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3 October 2006

## **TO ALL MEMBERS OF THE COUNCIL**

**Please Note:** As the meeting is to discuss in detail the revisions to the Council's Constitution all Members of the Council are invited to attend.

### **Members of the Panel:**

I A Campbell, S G Hitchings, Mrs D L Jones MBE, D Milsted, J P L Tory, P Webb, Col D C Whitehead.

Dear Councillor

## **POLITICAL MANAGEMENT PANEL**

A meeting of the Panel will be held in the Council Chamber, Nordon, Salisbury Road, Blandford Forum on **Wednesday 11 October 2006 at 2.00pm.**

Yours sincerely



Elizabeth Goodall

Chief Executive

## **A G E N D A**

- 1. APPOINTMENT OF CHAIRMAN**
- 2. APOLOGIES**
- 3. DECLARATIONS OF INTEREST**
- 4. MINUTES OF PREVIOUS MEETING**

To confirm the notes of the meeting of the Panel held on 3 March 2006 (previously circulated).

## 5. REVIEW OF THE CONSTITUTION

To receive a report from the Solicitor to the Council asking Members to consider proposed revisions to the Council's Constitution, Cabinet's comments on those proposed revisions and to recommend a revised Constitution to Council.

***Note: Because of the large expense involved in printing and posting a third draft of the Constitution the amended version is enclosed for Members of the Political Management Panel only. It has been e-mailed to other Members where possible and hard copies are available in the Members' Room or from Democratic Services.***

NORTH DORSET DISTRICT COUNCIL

**NAME OF COMMITTEE**                      **Political Management Panel**

**Date of Meeting:**                      11<sup>th</sup> October 2006

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**REPORT TITLE:**                      **REVIEW OF THE CONSTITUTION**

**Portfolio Holder:**                      **Leader of the Council**

**Report Author:**                      Solicitor to the Council

<b>Purpose of Report:</b>	To consider proposed revisions to the Council's Constitution, to consider Cabinet's comments on those proposed revisions and to the recommend a revised Constitution to Council
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**Statutory Authority:**                      Local Government Acts 1972 and 2000

**Financial Implications:**                      None

**Consultations required/  
undertaken:**                      All Members, Cabinet, SMT and Team Leaders

**Recommendations:**                      i)        That Political Management Panel supports the revised Constitution attached at appendix A and recommends it to Council, subject to any suggested amendments Members may wish to make.

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**BACKGROUND AND REASON DECISION NEEDED**

1. The Council's present constitution became effective upon the Council adopting executive arrangements in May 2002. Councils are duty bound to review their constitutions from time to time. Over the last four years some piecemeal changes have been made to the Constitution, but it has not to date been subject to a complete review. Officers have now conducted a review of the Constitution in order to ensure that it complies with legislative requirements, properly regulates how the Council's business is transacted and is as clear as possible, given the technical nature of such a document.

2. In carrying out the review, officers have endeavoured to make as few major changes as possible and to maintain the overall style of the Constitution. The revisions also take into account the modular constitution contained in government guidance. Many of the additions reflect matters contained in the modular constitution which were missing from the Council's original constitution. The following paragraphs give an explanation of the parts of the Constitution where changes are recommended.
  
3. The constitution is divided into seven sections as follows;
  - a. Section 1 – summary of what the constitution is,
  - b. Section 2 – the articles of the constitution,
  - c. Section 3 – which areas of work the various bodies of the Council are responsible for,
  - d. Section 4 - the rules of procedure ( Standing Orders),
  - e. Section 5 - codes of conduct,
  - f. Section 6 – the Members scheme of Allowances and
  - g. Section 7 - management structure
  
4. The articles describe the decision making structures of the Council, including Cabinet and committees, as well as the relationship between the Council and the public. They set out the responsibilities of the various bodies.
  
5. Section 3, explains the rules on how the responsibility for decision making is divided up under executive arrangements. Sch 1 sets out those powers that the executive cannot have and says which body has them. Sch 2 sets out the local choice functions which can be for the executive, but need not be. This also sets out which Council body has been given the power. Sch 3, is a summary of the main functions of the executive. This is not an exhaustive list, as the executive is the default decision maker and is therefore responsible for all functions unless the law says it can't be, or Council has allocated the powers elsewhere. Sch 4 is the scheme of delegation to officers.
  
6. The rules of procedure are the Councils standing orders and govern the procedure for the making of decisions, both by Council bodies and Officers. This includes the rules for the running of meetings and the detailed rules on how the executive arrangements will operate. Most important in this is the limitations on how the executive can make decisions and how they interact with the overview and scrutiny function. The rules also include the Contract Management Regulations and the Financial Regulations which govern how the Council's finances are dealt with. These two rules are stand alone and will be reviewed by the Financial Services Manager in due course.
  
7. As explained above, the executive can exercise any of the Councils powers with the exception of those it is not allowed to exercise by law or those local choice functions which the Council has allocated elsewhere. In addition, there are some areas of function where the executive has a limited role. This is

primarily in setting the budget and the policy framework. In this case, the role of the executive is to propose policies, in consultation with the overview and scrutiny function, for Full Council to adopt (with or without changes).

- 8.** These rules also set out the role of the overview and scrutiny function. Where executive decisions are made by Cabinet or portfolio holders, or key decisions made by an Officer, the overview and scrutiny function can call the decision in. This allows them to make representations about the decision, and to have those representations considered before a final decision is made. They can also intervene if they believe that an executive decision has been made that is outside the budget or the policy framework. If this is the case, the decision must be referred to Council who can, if they believe the decision was outside the framework, either alter the framework to allow the decision to stand or send it back to Cabinet for the decision to be made in accordance with the framework. All three O & S bodies will now be designated as committees to reflect their true status. To make them true sub-committees would necessitate all the members of the Service Review and Policy Review Committees being members of the main Overview and Scrutiny Committee. This was felt to be impractical.
- 9.** The rules also set out the arrangements for the forward plan, which is published annually in June and updated monthly. This is intended to set out the key decisions that the Cabinet is intending to make in the next four months. This is both to inform the public of major decisions and to allow overview and scrutiny to see what major decisions are proposed and to call them in before they are made, if they wish to. There are processes within the rules that allow key decisions to be made that have not been on the forward plan for the requisite period of time. This will require a notice of such decision to be given to the overview and scrutiny chairman, or in some cases require his consent. If overview and scrutiny believe that a key decision has been made that was not on the forward plan, they can require Cabinet to report it to Council with an explanation.
- 10.** Within Section 5 are the various codes of conduct and protocols. The Members Code of Conduct is statutory and is likely to be changed by new legislation in the next year or two. The Code of Conduct for Members and Officers Dealing with Planning Matters is a local code, as is the Protocol on Member / Officer Relations, which was updated about two years ago. There is also a Code of Conduct for Officers which is likely to be replaced by a statutory code in the next year.
- 11.** The Scheme for Members Allowances is in Section 6 and is revised every three years. This will next be done in the early autumn of 2006.
- 12.** Section 7 contains the management structure of the Council.
- 13.** There are some grammatical amendments that need to be made to the document. These will be addressed in the 'clean copy' of the Constitution ( without tracked changes) that will be presented to Full Council in October.

14. Members should note that the proposals for Article 7 now permit there to be a variable number of Cabinet Members in the Leader's discretion. Members' views are specifically sought on this point.
15. During the initial consultation period, a suggestion has been made that the Constitution be varied to provide that in future, Full Council appoints and removes Cabinet Members rather than the Leader under the present arrangements. Such an approach is incorporated as an option in the modular constitution. It has not been incorporated in the draft revised constitution attached to this report, but Members are asked to indicate whether this proposed amendment should be adopted.
16. A suggestion has also been made that Co opted members of overview and scrutiny committees be permitted to vote. The original provisions in the Constitution were silent on the matter but must be interpreted as not permitting voting, as at the time of their adoption, voting by co opted members was unlawful. The law was changed in November 2003 by the Local Government Act 2003 which permitted councils to adopt a scheme to allow co opted members to vote. Such a scheme must specify maximum and/or minimum numbers of co opted members who can vote, on which bodies they can vote and on what matters they can vote. The scheme would have to be published in local papers and made available for inspection by the public before such voting could take place. Members are asked to indicated whether they support the principle of voting for co opted members and, if so, what provisos should be put in any draft scheme.
17. There is some repetition in the revised Constitution, where elements of a process are contained in different parts of the Constitution. This has been done to help make each part of the Constitution make sense on its own.
18. Cabinet considered the draft revised constitution on 22<sup>nd</sup> September and resolved to ask Political Management Panel to consider a number of issues before recommending a revised constitution to Council. These issues are set out in appendix B. In addition, a number of minor text amendments suggested at the meeting of Cabinet have been incorporated into the current draft of the revised constitution.

## **OPTIONS**

19. To recommend the revised Constitution to the Political Management Panel, subject to any comments Cabinet may wish to make.
20. To refer the revised constitution back to officers to carry out further revisions.

## **COSTS**

21. There are no direct costs beyond existing budgets associated with the recommendations.

## **RISK MANAGEMENT**

**22.** It is essential that the Council has a constitution which complies with the law and has sufficient clarity to enable it to guide the Council's decision making processes. The changes recommended are required in order to achieve these objectives. There is no option but to have a constitution which complies with legislative requirements. To have elements of the Constitution which are not consistent, or do not fully set out the procedural requirements for decision making increase the risk that decisions will be challengeable. This, in turn creates both financial and reputational risks for the Council.

## **RECOMMENDATION AND REASON**

**23.** That Political Management Panel supports the revised constitution attached at appendix A and recommends it to Council, subject to any comments Members may wish to make and having considered the issues highlighted by Cabinet. This is to secure a constitution which is compliant with legislation and gives sufficient clarity to the Council's decision making processes.

**Author: Stuart Caundle Solicitor to the Council**

**Date: 29<sup>th</sup> September 2006**

**Background papers: None.**

## APPENDIX B

### Issues Raised by Cabinet

1. Should the Leader be able to vary the number of Cabinet members? If so, what should the maximum and minimum be? (Statute provides between 3 and 10, including Leader).
2. If the Leader varies the number, should the total Special Responsibility Allowance simply be divided equally between Cabinet Members?
3. Should Council appoint Cabinet Members in future? If so, should Council or the Leader decide portfolio responsibilities?
4. Should Co-opted members of O & S committees be allowed to vote? If so, how many such members should be allowed on any scrutiny body; on which scrutiny bodies should they be allowed to vote; and on what matters should they be allowed to vote?
5. Statutory changes will in future require the chairman of Standards Committee to be independent of the Council. Should this change happen at the next annual Council (unless statute requires otherwise) or earlier?
6. Should the independent members of the Standards Committee serve for a specified term of 4 years to reflect the term of elected Councillors?
7. Should the Constitution make additional provisions for public speaking at meetings of council bodies, including Cabinet? If so, what should they be?
8. Should any additional policies be included in the Policy Framework set out in Article 4?
9. Does the Council still require 3 scrutiny committees? If not, how many should the Council have?
10. If the existing scrutiny committees are retained, should their names be changed to Policy Review Committee and Service Review Committee?
11. Should the organisational chart in Part 1 of the Constitution show these two committees reporting directly to Council rather than to O & S Committee?
12. Should there be a standard basis for determining the quorum of each council body? If so, what should it be?
13. Should the reference to 'General Managers' in the Employment and Dismissal Procedure Rules refer to be replaced with the term 'Chief Officer'?