

New Constitution

Final Decision-Maker	Council
Lead Head of Service	Jayne Bolas, Monitoring Officer Angela Woodhouse, Head of Policy, Communications and Governance
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

Following the Council's decision to change its governance arrangements to a Leader and Scrutiny model in September 2021 the Democracy and General Purposes Committee have been reviewing and developing a new constitution to enact the new model. The proposed draft constitution is included at Appendix A.

Purpose of Report

Consideration and Recommendation to Council

This report makes the following recommendations to this Committee:

1. That Council be recommended to adopt the draft Constitution for Maidstone Borough Council at Appendix A, to come into effect from the Annual Meeting of the Council on 21 May 2022;
2. That the Head of Policy, Communications and Governance in consultation with the Chair of Democracy and General Purposes be given delegated authority to add a guide to the constitution and make any minor amendments to the draft to correct errors, omissions or inconsistencies, prior to submitting the draft to Council; and
3. Democracy and General Purposes Committee reviews the operation and effectiveness of the new constitution six months after its introduction

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

New Constitution

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	It was agreed that the cost for the new constitution will be met from reserves.	Section 151 Officer & Finance Team
Staffing	The drafting of the new constitution has been supported by the Head of Policy, Communications and Governance, Monitoring Officer and a Democratic Services Officer.	Head of Policy, Communications and Governance
Legal	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:	Interim Deputy Head of Legal Partnership

	<p>(a) Executive arrangements; or (b) A committee system; or (c) Arrangements prescribed by the Secretary of State.</p> <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) (England) Regulations 2000 (as amended). Anything not listed in these regulations is an executive function.</p> <p>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.</p>	
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.	Equalities & Communities Officer

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 legislative requirements for Overview and Scrutiny of Crime and Disorder Reduction will be contained within the terms of reference for the new Overview and Scrutiny Committee (this requirement is currently discharged by the Communities, Housing and Environment Committee).	Head of Policy, Communications and Governance
Procurement	The constitution contains financial and contract procedure rules.	Head of Policy, Communications and Governance
Biodiversity and Climate Change	There are no direct implications of this report on biodiversity and climate change.	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.

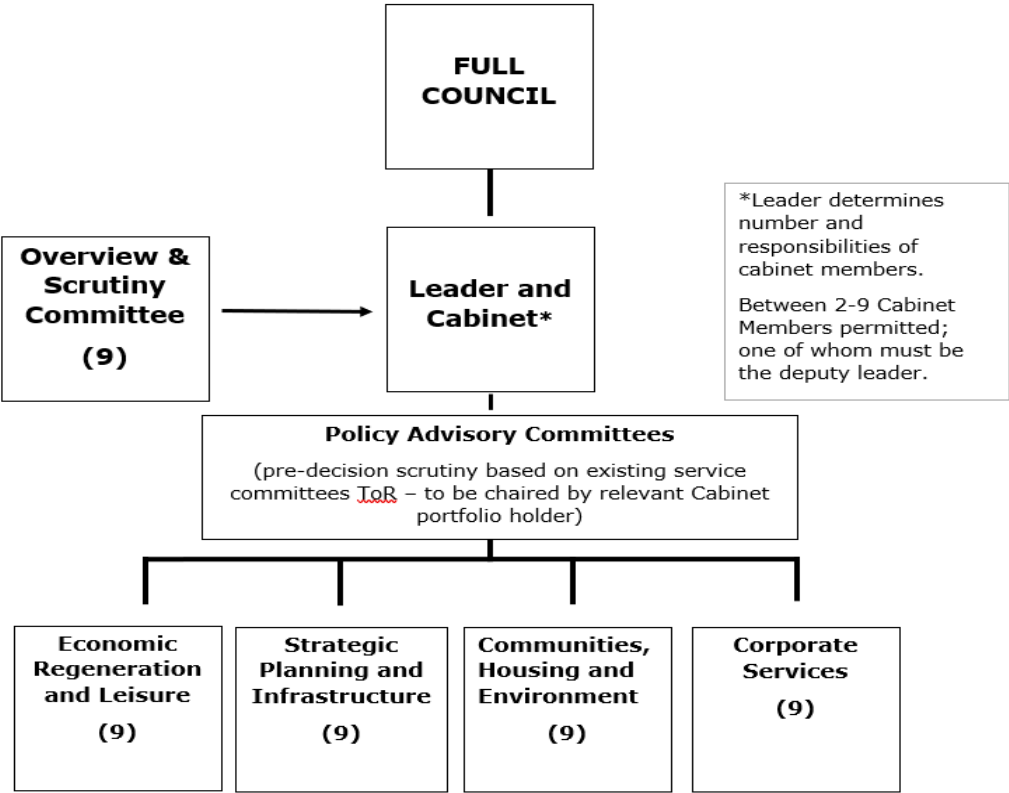
2.2 In May 2021 the Council approved the following motion:

- “ (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. The document at

Appendix A is a new constitution which has been drafted by the Chairman of Democracy and General Purposes Committee with input, consideration and agreement by the Committee's Governance Arrangements Working group.

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 • Leader's annual speech/administration's programme • Local Choice Functions 	Framework 11 November 2021 and 2 nd Meeting TBC November Draft Constitution Sections considered by working group on 9 December 2021	26 January 2022 (publication on 18 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	9 March 2022	13 April 2022

¹ see diagram above

	working group on 17 February 2022	(published on 1 March 2022)	(published on 5 April 2022)
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- 2.7 Democracy and General Purposes considered sections of the constitution relevant to the Leader and Cabinet, Policy Advisory Committees (PACs), Overview and Scrutiny, Local Choice Functions, the Administration's Programme and Procedure rules at its meeting January. The Committee made observations regarding the draft sections requesting that the constitution be written in plain English and laid out simply to increase useability. Consideration was given to the appointment of the Chairs of PACs and additional questions were asked about access to information and charitable trusts.
- 2.8 In February the Committee considered Members rights, questions, agenda items and decision making agreeing the changes proposed in principle. Access to information was still under discussion by the working group in February so was not included for consideration by the Committee at its last meeting. There has been extensive redrafting of the Access to Information procedure rules with external advice from our lawyer and confirmation from Counsel that the current version is lawful.
- 2.9 In accordance with the remaining timetable the Committee is asked to consider the new draft constitution for submission to council.
- 2.10 **Style and Structure of the New Constitution**
The new constitution takes a different approach to previous versions and represents a more formal style. For example, in 2015 the Council changed references to Members to Councillors this document sees a return to the use of Member or Elected Member. A guide to the constitution is still being developed and will be included in the submission to Council.

The constitution has been structured in parts as explained below:

Part A, sets out the higher-level principles and core provisions of the constitution. The constitution is a hierarchical document, where there is conflict between Part A and another part of the constitution, Part A shall prevail.

Part B, contains provisions on responsibilities for discharging the functions of the Council and for making decisions. The officer functions will require review following the completion of the senior management restructure.

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

Parts D & E, sets out respectively the Codes and Protocols followed by the Council. It should be noted that the Councillor Code of Conduct is currently in the process of being reviewed and updated. A revised Code of Conduct will be brought forward by the Monitoring Officer at the appropriate time.

Part F, contains final provisions such as the statutory Scheme of Allowances. The Members Scheme of Allowances will be updated following approval of the new scheme by Council.

Within any Chapter, a reference to a numbered Provision, Rule or Clause shall refer to the contents of that Chapter of the Constitution unless specified otherwise. Within an Appendix to a Chapter, references to a numbered Paragraph shall likewise refer to the contents of that Chapter.

The contents of this Part A, and also Parts B, D, E & F are correctly referred to as Provisions (e.g. "Provision 4.2"), save for any appendix whose content is correctly referred to as Paragraphs.

The individual chapters of Part C may be referred to by Chapter number (e.g. "Chapter C1") or by their title (e.g. "Council Procedure Rules"). Within these particular chapters, the contents are correctly referred to as Rules (e.g. "Rule 2" or "Council Procedure Rule 2").

2.11 Changes of Significance by Topic

Some of these changes are necessary to implement the new governance model agreed by Council in September 2022; these are in italics and some are changes brought about by the working group.

• Policy Advisory Committees

- *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.

• Overview and Scrutiny Committee

- *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.*

• Procedure Rules

- A change has been made from "Members of the Public" to "Local Residents" defined as "people who reside work or own or operate a business in the Borough of Maidstone or who use its services or are affected by its decisions or services"

- 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/Chair’s decision will be final.

- 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.
- 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.
- Removal of the Planning Referral Body.
- Introduction of referral of enforcement matters to the Planning Committee by a Member as an agenda item request.
- Petitions – a change has been made to require 200 signatures for a petition to be considered at an Executive Meeting, see page 120 of the draft constitution. This change has come in via the working group. Currently a minimum of 100 signatures is required.
- 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.*
- Member Rights
 - The right to move amendments to any Motion by the Leader concerning the Administration’s Programme for the Municipal Year

- The right to refer a breach of planning control to the Planning Committee
- The right, together with two (2) others, to refer a serious nuisance or a major service failing directly to the Executive
- The right, together with two (2) others, to call-in a decision of the Executive for scrutiny
- The right to refer a dispute about his or her rights under this Constitution to the Democracy & General Purposes Committee as an agenda item request.

- Decision Making

Decision making is covered in Part A2 at section 4 and within the procedure rules of the Council, Executive and Committees at C1, C2 and C3. The definition of a key decision is the same definition in place in 2015 under the previous Leader and Cabinet Model. The decisions have been further defined to identify procedural and decisions of less significance and other material decisions.

Significant Decisions:

(a) *Key decisions will be those which:*

- (i) *result in the Council incurring expenditure, or making savings, of more than £250,000; or*
- (ii) *are significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.*

(b) Procedural and De Minimis Decisions are those decisions pertaining to procedural matters and those decisions of little or no policy significance where expenditure or loss is less than £5,000.

(c) Other Material Decisions are those decisions not otherwise falling into (a) or (b).

- Access to Information

The working group have extensively considered access to information and the procedure rules for this have been rewritten accordingly, see provision 3.4 in Chapter A and page 157 of the draft constitution Chapter C, provision C4. The revised procedure rules for access to information are considered to be in accordance with the law. A new guide to part II items has also been produced to encourage officers to use their best endeavours in their approach to transparency whilst upholding principles of law and privacy. The proper officer function for ascertaining the need to know has been changed from the Monitoring Officer to the Head of Policy, Communications and Governance.

The proper officer shall consider that there is likely to be a need to know where: -

- (a) The Member sits on the relevant Member body considering a matter to which the information relates, or the proper officer has been notified that the member will be sitting on that body as a substitute when it is to consider the information in questions;
 - (b) The information relates directly and materially to a matter which affects the Member's role in representing their Ward; or
 - (c) It is reasonably necessary, for the member to access the information in order that they can properly carry out their duties as a Councillor, for example if a Councillor has a reasonably based interest in an issue such that they can apply their minds and efforts to shaping decision-making on that issue
- Officer Functions and Delegations
These remain largely the same subject to an addition for the Head of Housing and Communities to account for changes in legislation to the reflect the Sunbed (Regulation) Act 2010. These delegations will be reviewed once the new structure for senior officers is in place and reported in the usual way.
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3. AVAILABLE OPTIONS

3.1 To Agree the New Constitution and Recommend to Council 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 To Amend the constitution as presented and recommend to Council

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

3.3 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 with a simpler structure and plain English approach. An additional meeting of this Committee prior to Council would be required to take forward this option and there would be a reliance on external legal support to get it produced in time for the new governance arrangements.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 The Committee is recommended to:

- review and consider the new constitution at Appendix A for recommendation to Council to come into effect from the Annual Meeting of the Council on 21 May 2022;

- That the Head of Policy, Communications and Governance in consultation with the Chair of Democracy and General Purposes be given delegated authority to make any minor amendments to the draft to correct errors, omissions or inconsistencies, prior to submitting the draft to Council; and
- Democracy and General Purposes Committee reviews the operation and effectiveness of the new constitution six months after its introduction

4.2 This option is recommended as the constitution drafted at Appendix A has had extensive Councillor input and complies with legal requirements.

5. RISK

5.1 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.

5.2 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 addressed in the drafting of this document. The document as it stands does not represent a significant legal risk.

5.3 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. The Democracy and General Purposes Committee as the custodian of the constitution will be asked to review the constitution after six months to ensure the council has an effective and efficient decision making process.

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 approach 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

6.3 Briefing sessions for Councillors on the new constitution are planned to be held remotely and in person in April prior to consideration by full Council at its meeting on 13 April 2022, Members also have options to ask questions prior to the meeting.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 The new constitution will be considered by Council on 13 April 2022 for adoption from the annual meeting on 21 May 2022. As well as the briefing sessions planned prior to Council in April, training is planned for councillors and officers on the new arrangements following the next local elections. Once adopted the new constitution will be published on the Council's website.

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
- Appendix B: Notes of the working group meetings

9. BACKGROUND PAPERS

Report to Council 29 September 2021 – New Executive Model