

BABERGH DISTRICT COUNCIL

FROM: Constitution Review Task Group

REPORT NUMBER: **J208**

TO: OVERVIEW AND SCRUTINY
(STEWARDSHIP) COMMITTEE

DATE OF MEETING: 23 March 2010

REVIEW OF GOVERNANCE ARRANGEMENTS

1. **PURPOSE OF REPORT**

To report the conclusions of the Constitution Review Task Group and to consider its recommendation to progress a move to executive arrangements.

2. **RECOMMENDATIONS TO COUNCIL**

- 2.1 That the constitutional review should continue with a view to a possible move to executive arrangements.
- 2.2 That in furtherance of the constitutional review, the Council proceeds to undertake the public consultation exercise required pursuant to the Local Government and Public Involvement in Health Act 2007 in the form and manner recommended by the Constitution Review Task Group, and in particular:
 - the means of consultation set out at paragraph 5.17 be approved
 - the list of key stakeholders to be consulted shown at Appendix 2 be approved
 - the period of consultation be fixed at 8 weeks.
- 2.3 That authority be delegated to the Chief Executive in consultation with the Chairman of the Council to finalise the Consultation Document.
- 2.4 That a sum up to £5,000 be made available from the £25,000 sum allocated for Local Government Review/ Shared Services provision to undertake the consultation exercise.

The Committee is asked to make the above recommendations to Council.

3. **FINANCIAL IMPLICATIONS**

- 3.1 There will be costs involved in undertaking the statutory public consultation exercise although, subject to the method of consultation chosen, such costs could be limited to the costs of circulation of the consultation to key stakeholders as identified in paragraph 5.17.
- 3.2 The costs of a leaflet and reply card inserted into 40,000 copies of *Babergh Matters!* would cost £2,940. Every reply card received back would cost the Council 32p. A 10% response would therefore cost approximately £1,300.

3.3 A notice in the East Anglian Daily Times would cost approximately £250 with a further equivalent sum being needed if the Council were to proceed to publishing a proposals document after the consultation had closed.

3.4 Based on the above, a sum in the order of £5,000 should be allowed and this sum could be made available from the £25,000 provision for LGR/Shared Services.

4. **RISK MANAGEMENT**

4.1 This report is linked with the Council’s Significant Business Risk No. 4 (Governance). Key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
The Council misses the resolution deadline of 31.12.10 to change to an executive form of governance and must wait 4 years for further opportunity.	Low	Critical	Continue with the review now.
The review needs to be aborted due to LGR	?	Negligible	Monitor position

5. **KEY INFORMATION**

Background

5.1 The Constitution Review Task was established by Council on 30 October 2007 to give consideration to the Council changing its governance arrangements to an executive model.

5.2 The work of the Task Group was suspended by Full Council on 15 April 2008 due to the progression of Local Government Review and what appeared as the likelihood at that time of events surpassing the need for a constitutional review. Whilst Local Government Review remains a possibility, we may not know until it is too late to implement a change in time for the new Council in 2011. The reason for this is that there are only 4 yearly windows of opportunity in which an authority is permitted to change to an executive.

5.3 The Constitution Review Task Group re-convened in December 2009 and re-commenced its consideration of the advantages and disadvantages of the existing arrangements and those of a Leader and Cabinet Executive. At its meeting on 12 January 2010, the Task Group affirmed Appendix 1.

- 5.4 Further, having reviewed the advantages and disadvantages of each option (i.e. status quo or move to an executive model), the Task Group agreed to recommend to Overview and Scrutiny Committee and Council that the constitutional review should proceed. In so doing the Task Group noted that an executive would provide a more modern form of local government and afford the Council greater leadership and direction than at present. At a time when the Council is seeking to forge new partnerships and develop new ways of working, it was considered important that the Council has strong leadership with appropriate status and the ability to make faster decisions. An executive would also align the Council with the vast majority of other councils in England.
- 5.5 Whilst concern was raised that some members not serving on the executive may feel disenfranchised, it was noted from the experiences of other authorities that have moved away from alternative arrangements that this did not appear to be a significant issue in practice with most members serving on at least one committee. On balance, it was therefore considered that there were greater benefits in proceeding with constitutional review than not and recommendation should accordingly be made in the first instance to the Overview and Scrutiny Committee.

Forms of Executive

- 5.6 The Local Government Act 2000 (“the 2000 Act”) provided for local authorities to operate executive arrangements using one of three model forms:-
- elected mayor and cabinet
 - leader and cabinet
 - elected mayor and Council manager

For smaller councils having a population of less than 85,000 (as at 30 June 1999) a last minute amendment was introduced to allow those councils to retain a modernised committee structure format instead of an executive. Approximately, 80 local authorities including this Council elected to adopt the committee structure, often referred to as ‘alternative arrangements’ and the councils as ‘fourth option councils’.

- 5.7 Part 3 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) allows fourth option councils to move to executive arrangements. The 2007 Act has abolished two of the models referred to above, namely, the old-style leader and cabinet and the elected mayor and Council manager. It now provides for two models, namely:-
- elected mayor and cabinet
 - leader and cabinet executive

- 5.8 Under the **elected mayor model**, the executive consists of:

- a mayor elected by the local authority electorate for a four year term, and
- between two and nine councillors of the authority appointed to the executive by the elected mayor.

5.9 Under the **leader and cabinet model**, the executive consists of:-

- a councillor of the authority (“the Leader”) elected as leader of the executive by the Council, and
- between two and nine councillors of the authority appointed to the executive by the Leader.

5.10 In a change from the old-style leader and cabinet model, the leader is elected by the Council for a four year term or (if shorter) the balance of his/her term of office as a councillor. However, it is possible to make provision in the Constitution for the Council to be able to remove the Leader by resolution before the end of his/her term.

5.11 The Leader (rather than the Council, as under the previous model) determines the size of the executive within the statutory framework (limiting the executive to a maximum of 10 members). The Leader also appoints the members of the executive and can remove them at any time, effectively enabling midterm “reshuffles”. The Leader must appoint one member of the executive to be Deputy Leader who will act as Leader if the Leader is unable to act. The Deputy Leader’s term of office will be coterminous with that of the Leader (provided that the Deputy Leader remains a councillor). However, the Leader can remove the Deputy Leader from office. The Leader determines the arrangements for the delegation of executive functions which can be personally discharged by the Leader or delegated to (1) the executive (2) another member of the executive (3) a committee of the executive (4) an officer of the authority.

5.12 Obviously, much power rests in the hands of the Leader under these arrangements. However, it is equally clear that a Leader and Cabinet would be unable to operate without the consent of the Council and, in those local authorities with no overall control, it is anticipated that the actual composition of the Cabinet would have to be a matter for consultation between the political groups.

Changing To Executive Arrangements

5.13 The next stage of the process is to consider how the views of the public and other stakeholders are secured. The Local Government and Public Involvement in Health Act 2007 provides that “**Before** drawing up its proposals for change to a form of executive, the Council must take reasonable steps to consult the local government electors for, and other interested persons in, the authority’s area.”

5.14 The Department for Communities and Local Government has confirmed that it does not intend to issue any Guidance to Local Authorities as to what will constitute “reasonable steps” to consult local government electors. Furthermore, that since the 2007 Act does not provide for a specified period of consultation, nor any detailed requirements the Council has the flexibility to decide the appropriate level of consultation.

5.15 Case law has established that in order to achieve procedural fairness a statutory obligation to carry out public consultation must:

- (i) be undertaken when the decision that is being consulted upon is still at a formative stage (i.e. no pre-determined decision has been made and the public body is not merely paying “lip-service” to its obligation to undertake a consultation).
- (ii) include sufficient information to allow interested parties to consider the decision that is being consulted upon and formulate their response.
- (iii) allow adequate time for interested parties to consider and respond to the consultation.
- (iv) take all the responses from the interested parties conscientiously into account when the ultimate decision that is the subject of the public consultation is taken.

5.16 Prior to the implementation of the 2007 Act, the Secretary of State had issued a Direction to local authorities on the manner in which consultation should be undertaken and also published a guidance document. Whilst neither document is current, they do provide some helpful pointers on what has in the past been considered by the Government to be ‘reasonable steps’ to consult. Key points in the documents are:-

- each of the forms of political management arrangement (i.e. the types of executive model and alternative arrangements) should be described in a fair and balanced way without leading people to give a preferred response
- the consultation should provide an opportunity for consultees to express a preference for the form of arrangement including the status quo
- all local electors for, and other interested parties in, the local authority’s area should have opportunity to respond to the consultation
- both qualitative and quantitative methods of consultation should be used
- the consultation should not include details of the Council’s proposals (which must only be drawn up following consideration of the consultation responses)
- feedback on the responses should be provided to show that views are listened to and how they have been considered.

5.17 In the light of points above, the Consultation Document will need to outline both of the two possible forms of new executive arrangements under the 2000 Act and ask for interested parties to give their views on which of the two possible forms they would prefer the Council to adopt or whether there should be no change.

5.18 It is suggested that the consultation should include the following:

- (i) featuring an article within *Babergh Matters!* together with a separate Consultation Document in the form of a leaflet and response slip (using a freepost address) inserted within the publication, at an estimated cost of £3,500.00;
- (ii) placing a public notice in the local press announcing the beginning of the consultation period and inviting a response to the Consultation Document on a cut out reply slip at an estimated cost of £250.00;
- (iii) placing copies of the Consultation Document in Council offices and other public buildings, such as local libraries (cost encompassed within estimate at (i) above);
- (iv) putting a copy of the Consultation Document on the Council's website (with provision for one-line responses);
- (v) preparing questions and answers so Customer Services staff can help people with any queries over the telephone;
- (vi) launching the consultation with an interview opportunity on local radio
- (vii) using any existing forums that already exist where the Council communicates with local electors and other interested persons routinely (including staff forums)
- (viii) circulation of the Consultation Document to key stakeholders identified at Appendix 2

5.19 In view of the broader discussions being undertaken with Mid Suffolk District Council concerning possible integration of the two Councils, the article in *Babergh Matters!* may be an opportunity to explain those potential arrangements and the benefits of constitutional alignment. The Consultation Document itself may also need to link to those issues. It is also possible that between now and the consultation exercise commencing MSDC will be at a similar stage of the process for constitutional review in which case there may be scope for a combined Consultation Document. Discussions are being undertaken between officers of the two authorities to identify the options and to ensure our approaches are compatible.

5.20 Members are also asked to note that statutory provision has now been identified that could effectively enable the merger of two or more local authorities. This would involve the Boundary Committee undertaking a boundary review followed by an order of the Secretary of State for the abolition of the existing local government areas and creation of a new two tier authority. Any new authority would need to operate an executive model. Even if the Councils were to press for a boundary review, neither the Boundary Committee nor the Secretary of State would be compelled to progress such an arrangement and the 4 yearly window of opportunity would be likely to have passed before we would know if a wider review was likely to be supported. It is therefore recommended that constitutional review should be progressed notwithstanding this alternative option may possibly be available.

5.21 It is within the discretion of the Council to fix the period of the consultation having had regard to the requirements of reasonableness referred to above. Ideally, the period of consultation would be 12 weeks to correspond with previous (but now obsolete) Government guidance and 12 weeks is also the standard period for Government consultation. However, this would afford very little opportunity to analyse the consultation responses and to progress the following stages within an achievable timeframe. It is therefore recommended that the consultation period be for 8 weeks.

5.22 It is within the discretion of the Council to fix the period of the consultation having had regard to the requirements of reasonableness referred to above. Since earlier Government guidance refers to a period of 12 weeks and indeed this is the standard period for Government consultations, this would be the most obvious period to select. The period could be shorter and this would allow more leeway later on in the timetable, but it is not recommended that the period be less than 6 weeks.

5.23 A projected timetable for the whole process is at Appendix 3.

6. **APPENDICES**

- Appendix 1 – List of Advantages and Disadvantages
- Appendix 2 - List of key stakeholders to be consulted
- Appendix 3 - Key Stages Document (March 2010)

7. **BACKGROUND PAPERS REFERRED TO:**

- DETR/LGA 'New Council Constitutions - Consultation Guidelines for English Local Authorities'
- Changing Executive Arrangements and Alternative Arrangements Direction 2001

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ADVANTAGES OF LEADER AND CABINET OPTION	DISADVANTAGES OF LEADER AND CABINET OPTION
<ul style="list-style-type: none"> • Leader and Cabinet assume responsibility for ensuring delivery of Council's services within remit of the policy framework and accountability is therefore easier to identify. • Decision-making tends to be more focused. • Collective decision-making of Cabinet provides greater support to strategic decisions. • Affords flexibility for responsive and reactive decision-making. • Recognised by Government as means to secure strong and accountable leadership. • Position of Leader commands authority and respect amongst other councils. • 4-year term secures continuity of leadership providing stability and enhancing deliverability of Council objectives. • Faster decision-making. • Facility for specific delegation to portfolio holders. • Officers would get clearer and more effective direction. • The successful co-operation with other councils, and possible future mergers of services etc., make it necessary for Babergh to be aligned to the working method of other councils: and the cabinet method is that method. 	<ul style="list-style-type: none"> • Non-cabinet members may feel disenfranchised and excluded from a decision – making role. • The cost of democracy may increase, particularly through Members allowances. • Some members might fear that it gives too much 'power' to the Leader and cabinet and that other Members will be sidelined. • If the Leader is not keen on change then business of the Council could be stifled. • Greater time demands on the leader / cabinet could preclude even more people, making it more exclusive – older & richer but not representative.

<p>ADVANTAGES OF LEADER AND CABINET OPTION</p>	<p>DISADVANTAGES OF LEADER AND CABINET OPTION</p>
<ul style="list-style-type: none"> • Non-controversial decision-making would be more streamlined through delegated powers. • Through delegated powers there may be a reduction in the number and length of meetings. • A Leader and Cabinet made up of Portfolio Holders so the Public know who is responsible for what thereby strengthening the accountability of these particular Members. • With or without a political administration, gives focus to Council decision-making and properly delegated responsibility to cabinet members and the appointed Leader and greater clarity for the Officers. • Assists the Council in its governance arrangements within the Pathfinder process. • May answer the challenges as to leadership during the CPA process. • Gives portfolio holders & officers a chance to work closer together. • Opportunity for ungrouped Members to be portfolio holder. 	

ADVANTAGES OF EXISTING ARRANGEMENTS (FOURTH OPTION)	DISADVANTAGES OF EXISTING ARRANGEMENTS (FOURTH OPTION)
<ul style="list-style-type: none"> • Suited to small authorities that can operate on consensus. • Operated reasonably effectively in the past and did achieve a Good CPA rating in 2004. • Discussions at PLG and through groups mean decisions don't normally end up as surprise. • Structure considered inclusive of all members who have more input and are more involved in discussion and decision-making. • Perceived as democratic means of decision – making with all political groups represented on Strategy Committee. • Improvements to the existing arrangements could be made which could largely replicate the switch to leader / cabinet with much less effort and cost. 	<ul style="list-style-type: none"> • Strategic leadership is less focused, particularly as an authority with no overall political control. • Contentious decisions can be delayed or not taken • Lack of direction impacts upon decision-making giving rise to mixed messages to staff and public. • Reduced influence at local, regional and national level. • Not recognised by Government as the most effective structure for decision-making. • Inappropriate structure if merger of Councils • Implementation of LGPIH Act 2007 will marginalise the committee structure • Committee system decisions take longer to resolve. Responsibility and influence rests with the Officers rather than with Members. • Can make for a pretty punishing schedule for Strategy chairman with little opportunity to delegate. • Officers are able to lead rather than be led.

<p>ADVANTAGES OF EXISTING ARRANGEMENTS (FOURTH OPTION)</p>	<p>DISADVANTAGES OF EXISTING ARRANGEMENTS (FOURTH OPTION)</p>
	<ul style="list-style-type: none"> • When working jointly means that representatives from Babergh have to be appointed by full Council, with no clear line of feedback to the existing PLG and Committee structures. • Development committee have to rely on the group meetings to be involved in policy.

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List of Key Stakeholders to be consulted

- Age Concern
- Babergh Communities Together
- Babergh Dual Use Sports Centres
- Babergh East LSP
- Babergh Tenants Forum
- Chamber of Commerce
(Hadleigh/Sudbury/Ipswich/Suffolk)
- East of England LGA
- EEDA
- Faith Reps (re LSP)
- Federation of Small Businesses
- Haven Gateway Partnership
- High/Upper Schools
- Ipswich Citizens Advice Bureau
- ISCRE
- NFU
- RSL's
- SAVO
- South Suffolk Leisure Trust
- Staff/Unison
- Sudbury Citizens Advice Bureau
- Suffolk ACRE
- Suffolk Asscn of Local Councils
- Suffolk County Council
- Suffolk Local Authorities (All)
- Suffolk New College
- Suffolk PCT
- Suffolk Police
- Suffolk Preservation Society
- Tim Yeo MP
- Town/Parish Council's
- Western Suffolk LSP

APPENDIX 3

Key Stages Document

	Stage	Date
1	Task Group considers merits of a change of constitutional arrangements*	16 December 2009
2	Task Group considers recommendation to O&S & Council on whether review should proceed.*	12 January 2010
3	Task Group identifies: (i) stakeholders for consultation (ii) means & form of consultation (iii) period of consultation	2 March 2010
4	O&S considers report from Task Group and makes recommendation to Council on:- (i) constitutional review continuing (ii) stakeholders for consultation (iii) means & form of consultation (iv) period of consultation (v) timetable for future reports to Council	23 March 2010
5	Council considers recommendations from O&S and decides (i)-(v) above	20 April 2010
6	Article for Babergh Matters! and leaflet comprising Consultation Document is finalised by officers ready for publication	April/May 2010
7	Consultation period commences	early June 2010
8	Consultation period closes	end July 2010
9	Task Group considers consultation responses & considers whether to recommend a change to executive arrangements. If so, Task Group considers draft proposals document (that identifies functions, committee structure & timetable)	August 2010 <i>separate meeting?</i>
10	O&S considers recommendations from Task Group on 9. <i>or does Task Group report direct to Council (?)</i>	August 2010 (<i>extra meeting</i>)
11	Council considers recommendations & determines whether to proceed with a change to executive arrangements having considered draft proposals document (& whether to hold a referendum). Council approves proposals document including the date that new arrangements will take effect	31 August 2010

	Stage	Date
12	Proposals document is advertised	September 2010
13	Task Group reviews the proposed constitution document	September – November 2010
14	O&S considers the proposed constitution document	16 November 2010
15	Council resolves to change to a Leader & Cabinet Executive & considers the proposed constitution document	November 2010 <i>(additional meeting)</i>
16	Council adopts the revised form of constitution.	14 December 2010
17	Executive arrangements take effect on day 3 after 2011 elections.	

*N.B. Additional meeting dates for Council/O&S Committee likely to be needed
* denotes tasks already completed*

March 2010