 A new council presents a rare opportunity to set out new ways of operating, but also to explain how it intends to operate in a different way so that it encourages public involvement in the democratic process and helps to inform and engage, avoiding some of the traditional approaches which can present a barrier to wider public involvement.
- 3.1.2 The four local authorities within West Northamptonshire all have their own constitution which have provided a useful background to current decision making arrangements. However a unitary Council requires a new Constitution which draws upon but is not the same as any existing Constitution. The decision about the style of that document is one of the ways the new Council can signal that this is a new council with a different look and feel from its predecessors.

#### **3.2 The Drafting of the Constitution**

3.2.1 The Council is required by Section 9P of the Local Government Act 2000 to have a Constitution which must contain:

- (a) a copy of the authority's standing orders for the time being,
- (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
- (c) such information as the Secretary of State may direct, and
- (d) such other information (if any) as the authority considers appropriate.

3.2.2 To take forward the drafting of the Constitution a Member Task and Finish Group was set up, chaired by Councillor Adam Brown with Councillors Phil Larratt, Michael Clarke, Sally Beardsworth and Charles Manners also members of the group. During November and December the Task and Finish Group has met almost weekly to consider the various sections of the new Constitution. Meetings of the group provided a steer on the principles, framework and key provisions. The Task and Finish Group has had the following meetings:

No.	Date	Topics Explored with Members
1.	1 July 2020	Operation of Group and adoption of the terms of reference.
2.	29 July	<p>Considerations of current governance structures used by unitary authorities.</p> <p>LGA's recommendation of a good example of leader and cabinet – Cornwall Council.</p> <p>Consideration of Committee System Structure.</p>
3.	20 August	<p>Legal Advice on the models of Constitution available.</p> <p>Initial draft - Council Procedure Rules / Meeting Procedure Rules</p>
4.	16 September	Second draft - Council Procedure Rules / Meeting Procedure Rules
5.	16 October	<p>Initial draft:</p> <ul style="list-style-type: none"> <li>• Access to Information Procedure Rules</li> <li>• Executive Procedure Rules</li> <li>• Interim arrangements</li> </ul>
6.	12 November	<p>Presentation by the new MO</p> <ul style="list-style-type: none"> <li>• Approach and next steps</li> <li>• Governance Structures</li> <li>• Scoping and Planning Document</li> <li>• Cabinet Procedure Rules (final draft) and initial draft - Summary and Explanation</li> </ul>

		<ul style="list-style-type: none"> <li>• Initial consideration - Overview and Scrutiny function</li> <li>• Interim Arrangements</li> </ul>
7.	25 November	<p>Democratic Arrangements - A New Constitution for West Northants</p> <ul style="list-style-type: none"> <li>• Constitution Index</li> <li>• Summary and Explanation</li> <li>• Public Participation in West Northants – initial draft</li> <li>• Proper Officer List</li> <li>• Overview and Scrutiny Procedure Rules – Initial draft</li> <li>• Council Procedure Rules final draft</li> </ul>
8.	2 December	<ul style="list-style-type: none"> <li>• Proposed Committee Structure for the new Council</li> <li>• Scheme of Delegation Principles</li> </ul>
9.	9 December	<p>Terms of Reference of Governance Committees</p> <ul style="list-style-type: none"> <li>• Democracy and Standards</li> <li>• Audit and Governance</li> <li>• Pensions</li> <li>• Senior Appointments</li> </ul> <p>Councillors</p> <ul style="list-style-type: none"> <li>• Role of Councillors</li> <li>• Code of Conduct</li> <li>• Member Complaints Procedure</li> <li>• Member Officer Protocol</li> </ul> <p>Officers</p> <ul style="list-style-type: none"> <li>• Scheme of Delegation Draft</li> <li>• Proper Officers (review)</li> </ul>
10.	22 December	<ul style="list-style-type: none"> <li>• First Draft of New Constitution</li> </ul>
11.	15 January 2021	<ul style="list-style-type: none"> <li>• Glossary</li> <li>• Planning Protocol</li> <li>• Planning Committees Terms of Reference</li> <li>• Finance Procedure Rules</li> <li>• Contract Procedure Rules</li> <li>• Employee Code of Conduct</li> </ul>

### 3.3 Principles

3.3.1 The Member Task and Finish Group agreed the following Principles, which have enabled members and officers to work together collaboratively to shape and frame a new constitution:

- Transparency – makes it clear what our rules are
- Accountability – explains clearly who makes which decisions
- Efficiency – keeps the cost of decision making down
- Accessibility – is accessible to all
- Inclusivity – encourages public participation
- Concise – describes what it needs to succinctly.

### **3.4 Style**

3.4.1 The Member Task and Finish Group was also supportive of the idea that the way the document is drafted and published supports the principle of accessibility and inclusivity, both digitally and more generally. It also recommended that the Constitution should be easy to read and written wherever possible using plain English, and with any technical terms being clearly explained and set out in a glossary.

### **3.5 Structure**

3.5.1 The Task and Finish Group also chose a new structure for the Constitution based on the key decision making bodies, to make it easier for those consulting the constitution to find what they are looking for:

- Non-executive
- Executive
- Scrutiny
- Joint Arrangements
- Councillors
- Officers.

3.5.2 This is a departure from the Model Constitution which was introduced by the DETR in 2000. That guidance has now been archived although it continues to inform many constitutions.

3.5.3 It was also agreed that in order to keep the document short, Standing Orders such as procedures for contracting should be in guidance documents sitting outside the Constitution. Schemes of delegation should also be prepared as catch-all delegations with exceptions to avoid the risk of omissions.

### **3.6. Approach**

3.6.1 The officers prepared a number of slide presentations to discuss with the members of the Task and Finish Group. A steer from members was obtained and the results of the steer and the slides have been used to draft the Constitution.

3.6.2 The Constitution is a living document and although it will be approved by the Shadow Authority in the first instance it is not necessary to take changes back

to full council where the relevant decision maker has made a decision. E.g. the Cabinet can change the portfolios without the need for this to be referred to Council as this is an Executive decision. Where the Cabinet makes changes the Monitoring Officer will be able to amend the Constitution as a 'consequential amendment'. This is provided for within the Constitution.

3.6.3 The Constitution has been drafted in accordance with the steer from Members. The draft Constitution has been referred to the Task and Finish Group.

### **3.7 Progress:**

#### **Parts 1 and 2 Summary and Articles**

3.7.1 The Summary and Articles section of the Model Constitution contains an overview of the Council. It is the part of the Constitution which is directed to the public as it includes a broad description of the rights of citizens as well as a basic statement about how the Council operates.

3.7.2 In addition to the broad description this section usually contains some specific information e.g. the content of the Council's Policy Framework. The detailed information in Part 1 is set out in a series of 15 Articles. The majority of detailed rules are set out in the later parts of the Constitution.

3.7.3 The new approach that has been taken for the Constitution deletes the Articles and provides a simple introduction and summary which includes the necessary information to provide a broad overview. This will form the basis of the information which is presented on the website as the content for the Council pages.

#### **Part 3 Responsibility for Functions**

3.7.4 The remainder of the Constitution is set out in specific sections in a different order to the Model Constitution. It is drafted as follows:

##### **Non-Executive**

3.7.5 Council:

The functions of Council, the overall policy framework and budget and how Council make decisions. The Council Procedure Rules set out how the Council will operate.

3.7.6 Council Committees:

Detailed consultation has taken place to draw up a draft committee structure which will form the basis of the delegation of functions to committees within the Constitution.

- **Planning**  
Detailed work has been carried out by the Planning work stream and the Member Task and Finish Group on planning which has been shared with the Constitution Task and Finish Group. The terms of reference of the committee are not disputed and have been drafted in accordance with the instructions of the Planning Work stream.

- **Licensing**  
Details of the Licensing Committee arrangements have been considered by the Communities Board and this has been provided to the Constitution Task and Finish Group.
- **Senior Appointments Committee**  
Detailed procedures for the Senior Appointments Committee have been drafted by the HR work stream and considered by the Constitution Task and Finish Group. Comments have been referred back to HR.
- **Democracy and Standards Committee, Audit and Governance Committee, Pensions Committee.**  
Documents have been prepared for the Member Task and Finish Group with specific recommendations which have been agreed by Members.
- **Localism Arrangements**  
These arrangements are currently subject to a separate piece of work which will take place once the new Council is in place. Existing arrangements will be maintained in relation to key boards and groups until that review is complete.

## **Executive**

### **3.7.7 Executive Procedure Rules**

A detailed analysis has been presented to the Member Task and Finish Group including comparisons with other councils and a clear steer has been provided on the key elements of the way the Council will operate. The Executive will be called Cabinet and will have 9 members plus the Leader and there will be portfolios which can be established at the discretion of the Leader.

### **3.7.8 Access to Information Procedure Rules**

Detailed recommendations have been referred to the Member Task and Finish Group and these have resulted in a steer on, for example, the definition of a key decision.

## **Scrutiny**

**3.7.9** Scrutiny arrangements have been the subject of consultation with the Scrutiny Committee including the process of Scrutiny which is not detailed in the Constitution. The broad framework for establishing a work programme has been included.

### **3.7.10 Rules of Procedure**

The detail of Call-in processes and grounds for Call-in have been the subject of a presentation to Members and a steer has been provided.

## **Joint Arrangements**

**3.7.11** The North and West Joint Committee will deal with shared service arrangements.

**3.7.12** PATROL work - the terms of reference of these joint arrangements will be included within the new Constitution.

### 3.7.13 Police, Fire and Crime Panel

Separate work has been undertaken to identify the changes needed to the membership of statutory bodies in which the existing councils have duplicated membership. The Police and Crime Panel will need to decide those new arrangements and that decision has been referred to their meeting.

## **Councillors**

### 3.7.14 Members' Allowances Scheme

A separate report will be presented on Members' Allowances – once the scheme is finalised it will be incorporated into the Constitution.

### 3.7.15 Roles of Councillors (Job Descriptions)

### 3.7.16 Members' Code of Conduct and Complaints Procedure

Details of the proposed new Code of Conduct have been referred to the Member Task and Finish Group along with a complaints procedure for handling member complaints, and a procedure for recording Members' registers of interests.

### 3.7.17 Members' Planning Protocol

This is subject to further discussion with the Member Planning Task and Finish Group.

### 3.7.18 Member/Officer Protocol

Details of the proposed Member/Officer Protocol have been discussed with the Member Task and Finish Group.

## **Officers**

### 3.7.19 Management Structure

This has been finalised and a high level structure is included.

### 3.7.20 Proper Officer Functions

A detailed list of proper officer functions has been drawn up following consultation with the Task and Finish Group.

### 3.7.21 Scheme of Delegation to Officers

A proposed format and style of the Officer Delegation scheme has been described to members and approved in principle (this is described in detail below). The members have yet to discuss and agree the level of delegation within the scheme. The levels set out in the procedure rules for employment, contracts, finance and property will play a significant role in determining the level of delegation to officers. Work is underway to determine the legal and finance reservations.

### 3.7.22 Employees' Code of Conduct

This is being drafted as part of the wider work on Terms and Conditions.

### 3.7.23 Contract/Finance/Employment Procedure Rules

Contract and Employment Procedure Rules are included. The Finance Procedure Rules are being drafted and have been delayed due to the more pressing work required on the Budget by finance colleagues.

### **3.8 Interim Arrangements**

3.8.1 Between 1 April, when the Constitution comes into effect, and the fourth day after the election (the date specified in the Order) the Shadow Period continues and the Shadow Executive will continue to be responsible for the majority of decisions. During this period a streamlined committee structure will be in place. This is set out in the Interim Arrangements section of the Constitution. This will fall away after the election and will be removed from the Constitution and the substantive Committee Structure will then be in place and appointed to at the Annual General Meeting.

### **3.9 Delegation of Responsibilities**

3.9.1 Executive and Non-Executive distinctions will be illustrated through charts.

3.9.2 When an officer is appointed as a Proper Officer, e.g. the Head of Paid Service, this has the effect of legislation providing powers directly to an officer role and these powers cannot be exercised by any other decision maker other than a properly appointed deputy.

3.9.3 In reviewing the delegations to officers the extent of officer delegation should be made transparent and will need to be kept current in order to ensure that the Council is not open to challenge. If each individual officer power is listed there is a high risk that a power may be missed. Recognising this many authorities have adopted the approach of reversing the scheme so that officers are delegated all powers within a certain functional area EXCEPT .... and the exceptions would make clear those matters which officers can not decide and which must be reserved to Members. This provides greater clarity about matters which are reserved to Members whilst reducing the risk that the scheme becomes out of date or misses a relevant power. It also avoids the need to amend the scheme with each change of legislation.

3.9.4 The Exceptions will be detailed under a number of headings:

- Financial
- Legal
- Contractual
- Land
- Planning
- Temporary delegations (e.g. on capital schemes).

3.9.5 The scheme sets out which individuals/bodies are required to make decisions at each level. Where consultation is required with a particular officer e.g. the s151 Officer, this will be detailed within the scheme. Decision making will always sit with a single body or person (not more than one) so that there is clear accountability for the decision and no risk of conflicting decisions being made. An early draft has been included.



### **3.10. A new Section on Public Participation**

3.10.1 There is a widespread principle that public participation builds a more engaged citizenry, increases the legitimacy of decisions, and helps ensure that policy-makers have valuable local knowledge. As proposed above, by drawing together information about how the public can participate, the Constitution can reinforce the encouragement of public participation. A new section on Public Participation has been included.

### **3.11. Next Steps**

3.11.1 There are some parts of the Constitution still outstanding – in particular some elements of the Scheme of Delegation and Finance Procedure Rules. There is further work on the refinement of other sections.

3.11.2 The chart below shows the path for the Constitution to approval. The Constitution will come into effect on 1 April 2021. The interim arrangements section will apply an alternative committee structure for a limited period of time.

<b><u>Date</u></b>	<b><u>Event</u></b>
13 January	West Implementation Executive is consulted on a first draft of the Constitution
25 January	Shadow Overview and Scrutiny Committee is consulted on the draft of the Constitution
12 February	Final Draft is referred to Shadow Executive for a decision on the Executive decisions and delegations within the Constitution subject to approval of the document by the Shadow Authority
23 February	The Shadow Authority considers the final draft of the Constitution
1 April	The Constitution comes into effect
10 May	The interim arrangements fall away on the fourth day after election day (6 May 2021).

## **4. Implications (Including financial implications)**

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### **4.1 Resourcing requirements**

4.1.1 The publication of the Constitution is proposed to have limited cost as it will be published digitally. However the Council is required to provide a hard copy at a fee if requested to do so. The initial digital preparation may also require some design/development.

4.1.2 It is suggested that some limited documentation will need to be prepared to enable new members and the public to have a broad outline of the new arrangements.

4.1.3 The Constitution is being drafted by existing staff employed by the authorities and there are no additional costs.

**4.2. Legal implications**

4.2.1 This report relates to the high level legal requirements and the legal implications are detailed within the body of the report.

**4.3 Climate Impact**

4.3.1 There are no specific climate impacts resulting from this report. The principles of the Constitution as drafted include efficiency and accountability. This is designed to ensure that meetings to determine a decision are kept to a single decision making body which reduces the need for meetings and, where applicable ,documentation.

**4.4 Community Impact**

4.4.1 The draft Constitution introduces a new section dedicated to public participation in decision making. This is designed to encourage and support community involvement in decision making to help to ensure that future impacts are understood as part of the decision making process.

4.4.2 Existing Community Boards will continue to be supported until new arrangements can be put in place. The new Council will conduct a review of the needs of community based governance including local boards and forums. It is intended that this work will include public and stakeholder engagement.

<b>Background Papers</b>	Background Paper: New Council Constitutions: Guidance to English Authorities
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