

New Constitution: Consideration of Draft Sections

Final Decision-Maker	Council
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Lead Officer and Report Author	Angela Woodhouse, Head of Policy, Communications and Governance Oliviya Parfitt, Democratic Services Officer
Classification	Public
Wards affected	All

Executive Summary

Appendix A contains the relevant draft constitution sections for the new Governance Model. As agreed at the meeting of this Committee in November 2021 the sections included for consideration relate to the role of the Leader, Policy Advisory Committees, Overview and Scrutiny, Procedure Rules and the Administration's programme. Further reports on the remaining sections of the constitution will come to this Committee in February and March 2022.

Purpose of Report

Consideration and agreement.

This report makes the following recommendations to this Committee:

1. Consider the new draft constitution sections relating to the role of the Leader, Policy Advisory Committees, Overview and Scrutiny, Procedure Rules and the Administration's Programme proposed by the working group attached at Appendix A, for inclusion in the new draft constitution and the options at para 3 and provide direction on the way forward.
2. All drafting agreed to be in accordance with legal requirements.

Timetable

Meeting	Date
Democracy and General Purposes Committee	26 January 2022
Democracy and General Purposes Committee	16 February 2022
Democracy and General Purposes Committee	9 March 2022
Council	13 April 2022

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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>The new constitution will need to ensure effective decision-making processes are in place to achieve the strategic priorities.</p>	Head of Policy, Communications and Governance
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The new constitution will need to ensure effective decision-making processes are in place to achieve the strategic priorities.</p>	Head of Policy, Communications and Governance
Risk Management	Covered in the risk section at 5.	Head of Policy, Communications and Governance
Financial	<p>It was agreed that the cost for the new constitution will be met from reserves. The cost estimate was made prior to the Chair of the Democracy and General Purposes Committee leading the member working group taking on the drafting and the working group expanding the scope of the work; consequently, the cost now involved is likely to be in excess of that originally envisaged.</p>	Section 151 Officer & Finance Team

<p>Staffing</p>	<p>The drafting of the new constitution has been supported by the Head of Policy, Communications and Governance, Monitoring Officer and a Democratic Services Officer. As the new draft is not just a simple change to reflect the revised governance structure agreed by Full Council (i.e. the move from a Committee system to an Executive system for member decision making) but an entirely new structure for the Constitution with multiple other changes the work has been significant so far in terms of time.</p>	<p>Head of Policy, Communications and Governance</p>
<p>Legal</p>	<p>The Localism Act 2011 amended and inserted Part 1A of the Local Government Act 2000. The provisions enable a Council to operate one of three permitted forms of governance:</p> <ul style="list-style-type: none"> (a) Executive arrangements; or (b) A committee system; or (c) Arrangements prescribed by the Secretary of State. <p>The executive arrangement may consist of a 'executive' leader and cabinet under the 2000 Act, section 9C (3); or the directly elected mayor and cabinet model of governance under section 9C (2). The executive may not exceed 10 members of the Council, to include the Leader and/or Mayor.</p> <p>The executive arrangement of a Council must include provision for the appointment of one or more overview and scrutiny committees to review and scrutinise executive decisions made, or other action taken – LGA 2000, section 9F.</p> <p>The 2000 Act divides the functions into Council functions, local choice and executive functions. The allocation of functions is prescribed under the Local Authorities (Functions and Responsibilities)</p>	<p>Interim Deputy Head of Legal Partnership</p>

(England) Regulations 2000 (as amended). Anything not listed in these regulations is an executive function.

The Council is required to have an up-to-date written Constitution setting out how the Council conducts its business, who takes which decisions and how to work with the Council. The Constitution should contain the Council's Standing Orders, the Code of Conduct, information required by the Secretary of State and other information as the Council considers appropriate – section 9P LGA 2000.

Comments on the proposals in this report and the appendix and how they meet legal requirements have been included in the report and on the draft documents.

The protocol on Councillor/Officer relationships at 4.3 of the constitution sets out the roles of Councillors and Officers.

In brief, Councillors are expected to:-

1. Make policy;
2. Contribute to the good governance of the area;
3. Represent the interests of their Ward and Constituents fairly and impartially;
4. Participate in the governance of the Council and represent the Council on outside bodies;
5. Maintain the highest standards of conduct and ethics; and
6. Comply with their obligations under the Constitution.

And under the role of Officers:
Officers are responsible for giving advice to all Councillors and for implementing the proper decisions of the Council.

Privacy and Data Protection	No impact.	Corporate Insight, Communities and Governance Manager
Equalities	The recommendations do not propose a change that will require an equalities impact assessment.	Corporate Insight, Communities and Governance Team
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Head of Policy, Communications and Governance
Crime and Disorder	It is proposed that the requirements for legislative requirements for Overview and Scrutiny of Crime and Disorder Reduction will be contained within the terms of reference for the new Maidstone Overview and Scrutiny Committee (this requirement is currently discharged by the Communities, Housing and Environment Committee).	Head of Policy, Communications and Governance
Procurement	There has been and will continue to be a need procure external legal advice to assist with the development of the constitution.	Head of Policy, Communications and Governance
Biodiversity and Climate Change	The implications of this report on biodiversity and climate change have been considered and none have been found.	Biodiversity and Climate Change Manager

2. INTRODUCTION AND BACKGROUND

2.1 The constitution is the key governance document for the Council and should set out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are prescribed in law and others are a matter for the Council to choose. The constitution should make clear to members of the Council, its Officers and the public how the council works, what people's rights are and how all decisions will be made in accordance with the law. It is a key document and needs to be as clear as possible and kept regularly under review and updated.

2.2 In May 2021 the Council approved the following motion:

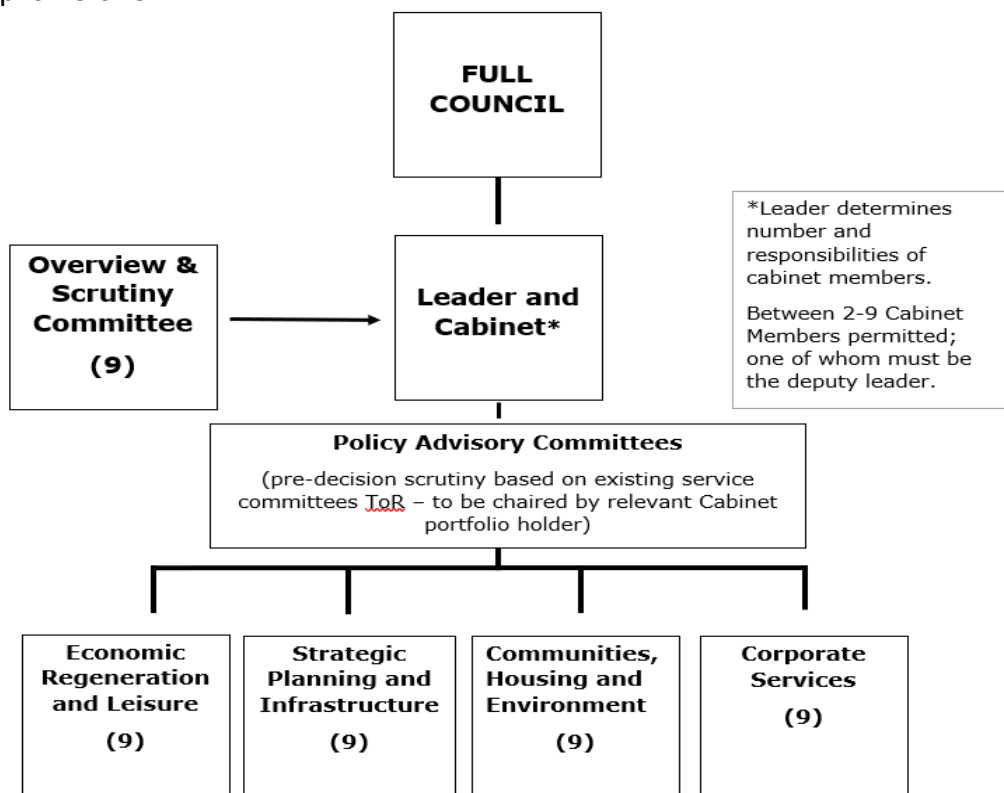
“ (1) That Council agrees, in principle, to revert to executive arrangements from its next Annual Meeting for the municipal year 2022/23 onwards.

- (2) That Council recognises the substantial work required to bring forward final proposals, to review interim arrangements and other aspects of member involvement.
- (3) That Democracy & General Purposes Committee be requested to consider the matters outlined in (2) and put a proposed executive arrangements model to Council for adoption in order to allow the executive arrangements to be adopted to meet the principle agreed in (1)."

2.3 The Democracy and General Purposes Committee appointed a working group to develop a new model. The Working Group identified the principles that would be important in the new model and subsequent constitution:

- Member inclusivity throughout the decision-making process
- Increased transparency of decision making
- A member led decision making process; and
- Increased pre-decision scrutiny

A model was developed to meet the principles above with the addition of four Policy Advisory Committees (PACs) to a traditional Leader and Executive model aligned to portfolios to ensure greater member involvement at a pre-decision stage. The single overview and scrutiny committee (OSC) will also undertake crime and disorder functions. All Cabinet decisions, except those outlined as part of the administration's programme (individual or collective), are proposed to be subject to pre-decision scrutiny at the relevant PAC, unless dealt with under the urgency provisions.



*This diagram does not include regulatory/statutory/other Committees such as; Audit, Governance and Standards, Licensing, Planning, Crime and Disorder Committee, Appointment Sub-Committee, Democracy and General Purposes Committee.

- 2.4 In response to questions, it was clarified at Democracy and General Purposes Committee meeting on 8 September 2021 that “(t)he Constitution would be created using a previous version the 2014 when the Council had an executive model in place, and the Legal Team with external expert advice would lead this work.” This reflected the distinctive roles and responsibilities of councillors and officers i.e. it would be for Councillors to set direction and principles and for officers (and in this case an external legal expert with specialist expertise) to the draft the constitution on that basis for the working group to review, debate and refine. In contradiction to this practice the proposed draft constitution has been written and formatted by the Chairman of the Democracy and General Purposes Committee and presented to the working group with advice and comment then offered by an external advisor and council officers. The proposed new constitution is a complete rewrite and not a redrafting of the current or past constitutions. The current draft recommended by the working group cannot be cross referenced to the current, past or model constitutions easily and this creates challenges in identifying changes and their implications; it has not been written in plain English.
- 2.5 On 29 September 2021 Council approved the new model of executive governance proposed by Democracy and General Purposes Committee.

The agreed resolutions are outlined below:

1. “That the Executive Model outlined at paragraph 3.3 of the report to the Democracy and General Purposes Committee, attached as Appendix 1¹ to the report of the Committee, be adopted at the Annual Meeting of the Council in 2022.
2. That the timetable for developing and implementing the new Executive Model set out in paragraph 2.4 and section 7 of the report to the Democracy and General Purposes Committee, attached as Appendix 1 to the report of the Committee, be approved.
3. That the use of reserves to fund the work required to review and redraft the Constitution be approved.”

As part of the proposal, it was agreed that the Governance Arrangements Working Group would continue to operate and review the redrafted significant parts of the constitution prior to Democracy and General Purposes recommendation to Council for adoption.

- 2.6 In November 2021 Democracy and General Purposes considered and noted the below approach to drafting the new constitution:

Topic	Working Group Meetings	DGP – Committee	Council
Leader and Cabinet <ul style="list-style-type: none"> • PACs and OSC • Procedure Rules 	Framework 11 November 2021 and 2 nd Meeting TBC November	26 January 2022 (publication on 18	

¹ see diagram above

<ul style="list-style-type: none"> • Leader’s annual speech/administration’s programme • Local Choice Functions 	Draft Constitution Sections considered by working group on 9 December 2021	January 2022)	
Member Rights <ul style="list-style-type: none"> • Access to Information • Agenda items • Questions • Decision making including key decisions 	Framework 16 December 2021 Draft Constitution considered by working group on 13 January 2022	16 February 2022 (publication on 8 February 2022)	
Remaining Constitution	Draft Constitution considered by working group on 17 February 2022	9 March 2022 (published on 1 March 2022)	13 April 2022 (published on 5 April 2022)

2.7 In accordance with the timetable the Committee is asked to consider the following sections of the new constitution, Attached at Appendix A:

Section	Topic
Part A1.	The Council and the Constitution
Part A2.	Core Provisions of the Constitution
Part B1.	Responsibility for Functions
Part B3.	Responsibility for Executive Functions
Part B4.	Functions of Other Committees
Part C1.	Council Procedure Rules
Part C2.	Committee Procedure Rules
Part C3.	Executive Procedure Rules
Part C5.	Maidstone Crime and Disorder Reduction Rules

2.8 **Appendix A** includes the draft sections relevant to the themes agreed for consideration. Part A has been included as this sets out the provisions and higher principles of the new constitution and relates to the areas to be considered and covered in Parts B and C: Administrative Programme, Overview and Scrutiny Committee, Policy Advisory Committees, Procedure Rules and Local Choice Functions. The changes regarding member rights and access to information are for discussion at the February meeting and have been highlighted as needing further legal advice and input. They have not been removed from Part A, B or C as presented so as not to affect the flow of the document. For completeness the minutes of the working group meetings that have taken place to review the constitution are included at Appendix C.

2.9 Information in **Appendix A** which relates to parts of the constitution identified for the February meeting will be brought back to the Committee for consideration then. The Committee is not asked to consider or approve any aspects relating to access to information, questions, rights or decision making including key decisions, this will be considered in detail in February by this Committee.

2.10 Attached at **Appendix B** is a list of significant changes, where legal advice has been given that these changes are not in accordance with the law or impractical this is highlighted with the external lawyer's comments provided. This should be read alongside **Appendix A**.

2.11 **Part A**, sets out the higher-level principles and core provisions of the constitution.

2.12 **Part B**, contains provisions on responsibilities for discharging the functions of the Council and for making decisions.

2.13 **Part C**, sets out various rules of procedure around how certain proceedings of the Council are regulated and how decisions are made.

2.14 **Changes of Significance by Topic**

Some of these changes are necessary to implement the new governance model; these are in italics and some are changes brought about by the working group. As can be seen from the notes below many changes are not for the purpose of implementing the new governance model.

- Policy Advisory Committees and Overview and Scrutiny Committee

- *Four Policy Advisory Committees have been included these mirror the current service committees albeit that these advisory committees do not have decision making powers in accordance with the new governance model. These were identified in the model presented to Council in September as part of the new governance model.*
- Chairs for PACs will be nominated by the Leader, their appointment is by the Committee. *The intention is that they will be a Member on the Executive* however, the Leader cannot appoint a Chair as these are appointed by the Council or the Committee. The report from Democracy and General Purposes to Council highlighted that ideally PACs would be chaired by Portfolio Holders.
- *There will be one Overview and Scrutiny Committee with 13 Councillors, they will not carry out pre-decision scrutiny on matters that go through Policy Advisory Committees, they will exercise call-in and the crime and disorder reduction functions.* No reference to the number of meetings. The membership number has been determined by the working group.

- Procedure Rules

- A change has been made from "Members of the Public" to "Local resident" and "Local resident and Service User" in relation to public rights change this has been introduced via the working group in

response to concerns on public attendance at meetings from residents who don't live in the Borough.

- The role of the Mayor in relation to the Council meeting and the application of all procedure rules. In the present constitution we have rule (e) under chairing the meeting which has been omitted from the draft:

“the ruling of the Mayor as to the application of these rules shall be final unless challenged by a Councillor who gains the support of two thirds of those councillors present and voting”

A new rule has been added that where a situation arises and the application of a procedure rule is disputed, if it is a point of order raised by an individual member the Mayor's/Chairman's decision will be final. The Member Dispute Panel will be considered at the next meeting.

- Member Dispute Panel – this will be considered in more detail in February under member rights, as the Mayor or Chair's rule at a meeting is final then this panel will meet retrospectively to then consider the decision made in respect of a point of order – it is unclear how this will work in practice. This has come forward via the working group.
- The Cabinet is referred to as the Executive and Cabinet Members as Members on the Executive, the Executive will be scheduled to meet 8 times per year.
- For meetings of the Executive, Visiting Members have to give written notice to speak 1 clear day before the meeting.
- Any 3 members can refer a nuisance or service failure matter to the Executive – this will be considered in February under Members' rights.
- Urgency for decisions of the Executive– can be over-ruled by the Chair of Overview and Scrutiny Committee and a simple majority of the group leaders.
- Restriction to local residents and service users for speaking and questions, currently it's members of the public.
- Removal of the Planning Referral Body.
- Introduction of referral of enforcement matters to the Planning Committee.
- Petitions – a change has been put in place that requires 1,000 signatures for a petition to be considered at a Council Meeting. This change has come in via the working group.

- *Administration's Programme*
 - There is a *requirement for the Leader to present an Annual Administration's Programme* within 60 days or at the Annual meeting of the Council. "Pledges" made in this speech can then be considered by the Executive without first going through the PACs. This concept was introduced in the September report from DGP to Council.

 - *Local Choice Functions*
 - *These are functions which may either be allocated to be dealt with by the executive or not under the functions' regulations. The draft constitution sets out proposals for how these should be allocated which the committee will need to consider. The draft includes all those local choice functions within the Regulations which are exercisable by a District Council. This is set out in Part B of Appendix A.*
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3. AVAILABLE OPTIONS

3.1 To Agree the Draft Sections as Per Appendix A

The working group have spent a significant amount of time reviewing and developing the sections of the constitution attached. As the new constitution is a complete rewrite rather than a simple review and insertion of new sections to fulfil the requirements of the change in governance models, the committee should review and consider the implications thoroughly.

3.2 Amend the sections as presented

The Committee may wish to put forward amendments to the text as is written.

3.3 Request the governance working group rewrite sections

The Committee could request that sections are revised if Councillors do not wish that significant parts are changed

3.4 Request a simple redraft of the current constitution

The Committee could request that the current constitution is redrafted to purely incorporate the changes to an Executive model of governance as approved at Council. An example section could be provided by the external legal advisor. This would be in line with the direction set out at the DGP meeting in September 2021.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 The Committee could take any of the options above.

There are concerns about the practical application and use of the document for example, with the ability to ensure the smooth running of meetings and applying procedure rules with the removal of mayoral/chairman discretion, and other Councillor discretions and having to cross reference in places to apply the constitution. There is also a need for detailed legal advice to be

provided on aspects of the Constitution which are due to be presented to committee at future meetings.

5. RISK

- 5.1 There are several risks that need to be considered as the constitution is developed.
- 5.2 **Reputational Risk**
If the Council does not have an appropriate decision-making framework in place, and cannot make timely decisions or take appropriate actions, the Council's reputation will be compromised. As currently drafted the speed of decision making as set out in the new constitution. The Constitution as drafted is being reviewed by officers and external solicitors and any concerns will be reported to the committee at the appropriate stage.
- 5.3 **Legal Risk**
Risk of something being unlawful in the constitution as drafted or in the way in which it governs decision making. A number of unlawful matters have already been identified and raised as articulated in Appendix B and these have been brought to Members' attention to address the risk. Any further concerns will be reported to the committee at the appropriate stage.
- 5.4 **Practicality of the document and decision making**
There is a risk that the proposed new constitution as drafted will have an adverse impact on the smooth running of decision making and meetings. Concerns have been raised by various parties of the possibility of officers being unable to advise effectively and clearly using the constitution as currently drafted and key councillor roles being hindered such as the Leader, the Mayor and Committee Chairs. Whilst mitigation has been put in place in terms of advice to the working group this advice has not been well received thus far. There is a duty for those advising decision makers to ensure they provide the best advice possible for the benefit of the whole Council to ensure good governance. Comments in Appendix B show concerns on the application of the constitution and have been highlighted elsewhere in this report.
- 5.5 **Timing**
A timetable for completing the constitution redrafting is in place and is on track. As the development of the constitution has taken a different approach than anticipated, mitigations have been put in place including additional meetings of the working group and advice and input from the external legal advisor

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The Democracy and General Purposes Committee through the governance arrangements working group have been involved in the development of the new executive model as a Member-led process. Consultation has previously

been carried out via councillor survey as part of the development of the new model and this has informed the development of the new constitution.

6.2 Council approved the next steps for developing the new executive model of governance at its meeting in September as outlined below:

Activity	Date	Purpose
Publication of Proposals	October 2021	Publish Proposals and required notices
Working Group	October 2021 to March 2022	Develop Constitution
Officers	October 2021 onwards	Officers to develop staffing to support new arrangements ready for 1 May 2022
Panel	January - March 2022	Members Allowance Scheme reviewed
DGP	March 2022	Recommend constitution to Council
Council	April 2022	Approve Constitution and members Allowance Scheme

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 The process for drafting the constitution is set out at paragraph 2.3 of this report.

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Working Group Drafted Constitution Sections
- Appendix B: Table of significant changes with comment
- Appendix C: Notes of the working group meetings

9. BACKGROUND PAPERS

Report to Council 29 September 2021 – New Executive Model