

CONSTITUTION AND GOVERNANCE COMMITTEE

Minutes of a Meeting of the Constitution and Governance Committee held in the Luttrell Room - County Hall, Taunton, on Tuesday 14 February 2023 at 10.00 am

Present: Cllr T Butt Philip (Chair), Cllr S Carswell (Vice-Chair), Cllr S Ashton (substitute for Cllr C Lawrence), Cllr B Clarke, Cllr H Davies, Cllr D Johnson, Cllr H Kay, Cllr M Lovell, Cllr M Murphy, Cllr S Osborne, Cllr E Pearlstone (substitute for Cllr A Wiltshire), Cllr S Pugsley and Cllr R Wilkins

Other Members present: Cllr R Wyke, Cllr L Redman, Cllr T Deakin and Cllr S Coles

Other members present virtually: Cllr S Aujla, Cllr A Boyden, Cllr H Bruce, Cllr N Cavill, Cllr M Chilcott, Cllr N Clark, Cllr S Collins, Cllr A Dingwall, Cllr D Fothergill, Cllr A Hadley, Cllr S Hart, Cllr J Hunt, Cllr A Kendall, Cllr T Kerley, Cllr L Leyshon, Cllr C Lawrence, Cllr D Mansell, Cllr T Robbins, Cllr L Trimnell, Cllr S Wakefield and Cllr M Wale

1 **Apologies for Absence** - Agenda Item 1

Apologies were received from Cllr C Lawrence (substituted by Cllr S Ashton) and from Cllr A Wiltshire (substituted by Cllr E Pearlstone).

2 **Declarations of Interest** - Agenda Item 3

There were no additional declarations of interest made at the meeting.

3 **Minutes from the Previous Meeting held on 30 January 2023** - Agenda Item 2

The minutes of the meeting held on Monday 30 January 2023 were approved and signed as a correct record.

4 **Public Question Time** - Agenda Item 4

Submissions / request to speak had been received from 4 members of the public in respect of agenda item 5 (planning functions and arrangements) and the information provided had been circulated as supplementary agenda packs.

The Chair welcomed the following to the meeting: -

1. Mr Nick Hall – who read out his submitted statement, which in summary covered the following – concern about proposal to retain shared 3-minute time limit for public speakers; urge remove the sharing of time slots for objectors, supporters etc; referral rights; should be transitional arrangement put in place;

2. Mr David Orr – who read out his submitted statement, which in summary covered the following – 3-minute time slot will disengage communities and limits their voices in an undemocratic way; sensible baseline for objectors is a max of 5 speakers with 3 minutes each;
3. Mr Fletcher Robinson, on behalf of CPRE Somerset – who read out his submitted statement, which in summary covered the following – urge cttee to drop the proposed shared 3-minute speaking arrangements;
4. Mr Gideon Amos – had not submitted a statement in advance of the meeting and gave his statement, which in summary covered the following – there is a risk in constraining public speaking, meaning decisions possibly liable to judicial review challenge.

In response to a question from Cllr S Osborne as to why the final public speakers' statement had not been published and why an exception had been made to allow it, the Chair confirmed that Mr Amos had registered to speak after the deadline and as per Chair's discretion he allowed this. He reminded the Committee that he had also allowed a late speaker at the last meeting.

5 **Planning Functions and Arrangements for new Somerset Council** - Agenda Item 5

Further to the meeting held on 30 January 2023, the Executive Lead Member Cllr Ros Wyke introduced the item. She reiterated and confirmed that need to give the new Planning Committees time to bed in and will be monitored / reviewed each month and there will be a 6-month review as well. Cllr Wyke additionally referred to the new provision to allow Parish Councils the right to refer an application to the relevant Planning Committee.

Cllr Wyke introduced the following to the meeting for this item – Julie Reader-Sullivan (head of Service – Planning and Growth, Mendip District Council), Rachel Tadman (Interim Head of Planning, Mendip District Council) and Kevin Williams (Deputy MO, Somerset West and Taunton Council).

The Committee had received the amended Terms of Reference of Planning Committees, which will be in Part D section 11 of the new Constitution together with some comparator information of the public speaking arrangements across Somerset. The Committee received a PowerPoint presentation, which provided a summary of the constitutional arrangements for planning, the proposed revisions and highlighted other matters, as follows: -

- The Committees have been renamed – will be area-based Planning Committees (North, South, East, West) – 'Planning North Committee' and so on.
- Only Waste and Minerals applications will automatically be referred to Strategic Committee where the area-based Planning Committee's

decision is to overturn an Officer recommendation rather than all major applications as previously proposed.

- The public speaking arrangements (time limits) have been revised (the order has not changed) and Chairs have authority to extend speaking times where necessary.
- All major applications, where the Officer recommendation is contrary to that of the Member or Parish Council, will automatically be referred to the area-based Planning Committee.
- All other applications, where the Officer recommendation is contrary to that of the Member or Parish Council, will be referred to Chair/Vice Chair who will make the final decision as to whether an application goes to Committee or the decision is delegated to Officers.
- confirmed that there are no proposed changes to the Executive Sub-Committee 'Planning Policy'.
- confirmed the scope of the Strategic Planning Committee and for the area-based Planning Committees.
- outlined the matters automatically referred to Committee.
- provided a visual representation of application process.

During the debate the following points were highlighted: -

- membership of the Strategic Planning Committee.
- Parish Council meeting times and falling outside 21-day time limit for referrals (section 8.8) – *this is a statutory time limit but if respond after that time will honour that. Cllr Wyke said that the Parish Clerks will let officers know if their meeting times do not meet timescales and that this is 'working practice' on the ground.*
- Issue of 'predetermination' if sit on the Planning Committee – *members can give a preliminary view and make comments and keep an open mind; referred to planning protocol document which is a later item on the agenda.*
- Section 8.8 c) and reference to 'minor application' and who takes decision – *clarification provided, as set out in s101 of the Local Government Act 1972 and a later version of the document makes this point ('in consultation with').*
- Discussion on Chair's discretion issues and how ensure consistency across the 4 Committees (section 7.23) – *confirmed there will be separate training for all the Chairs and Vice Chairs and will ensure this is covered; will also form part of the review mentioned.*
- Chairs discretion / meeting time length (4 Hours) – *confirmed that the Chair can propose to the meeting that meeting time can be extended, or adjourn the meeting so business is transacted at extraordinary meeting or next formal meeting; will take suggestion made away about producing some form of public guidance note on this.*
- Section 8.2 (iii) and that 'or for any other reason' is too subjective – *clarified that this is not within the scope of powers delegated powers (so is exempt) and the matter would go to the relevant Planning Committee.*

- Referral process for applications discussed – *officers confirmed that had reviewed referral system across councils / other local authorities and follows previous discussions; what is key is that the review mentioned is essential and that the Committee will play an active part in this at early stage too and will include this on the work plan for the September meeting.*
- Strong feeling that the public speaking changes which are proposed, still do not go far enough (members of public – 3 mins shared).

The Chair had circulated a number of proposed amendments to the Terms of Reference, and a number of amendments were discussed and agreed by the Committee.

1. The Committee AGREED the following proposals as set out below: -

- 1.1 That a new Planning Committee be established, to be known as the Strategic Planning Committee and that four-area based Planning Committees be established for the discharge of the Council's planning functions.
- 1.2 That the Terms of Reference for the new Committee and its four-area based Planning Committees to form Part D section 11 of the new Council Constitution, be noted and with the amendments as set out below:

1. Public Speaking

(a) Section 7.21 – amend with the following – “Up to 15 minutes for support (shared – maximum of 3 minutes per speaker) and 15 minutes for object (shared – maximum of 3 minutes per speaker).”

(b) Section 7.22 – amend with the following – “Where speaking times are shared, there is an overall time limit of nine minutes in total, with no one person being allowed to speak for more than 3 minutes. Speakers in the above categories will be encouraged to coordinate with each other so that repetition can be avoided. Should there be more than three speakers in each category, the time will be divided between them. Should it not be practical for all those wishing to speak to do so and should the speakers within a category not be able to agree on suitable representatives between them, speaking slots shall be allocated in the order that they registered to speak.”

2. Circulation of documents

(a) Section 7.20 – in both instances, change “48 hours” to “2 days...”

3. Substitution and Membership

(a) Section 7.5 – amend with the following – “Executive Lead Members are not barred from membership of the Planning Committees but membership should generally be avoided due to potential bias or predetermination issues. Associate Lead Members may be members of the Planning

Committee. Neither Executive Lead Members nor Associate Lead Members may be Chair or Vice-Chair of the Planning Committees.”

4. City, Town and Parish Councils

(a) Every reference to Town/Parish or simply Parish, throughout the constitution, should specifically mention all three: City, Town and Parish (this applies equally to the planning section as to the rest).

(b) Delete 8.8. a iii.

c) Insert new 8.8 e - “A City, Town or Parish Council may request an extension of the time limit in which they must notify the planning officer that they wish to refer a Planning Application in order to coincide with the next meeting of the City, Town or Parish Council (or it’s Planning Committee). Such a request shall normally be granted where possible.”

(d) add new 8.9 so as to give the City, Town and Parish Councils the same additional right for re-referral rights as Members in the event of a substantial change to an application.

2. Agreed that the review of the planning arrangements as detailed at the meeting will be added to the Committee’s work plan for the September meeting.

3. Noted that the amended Planning Protocol, based on the recently updated Mendip District Council Protocol had been considered at the meeting held on 30 January 2023 and was set out in Appendix 1 to the report being considered at agenda item 8 at the meeting.

6 **Committee Structure and Arrangements for new Somerset Council** - Agenda Item 6

The Committee received a PowerPoint presentation from the Council’s Monitoring Officer, Scott Wooldridge. In the presentation, Mr Wooldridge: -

- provided an outline of the Council’s Committees (not the Executive) and an overview of the various Committee’s for the new Somerset Council – in terms of regulatory, governance, scrutiny, partnership (such as Health & Wellbeing Board), staffing;
- advised the Executive arrangements are dealt with in the next agenda item;
- advised that the Full Council meeting on 22 February 2023 will deal with constitution papers and the membership report will be taken to the Full Council meeting on 1 March 2023, which will provide the detail of names / membership and meeting dates;
- explained that the proposal is that Full Council meetings will continue to be held at Westlands or Canalside for the time being. Committee meetings will continue using hybrid format, with committee members needing to be physically present;

- highlighted webcasting and the continuing development to enable people to participate and observe;
- most Committees will have 13 members appointed to them (quorum of 5) which enables representation from the majority of political groups on committees; and
- explained the rules and legislation concerning political proportionality on Committees.

The Committee NOTED and endorsed the proposed Committee structure and arrangements for the new Somerset Council.

7 **The Executive Arrangements for new Somerset Council** - Agenda Item 7

The Committee considered a report from the Council's Monitoring Officer, Scott Wooldridge which detailed the Executive arrangements for the new Somerset Council (Part E of new Constitution), as set out in Appendix 1 to the report.

The Leader of the Council has the authority to agree the Executive arrangements in the Constitution and any Executive appointments alongside a number of other key elected member appointments which form part of the executive functions of the Council.

The report shared the draft arrangements and Mr Wooldridge reassured the Committee that the Executive functions are essentially / are position of continuity / building on the model from May 2022. The ability for the Executive to create sub committees and this will be considered by the Executive at its meeting on 27 February 2023 and by Full Council on 1 March 2023. Unfortunately, these proposals were not in the form they could be shared at this meeting today.

During the debate the following points were highlighted: -

- Question about the Local Plan and decision to make this an Executive function – *explained that this is an Executive / policy development role and is one of the 'local choice' functions. The Local Plan adoption is a matter for Full Council; proposals around sub committees are being developed but no decisions have been made yet. This will be going to the Executive meeting on 15 March 2023.*
- Cllr H Kay said that she had concern over how the Local Plan is being proposed to be dealt with and will write to the Leader to lobby to ensure wide / balanced membership.
- Part E, section 3.42, some textual amendments needed and query whether requirements relating to Key Decisions / Non-Key Decisions have been changed – *the Monitoring Officer reassured members that this section replicates the current Constitution arrangements.*
- Part E, section 3.49 / 3.50 - question asked about the difference between 'general exception' and 'special urgency' – *the Monitoring Officer*

confirmed that a 'general exception' is when it has not been possible to published the matter on the Forward Plan and allows for period of representation; 'special urgency' is for exceptional circumstances and is a safeguard; all Key Decisions are subject to call-in, except urgency ones; for Non-Key Decisions, call in doe not apply and is referral process; there are checks and balances in the system therefore and there are quarterly report made on special urgency decisions (section 3.54).

- Part E, section 3.61 and 'reasonably practical' asked this to be changed instead to '5 working days' – *the Monitoring Officer said that he would investigate this.*
- Part E, section 1.6 and question about the Leaders responsibilities (powers) – *the Monitoring Officer confirmed that under the Leader / Executive model, which the Council has operated since 2001, the leader is able to exercise anu / all the functions listed; unlikely to do when others have delegation though; for example, property acquisition / disposal are Executive functions, but is exercised in accordance with Council policy.*

The Committee: -

1. Noted that the proposed Executive arrangements as set out in the Report and Appendix 1, which are for the Leader of the Council to approve.
2. That the comments and suggested amendments be taken on board in the papers being presented to the Full Council meeting on 22 February 2023.

8 Overall Constitution for new Somerset Council to recommend to Full Council in February 2023 - Agenda Item 8

The Committee considered a report from the Council's Monitoring Officer, Scott Wooldridge.

The Committee has been completing a phased review of key elements of the new Constitution for the new Somerset Council over a series of meetings and the proposed new Constitution was appended to the report for consideration by the Committee to recommend this to the County Council for approval on 22 February 2023.

The development of the new Constitution has been undertaken by the LGR Governance Workstream involving the Council's Monitoring Officer in conjunction with the Monitoring Officers of the four district councils. This has involved extensive work and included reviewing best practice from Somerset councils and reviewing the Constitutions of previous local government reorganisations in Buckinghamshire, Wiltshire and Dorset.

The new Constitution sets out how the new council will operate; how it will make decisions and the steps that are to be followed to make sure the new

authority's decisions are efficient, transparent and accountable to local people, with public participation having greater focus.

During the debate the following points were highlighted: -

Part A – summary and explanation

- Section 1.12, should this refer to wards rather than divisions? – *clarified that as the Statutory Change Order had defined electoral divisions so that is the overriding definition to use; the Monitoring officer said that he will do a clarification note on this.*
- Section 1.15.2 should refer to 'children looked after' rather than 'looked after children'.
- Wording of the first sentence of section 1.12 needs to be amended to reflect current legislation.

Part B – public participation

- Section 1.4 needs to be reworded as not all meetings are open.
- Section 1.5 need to qualify first sentence.
- Section 1.7.3 need to remove 'scrutiny committee' as referenced in 1.7.1
- Section 1.10 is fantastic addition and help monitor progress on Key Decisions.
- Section 2.7 need to copy to 1.4.
- Section 2.28 Rights of Access to Information to Councillors, and exceptions to that? – *is an example of different practice across the councils and will switch to default positions so stay, unless reason not to stay.*

Part C – Council

- Section 3.10 – query about 'signature' – *the Monitoring Officer said that he would take out the reference to being 'signed'.*

Part D – committee structure and procedure rules

- Section 2.75 and query about last sentence regarding 'proposed substitute' - *will amend to "subject to agreement of the Monitoring Officer in consultation with Chair of relevant Committee".*
- Procedure Rules for Health and Wellbeing Board, section 4.1 – need to correct the phone number and email address referred to – *noted.*

Part E –Executive

- Part E2 – Somerset LCN's Terms of Reference (ToR) – disappointed that the document does not reflect the changes discussed by the Committee at the meeting on 30 January, for example core membership discussion (section 5.2), nor the spirit of discussions at that meeting.
The Monitoring Officer said the wording presented today was essentially to get them off the ground and would be amended in the papers going to Full Council.

- Part E2 - Somerset LCN's ToR section 14.1 quorum figure feel should be lower figure than 50% - *agreed will change to "30% of the core membership"*.
- Part E2 - Somerset LCN's ToR section 5.2 and whether there is provision for substitutes and if this be added for some categories of membership.
- Part E2 - Somerset LCN's ToR section 10.1 and if there will be a Special Responsibility Allowance (SRA) for the Chair - *The Monitoring Officer said that the IRP had not made a recommended an SRA for the Chairs or Vice Chairs of the LCN's. They are a Board of the Executive, not Committees. Also confirmed that any significant changes to the ToR require Executive to approve.*

Part F – Joint Arrangements

There were no questions or comments.

Part G – Overview and Scrutiny arrangements

- Section 1.3, functions and terms of reference – need to add that the list is "not an exhaustive list".
- Section 1.19 and Call for Action, add subject to agreement of the Chair / Vice Chair? - *the Monitoring officer referred to section 1.17 which outline how matters can be added to the Committee meetings; / work plan. Getting items on agendas can also be flagged as part of the review, in 6 months.*
- Section 1.21 c) need to include 3-minute time limit.

The Monitoring Officer said that the wording of sections 1.19 and 1.10 be amended to any issue of concern to be considered as part of the work plan of that committee.

- Section 1.22 (b) and section in brackets needs clarification – *the Monitoring Officer agreed that need to amend to "...or appeal (or relates to an individual planning application or decision by a planning committee)"*

Part H – Members

There were no questions or comments.

Part I – Officer Scheme of Delegation and List of Statutory and Proper Officers

The Council's Legal Officer clarified that the staff appointment rules will be reviewed, as part way through the appointments process.

Part J – Decisions making arrangements (key principles)

There were no questions or comments.

Part K – Appendices

- Need an index for the appendices.

The Chair thanked the all the officers for all their hard work in producing the Constitution documents.

1. The Committee AGREED to recommend the new Constitution to the Council for approval.
2. Noted that the new Constitution also sets out recommended Executive arrangements for executive functions for approval by the Leader of the Council.
3. That authority be delegated to the Monitoring Officer, in consultation with the Chair of the Committee, to make any necessary minor textual revisions to ensure that the separate sections of the Constitution are consistent and work together as a whole.
4. To recommend to the Council that the Chief Executive is appointed as the Returning Officer and Electoral Registration Officer for the new Somerset Council.
5. To recommend to the Council that the Chief Executive is given delegated authority to appoint all Statutory Officers and Proper Officers of the new Council, with the exception of any Statutory Chief Officers for example Section 151 Officer.
6. To recommend to the Council that the word "county" be omitted from the Council's name and it be known as Somerset Council from 1 April 2023.
7. to recommend to the Council that the Constitution & Governance Committee undertakes a review of the new Constitution and report back to the Council no later than June 2024.

9 **Annual Report of Constitution & Governance Committee and future role for Somerset Council** - Agenda Item 9

The Committee received and considered the report from the Chair of the Committee which concerned the Annual Report for the Committee, informing members of the work of the Committee over the municipal year.

The Chair asked that at section 3.6, (items considered at meeting on 14 February) an extra bullet point be added, to include reference to 'planning functions and arrangements'. There were no other amendments to the report and accordingly the Committee endorsed the report for submission to Full Council at its meeting on 1 March 2023.

10 **Work Programme** - Agenda Item 10

The Committee received and noted the forward plan of work to support the delivery of the Council's priorities and the items planned for the next meeting. The Chair advised that this date needed to change unfortunately and that the next meeting will now take place on Thursday 23 March @ 3 pm, in the Luttrell Room, County Hall, Taunton. [post meeting note – meeting start time changed to 2 pm].

The Committee AGREED the work programme and the items planned for forthcoming meetings: -

- Unitary Council transitional Governance Arrangements - 23 March
- Scoping work for 2023 / 24; review of Constitutional arrangements – 23 March
- Review of planning – September meeting.

11 **Any other urgent items of business** - Agenda Item 11

There were no other items of business.

The Chair thanked his Vice Chair, members of the Committee and officers for all their support and all the work.

(The meeting ended at 4.00 pm)

CHAIR