

First Meeting of Shadow Council

Forest Heath & St Edmundsbury councils

West Suffolk
working together

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| Title of Report: | Shadow Council Constitution | |
| Report No: | COU/SA/18/002 | |
| Report to and date/s: | Shadow Council | 30 May 2018 |
| Lead officer: | Leah Mickleborough Service Manager, Democratic Services Tel: 01284 757162 Email: leah.mickleborough@westsuffolk.gov.uk | |
| Purpose of report: | The Shadow Council is required to adopt a constitution, in order to determine how decisions are made. The Constitution proposed with this report has been adapted from the existing West Suffolk Constitutions, taking into account the temporary nature of the Councils. | |
| Recommendation: | The Shadow Council is requested to adopt the Shadow West Suffolk Council Constitution. | |
| Key Decision: | <i>Is this a Key Decision and, if so, under which definition?</i> No, it is not a Key Decision - <input checked="" type="checkbox"/> | |
| Consultation: | The principles of operating Shadow Council meeting were considered by the Future Governance Steering Group, which informed the development of the Constitution which has been reviewed by the Joint Constitution Working Group. | |
| Alternative option(s): | None | |
| Implications: | | |
| <i>Are there any financial implications? If yes, please give details</i> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |
| <i>Are there any staffing implications? If yes, please give details</i> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |
| <i>Are there any ICT implications? If yes, please give details</i> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |

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| <i>Are there any legal and/or policy implications? If yes, please give details</i> | | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> The Shadow Council Constitution must respect relevant local authority legislation, including the West Suffolk Structural Change regulations being considered by Parliament. | |
| <i>Are there any equality implications? If yes, please give details</i> | | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | |
| Risk/opportunity assessment: | | <i>(potential hazards or opportunities affecting corporate, service or project objectives)</i> | |
| Risk area | Inherent level of risk (before controls) | Controls | Residual risk (after controls) |
| Failure to adopt a constitution could lead to lack of clarity on arrangements and decision making | Medium | Adoption of the Constitution would provide clear responsibility and role to the Shadow Council | Low |
| Ward(s) affected: | | n/a | |
| Background papers: <i>(all background papers are to be published on the website and a link included)</i> | | None | |
| Documents attached: | | Appendix A: Draft Shadow Council Constitution | |

1. Key issues and reasons for recommendation(s)

- 1.1 Constitutions provide clarity on how Councils operate and make decisions. At present, Forest Heath District Council and St Edmundsbury Borough Council have an aligned Constitution, which ultimately may form a solid framework through which the West Suffolk Council Constitution can be adopted. In the meantime, we need clarity on how the Shadow Council will operate until 31 March 2018 to prepare to take on the functions of West Suffolk Council.
- 1.2 Officers have prepared a draft shadow constitution, which is based on the structure of the existing Forest Heath and St Edmundsbury constitutions. However, there are fundamental differences as the Shadow Council does not have the same powers and functions of the existing Councils – for example, it wouldn't make decisions about planning applications.
- 1.3 The full proposed Shadow Constitution is attached at Appendix A; this report provides further information on how the Constitution has been compiled in comparison to the current constitutions and what it seeks to achieve.
- 1.4 The principles for the rules of debate and operation of Council meetings were considered by the Future Governance Steering Group. Their recommendations, and this full Shadow Constitution, have been considered in detail on a page-by-page basis by the Joint Constitution Working Group.
- 1.5 One particular area of focus has been the arrangements for scrutiny. It is expected that the existing Performance and Audit Scrutiny Committee will operate jointly to consider the West Suffolk Council budget for 2019/20. Consideration was also given to the Overview and Scrutiny Committees operating jointly as required to scrutinise any other matters as necessary.
- 1.6 Whilst we do not consider that there would be a frequent need for joint scrutiny, there was concern that together the Overview and Scrutiny Committees total 26 members. It was therefore proposed that the Shadow Council has its own scrutiny function, but that this is made of 50% of each existing Overview and Scrutiny Committee – 8 members of St Edmundsbury and 5 members of Forest Heath. If agreed, at their meetings in June, the Overview and Scrutiny Committees will be asked to nominate appointments to the Shadow Scrutiny Committee.

2. Articles

- 2.1 The Articles are the fundamental framework for the Council's operations.
 - Article 1 - establishes the key purpose of the Constitution is to demonstrate how the Council will make decisions to prepare it to take on functions and responsibilities, and how St Edmundsbury and Forest Heath work together as they are obliged to do.
 - Article 2 – this does not have a ward member job description, as ward member work would be undertaken in relation to the Councillor's role on Forest Heath and St Edmundsbury Council. The elections and terms of office section covers the legal requirements set out in the West Suffolk order.

- Article 3 – this section does not allow residents to petition the Council to change its form of governance (this is ruled out by the West Suffolk order). We have also removed references to public speaking rights at licensing and development control, which are not shadow authority functions.
- Article 4 – this section removes some references to activities the Shadow Council would not undertake, or undertake in a different way (e.g. adoption of the local plan would be different to normal procedure, and the Shadow Council would not confer Honorary Freedoms). If the case did arise that a decision on such matters was required, these are Council functions and would need to be referred to them anyway. We have simplified the policy framework, to reflect only those items the Council has to adopt (versus those that there is flexibility between Cabinet and Council). We have added the requirement to oversee the implementation plan.
- Article 5 – this makes clear the Chair and Vice-Chair have no civic role as this is discharged by the Chairman of Forest Heath and Mayor of St Edmundsbury respectively.
- Article 6 – this reflects the legal composition of the Shadow Executive (15 Councillors, including at least 3 from each Council plus the Leaders). We expect that Portfolio holder roles should not be required – as Portfolio decision making would be done at Forest Heath / St Edmundsbury level, but the proposals offer the potential for Portfolio holders to be appointed specifically for the Shadow Council if this proves necessary.
- Article 7 – this establishes a Scrutiny committee for the Shadow Council, in case it is required (see section 1 above)
- Article 8 – this provides the authority to set up additional regulatory committees if the need arises. This function will continue to be performed by Forest Heath and St Edmundsbury until 31 March.
- Article 9 – rather than have its own Standards function, the Shadow authority is delegating this to the West Suffolk Standards Committee.
- Article 10 – this is substantially the same as the existing West Suffolk constitution, with terminology changed.
- Article 11 – it is expected the Shadow Council will only appoint 3 officers – the statutory posts. They are then given authority (separately) to delegate responsibility to other officers of Forest Heath and St Edmundsbury where required. Their functions are substantially the same as in the existing constitutions.
- Article 12 – this has been subject to minor amendment to reflect terminology and that the Shadow Council will not have regulatory functions.
- Articles 13-15 – these are substantially the same as the current constitutions, except the ability to change to a different form of governance has been removed from Article 14 as this is not allowed by the Order.

3. Scheme of Delegation

- 3.1 The scheme of delegations determines who, in the Shadow Council, can make decisions on matters.

Part A – this is substantially the same as the current constitutions, in that all functions where there is a choice between executive and Council responsibility will be for the Council to determine. This is only to the extent that the function is exercisable by the Shadow Council.

Part B – this is currently used to identify how delegation works for the regulatory committees. As this doesn't apply to the Shadow Council, this now only includes arrangements in respect to Standards, which is required under the order.

Part C – This has been updated to reflect that the intention is not to appoint portfolio holders for the Shadow Council (although the ability to make such appointments is preserved)

Part D – The proposed officer scheme of delegation is much simpler than in the current constitutions. This gives officers the general authority to “get things done” where either the Council or Shadow Executive have already agreed the approach to something; or it is necessary to deliver the implementation plan. A matter would then only be referred to the Shadow Council where it meets the definition set out in paragraph 2 of the Scheme of Delegation (for example, it's a key decision). This is a shift in approach to the current constitution, as it gives a broader authority rather than officers having to be given authorisation by the constitution to do something. In practice, we do not expect that the Shadow Council will require many officer-level decisions to be made, and many of the existing elements of the scheme of delegation will not be required by the Shadow Council.

Part E – the member role descriptions have been substantially amended. First, the role of Cabinet members will change as it is proposed they will simply operate as a collective on the Shadow Executive, rather than Portfolio Holder appointments – but they would lead on matters that are relevant to their Forest Heath and St Edmundsbury Portfolios. Further, ward roles would be undertaken in respect of Forest Heath and St Edmundsbury, rather than West Suffolk.

4. Rules of Procedure

- 4.1 These set out how the meetings of the council and its committees will operate.

Council Rules of Procedure – these have been amended to reflect legal requirements from the Order, terminology and remove references to regulatory committees. They then reflect the principles proposed by the Future Governance Steering Group regarding meetings: that there should be no ceremonial elements to the meetings as this is a “functional” committee until April 2019; the current rules of debate should be followed; all votes should be by show of hand or roll-call. Standing to speak was debated by both Future Governance and Joint Constitution Groups, and it was suggested that although members are not required to stand for debates, from a practical perspective, with more members in the room it may be helpful for members to stand so that others can see who is speaking.

Petition Scheme – whilst this is no longer required, it was felt sensible to continue to have a petition scheme in the event that residents want to petition the Council as the warding schemes continue to develop or on other matters relevant to the Shadow Council's work.

Cabinet Procedure Rules – these have been updated in respect of terminology and reflecting the portfolio holder arrangements outlined above.

Scrutiny Procedure Rules – these broadly reflect the current procedure rules but updated in respect of terminology.

Budget and Policy Framework – this has been updated for terminology. The document maintains processes for approval of the budget, and development of the policy framework, but removes in year variances to the budget as the Shadow Council will not have a budget to vary in its own right.

5. Codes and Protocols (Other Constitutional Matters)

- 5.1 At present, this section of the Forest Heath and St Edmundsbury Constitutions has not been harmonised – for example, there are two different officer codes of conduct and two different member / officer protocols.. It is proposed that over the summer and autumn of 2018, the Joint Constitution Working Group will lead a review of all codes and protocols in the Constitution so that one, single set can be adopted into the new West Suffolk Constitution.

- 5.2 In the meantime, the Shadow Council Constitution makes simple proposals regarding the need to adopt working protocols in some areas, as well as the (already harmonised) financial procedure and contract procedure rules. These proposals effectively adopt existing Council documentation.