

**NORTH NORTHAMPTONSHIRE SHADOW AUTHORITY****SHADOW EXECUTIVE COMMITTEE MEETING****12<sup>th</sup> February 2021**

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| <b>Report Title</b>  | <b>Shared Service Arrangements</b>                                       |
| <b>Report Author</b> | <b>Adele Wylie, Director Legal and Democratic and Monitoring Officer</b> |

**List of Appendices****Appendix A – Updated Blueprint document: Schedule of Services****Appendix B – Draft IAA****Appendix C – Proposed Terms of Reference of the Joint Committee****Appendix D – Proposed Terms of Reference of the Joint Officer Board****1. Purpose of Report**

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1.1. This report is to give effect to the decision of the Shadow Executive Committee on 24<sup>th</sup> September 2020 in relation to the Blueprint and seeks Members approval for the governance and legal agreements which will govern the shared services between the North Northamptonshire Council and the West Northamptonshire Council from the 1st April 2021.

**2. Recommendations**

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2.1 It is recommended that Members:

- a) Agree to share the services described as Hosted or Lead Authority, in the Blueprint schedule attached as Appendix A to this report, with the West Northamptonshire Council as detailed in this report.
- b) Establish an Executive Joint Committee within the governance framework of the Council with the Terms of Reference set out in **Appendix C** to oversee the shared arrangements.
- c) Note the proposed reservation of delegated powers to the Chief Executive, Executive Directors, Directors and Assistant Chief Executive which will be set out in the Constitution.

- d) Agree the Heads of Terms for the inter authority agreements with the West Northamptonshire Council for the delivery of the services set out in **Appendix B**, and in particular agree to:
- i. Provide the services set out in **Appendix A** and described as hosted by North Northamptonshire Council on a short-term basis in accordance with the terms of the proposed agreement
  - ii. Provide the services set out in **Appendix A** and described with North Northamptonshire as Lead Authority in accordance with the terms of the proposed agreement until the agreement relating to that service is terminated
  - iii. Receive the services set out in **Appendix A** and described as hosted by West Northamptonshire on a short-term basis in accordance with the terms of the proposed agreement
  - iv. Receive the services set out in **Appendix A** and described with West Northamptonshire as lead authority in accordance with the terms of the proposed agreement until the agreement relating to that service is terminated.
- e) Establish a Joint Officer Board to support the Joint Committee in accordance with the Terms of Reference set out in **Appendix D**

## 2.2 Reasons for Recommendations:

- a) The Councils have agreed that it is not practicable to disaggregate some services before 1<sup>st</sup> April 2021 and therefore a short term agreement will allow the current arrangements to continue until the necessary service changes can be made or contracts replaced to allow the services to be disaggregated.
- b) The Councils have agreed that some services, which benefit from critical mass where the service will be commissioned from an external provider (and amended the contract now would be cost prohibitive) and where sharing gives both authorities better value for money and/or improved delivery, should continue to be delivered across the whole geographical area of North and West Northamptonshire.
- c) To give effect to the decisions a Joint Committee will need to be established with agreed terms of reference supported by an Officer Board.
- d) An agreement will need to set out the terms of the arrangement and specific delegations will need to be made to relevant Chief Officers and Senior managers

### 3. Report Background

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- 3.1 Work has been ongoing for over the last year within the Future Northants programme to progress the plans to achieve a transfer to the new Authorities on 1<sup>st</sup> April 2021. In August 2020 a draft Blueprint was prepared which set out how the services from the predecessor Councils would be brought together and how in particular County Council services would be disaggregated and combined with the District and Borough Services to create two new functioning Councils. This draft document was made available to staff and others as part of a consultation exercise.
- 3.2 On 24<sup>th</sup> September 2020 the Shadow Executive Committee received the detailed Blueprint together with the results of the consultation. The final Blueprint document outlined the future design of the new Councils and since that time the Future Northants Programme has been working to deliver the Blueprint. That report and the attached Blueprint are background papers to this report.
- 3.3 The recommendations of the report to the September Shadow Executive Committee were as follows:
- a. Note the content of the detailed blueprint which sets out more detail of how services will operate and the design principles that will underpin their future operation and service to stakeholders
  - b. Note the key elements of service functions that we plan to transform and improve in the functions and services (the “plus”)
  - c. Note the key activities that will be undertaken in each area during the first year of the new Council,
  - d. Note the high level feedback from the initial detailed blueprint briefings with staff, unions and members, and
  - e. Adopt the detailed Blueprint as the basis of the day 1 functional design, subject to the identification of any further agreed opportunities to transform and improve service areas during the remaining months leading up to vesting day on 1<sup>st</sup> April 2021
- 3.4 To give effect to that decision work has been ongoing working out the detailed arrangements for delivering services in accordance with the Blueprint. Members were advised that service areas had set out the design principles and also that there were details about the services and their functions. These included issues like:
- The service Offer outputs that the service is responsible
  - Key activities undertaken in the service area
  - Planned Location operate and any planned changes from current locations

- IT Systems – any planned changes that will be required due to the split in services,
- Customer and channels the service supports a planned changes or Council,
- Key partners and organisations and internal and external services that the service will interact with
- Plus – the key significant changes identified in terms of major change
- Key activities Year 1 – key changes to be completed in the first year

3.5 As set out in the previous report on the Blueprint, some existing NCC services will be 'hosted' by one of the two new Councils and provided to the other Council. 'Hosting' will continue for a stated period until issues or barriers can be resolved and support a split at an earlier point. The majority of these 'hosted' arrangements will be for a twelve-month period but in some cases will be for up to two years to align with the end date for shared programmes or contracts.

3.6 There will also be some services which have been identified as being 'lead authority'. This means that one Council will deliver a service on behalf of both because that is the most efficient and effective way for those services to be delivered and splitting them will be detrimental to the Council in terms of delivery and/or cost. Many Councils have effective shared arrangements in place because it is appropriate for those services to be delivered on a larger geography. For example, waste disposal contracts are often delivered on a wider basis because they are long term commissioned services with significant investment required by suppliers and as economies of scale mean that services can be delivered at a lower cost using shared resources. These options need to be explored for some of the shared arrangements in the coming months and the appropriate geographies and costs for new arrangements explored in full.

#### **4. Hosted and Lead Authority Services**

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4.1 The 24<sup>th</sup> September Shadow Executive Committee Report outlined that further work would be undertaken to further refine the Blueprint and some additional 'change request' reports have since been agreed by the Shadow Executive Committee to update the Blueprint. **Appendix A** shows the updated position in relation to each of the services including those services which are to be disaggregated; externally provided; hosted and delivered by a lead authority. Page 2 of the spreadsheet provides the Approved Service Treatment and the changes since the Blueprint was approved in September are detailed in red.

4.2 Services which are disaggregated or externally provided are not relevant to the remainder of this report. Those services marked Hosted or Lead Authority in

column E of Page 2 are those which are to be subject to some form of shared governance arrangements between the two new Councils. All the items in the spreadsheet have been previously approved by the Shadow Executive. This report does not seek to make any change to the Blueprint but to give effect to what has already been decided.

- 4.3 In order to give effect to the decisions made by members in September 2020 the two shadow authorities need to enter into agreements with each other to set out, amongst other things:
- a. what will be delivered by each council,
  - b. how much will it cost the other council to have those services provided
  - c. what powers the host/lead authority will have to make decisions about service delivery
  - d. what other arrangements will need to be put in place eg support services and staff, to enable the services to be delivered.

## **5. Delegation of Powers and Duties**

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- 5.1 Shared Service Arrangements have been increasingly common between local authorities as a means of providing service improvements and financial benefits. There are a number of tried and tested legal powers which support the sharing of local authority services. Different powers are appropriate for different circumstances and before putting arrangements in place it is appropriate to consider the purpose and nature of the shared arrangements. The purpose of these shared arrangements is primarily to enable an appropriate timeframe for work to be completed to achieve effective disaggregation. The need to ensure value for money and avoid disruption to service delivery are also relevant factors. It is not the primary purpose of these arrangements to enter into a long-term partnering between the two councils or to provide profit or an income stream through commercial arrangements.

## **6. Legal advice and options**

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- 6.1 To provide an objective and informed assessment of the legal powers, advice has been obtained from Anthony Collins Solicitors and Olwen Brown, Partner. The advice was provided to the West but advice was made available to the North separately to comply with solicitor's practice rules. The advice is summarised below to assist in consideration, with additional comment from the Director of Legal and Democratic Services on the particular circumstances of this transition.

### **6.2 S101 Delegation**

### Summary of Advice

- 6.2.1 Firstly, section 101 allows local authorities to delegate functions to other local authorities. Where the 'Receiver' council chooses to delegate functions to another authority and the 'Provider' authority agrees to accept the delegation. The authority will then perform the function on behalf of the Receiver authority, even though, it is important to note, the Receiver authority remains ultimately responsible for the function and so needs to have the requisite information in place to reflect that.
- 6.2.2 Use of the s101 power is a very common feature of many shared service arrangements and requires both the authority who is taking on the function i.e. the Provider authority and the authority delegating the function i.e. the Receiving authority, to take "mirror" reports to their executive the difference being that one authority is agreeing to delegate the function and the other agreeing to accept the delegation.

### Additional Comment

- 6.2.3 The proposed delegation scheme for both the North and the new West Northamptonshire Councils provides for a reverse delegation. This means that all powers in a service area would be delegated to the Director responsible. Where a delegation to another Council is in place an exception will be recorded to that delegation. Delegations can then be made for these service areas to the Director in the other Council or to a Joint Committee. This will make it relatively easy to make the delegations without the need to set out in detail the nature of the delegations, only those matters which are reserved. The Director/Joint Committee will then be able to delegate power to whichever officer is necessary to deliver the service effectively. The Provider is held to account through the terms of the agreement and the governance arrangements. S 101 can be used to delegate executive and non-executive functions.

## **6.3 S102 Joint Committee**

### Summary of Advice

- 6.3.1 The second option is to use the powers in section 102 of the 1972 Act to set up a Joint Committee made up of members of the two authorities and delegate authority for running the functions to that Joint Committee. This is an arrangement which is often seen as appropriate where members wish to maintain a higher degree of control and oversight of the functions, is again a well tried and tested way of delivery where more than one authority is involved. The responsibility for the service will be delegated by each authority to the Joint Committee and both councils will need to agree the terms of reference and the delegations made.
- 6.3.2 Whilst a Joint Committee is able to have all of the functions of a local authority delegated to it, it is rare for Joint Committees to employ officers directly. Usually the arrangements are that practicalities dictate that officers

are employed by one of the authorities but work to the direction of the Joint Committee; and the operational matters are dealt with by that employing authority; under a detailed agreement. The decisions, about direction, budget etc, usually regarded as those in which members should be involved, are taken by the Joint Committee; with the operational matters delegated to officers.

#### Additional Comment

- 6.3.3 There will be matters which need to be resolved after the Joint Implementation Executive ceases to exist and therefore the Joint Committee will enable the North and West Councils to continue to work together to deliver transition and transformation, including further disaggregation, after the 1<sup>st</sup> April 2021.
- 6.3.4 If a Joint Committee is set up, the members would have to be appointed to it in accordance with the law and the constitutions of the respective Councils. The management of services is an executive function under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions and Responsibilities Regulations) and therefore it will be necessary to establish an executive Joint Committee, this means that only executive members would be members of the committee with decisions subject to Overview and Scrutiny within the respective Councils. The employment and appointment of staff is a non-executive function and can be dealt with by officers through a Joint Officer Board.
- 6.3.5 There is scope for s101 and s102 to apply together with the functions for delivery of a service to be split between those operational powers which would be delegated directly to officers and decision making at a high level to be delegated to the Joint Committee. Alternatively, all powers can be delegated to the Joint Committee with the committee itself delegating powers to officers. This option would not be suitable for any non-executive functions and therefore some s101 delegation will be necessary.

### **6.4 S113 Secondment**

#### Summary of Advice

- 6.4.1. The third option is to for the Receiver authority to delegate powers to its own employees but share those officers with the Provider authority using the powers in s113 of the 1972 Act. Under such a provision, the officers would simply be seconded over to the provider authority and would work as an officer of the authority to which they were seconded for all purposes (other than superannuation).

#### Additional Comment

- 6.4.2 This model means that powers are delegated to the relevant officer who is seconded to the Receiver authority. This is particularly appropriate where there are proposals for a joint management team or shared senior officer structure as in the recent partnership between South Northamptonshire and Cherwell District Council. It can be appropriate where an officer with specialist

skills carries out specific functions across a wider area to make the best use of limited skilled resource. It is a model commonly used as a method of bringing two Councils who have decided to work together to be able to deliver services quickly and effectively with minimal governance. The teams below senior management would carry out functions at the instruction of the officer with delegated powers. Because the individuals concerned have to have the powers delegated directly to them it could be significantly more difficult to put in place in a situation where the senior management will continue to be separate, and the delegation of powers will be to a number of officers carrying similar functions within service-based teams.

## **6.5 Commercial Options (s1 GSA)/ CHARGING AND TRADING (S93/95 LGA 2000)**

### Summary of Advice

6.5.1 A fourth option is for one authority to provide the services under an agreement made under s1 of the Local Authorities (Goods and Services Act) 1970. This provision enables one council to provide another with goods and materials services. These services can be provided at a fee in a more or less straightforward commercial transaction. There is also an option to set up a company or other commercial vehicle to deliver the services, including through a social business arrangement. However, whilst these separate legal vehicles are popular, and many authorities have used them and found them to be successful, they require quite a lot of time and resource to set up.

## **6.6 Summary of Options**

The advice provided by Anthony Collins Solicitors set out above provides that there are a range of options and while each is lawful as a means of delivering the Blueprint, there are pros and cons of each option.

## **6.7 Assessment of Options and Conclusions**

6.7.1 There are more than 50 services which it is proposed will need to be subject to some form of shared arrangements. The arrangements need to ensure that decision makers are operating within the scope of powers, and any failure to put in place appropriate delegations makes the decisions vulnerable to challenge as ultra vires i.e. outside the powers available to the decision maker. The delegation however needs to ensure that the decision makers can be held to account where appropriate for the decisions that have been made and that those carrying out operational decision can do so quickly and without the need to refer to a committee or senior officers.

6.7.2 The relevant factors can be summarised as follows:

- Provide the necessary delegation
- Are relatively straightforward to put in place
- Are flexible to change as transition moves forward
- Provide for operational delivery
- Provide the necessary accountability.



## **6.8 Recommended Options**

- 6.8.1A Joint Committee is relatively easy to establish at a time when new governance is being put in place for the new Council and can be added to the Council decision making framework and be included within the new Constitution. It continues arrangements that have existed during the Shadow Period and extends that opportunity into the new Council. Although it requires delegations as it is an Executive function these can be varied with relative ease by the Leader or the Executive as appropriate. The Joint Committee enables continued political oversight for the transition journey and decisions about when services disaggregate can be overseen by members. Having established a Joint Committee with delegated powers in relation to a number of high risk services, it is available to provide informal oversight and monitoring of all shared services through regular reports.
- 6.8.2 It would not be appropriate for all decisions to be made by a Joint Committee. The most appropriate way forward is for individual officers within the authorities to receive powers delegated to them by both Council's under a s101 delegation to carry out functions. This will need an agreement to describe in more detail the terms of the delegation but it provides a simple approach which could be used across all services.
- 6.8.3 A s113 can be used in appropriate cases but will not be suitable for services where there is limited shared management. It is therefore recommended that to avoid multiple different forms of agreement that s101 is the preferred form of agreement.
- 6.8.4 Other powers highlighted are more suited to commercial or one-off arrangements and would not be appropriate as the basis for a suite of agreements for a number of services.

## **7. The Joint Committee**

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- 7.1 Anthony Collins Solicitors, through Olwen Brown have also provided advice in relation to the type of Joint Committees. That advice is set out below:
- 7.2 We would advise that the most appropriate mechanism to deal with this where there is a justifiable desire for member involvement, would be via a Joint Committee made up of members from each authority, which Joint Committee would have an overview of the services and have the delegated authority from each of the two new unitaries to take the necessary decisions delegated to them in relation to the service.
- 7.3. A Joint Committee can be set up either as a decision-making body, which we would advise would be the most pragmatic option as it will then be deciding matters jointly between the two councils; or it could instead be asked to be advisory in the sense of agreeing recommendations to be made back to each Executive; or possibly a mixture, if it is felt that whilst the intention is to empower the Joint Committee, there are some decisions which are so important that they need to go back to the home authority, but the delegations have to be common in any event. A single Joint Committee of Executive members will

avoid the need for multiple meetings placing additional demands on members and officers alike, and increasing costs.

## 8. Form and Terms of Reference

- 8.1 It is proposed that the new Council's should each have two Joint Committees, in addition to existing arrangements, one for the Children's Trust because this is a Committee dealing services to a separate legal body and another for all other shared arrangements. Arrangements for the Children's Trust will be dealt with by a separate report. The Membership of the Shared Services Joint Committee will be drawn from the Executive.
- 8.2 A Joint Committee is not limited by the requirement to have 10 members, (as with a Cabinet) however to provide accountability for the decisions made and to make the Joint Committee practical both for members and officers, it is recommended that the number of members on the joint committee is somewhere between 6-12 members, with equal numbers being provided by each authority. The Joint Committee will need to meet regularly, certainly in the first year, to manage the services effectively. It is proposed that the Joint Committee meet bi-monthly but that additional meetings can be called by the Leaders of either the Councils. In order to ensure that there is shared oversight of the Joint Committee it is proposed that the chair of the Joint Committee will rotate. Rotation can be on any basis eg meeting by meeting, six month basis or a yearly basis. There will need to be regular support to the Joint Committee through Democratic Services and to avoid the need to change the support often it is proposed that the support is attached to the Chair and the Chair rotates on a six month basis in the first year, and thereafter on a yearly basis. It is proposed that as the basis of the Joint Committee is an agreement to share the Chair will not have a casting vote. This will mean that there is an even number of votes so that each Council, if all its members are agreed, will have an effective right of veto on any proposal. It is therefore not proposed that decisions will be put to the vote but that agreement will be reached between the two authorities. The Executive will delegate to the Joint Committee the powers as set out in the Terms of Reference which will be exercised within the Policy Framework and Budget for each of the two Councils. Decisions outside the budget will be made in accordance with the Constitutions of the respective Councils by the Executive and Council.
- 8.3 The Joint Committee will be a meeting of the Executive and will be subject to agreed joint Executive Procedure Rules between the two Councils. Decisions of the Joint Committee will in accordance with the rules, be subject to the requirements in relation to the publication of 28 day notices through a Forward Plan. The Overview and Scrutiny arrangements of each Council will apply to decisions of the Joint Committee. The draft Terms of Reference for the Joint Committee is attached at **Appendix C**. To support the work of the Joint Committee it is proposed that a Joint Officer Board would need to meet to agree the matters to be presented to the Committee and to deal with operational matters eg staffing which in accordance with the Functions and Responsibilities

Regulations cannot be the responsibility of an executive committee. The draft Terms of Reference of a proposed Joint Officer Board are set out in **Appendix D**.

## **9. The Agreements**

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- 9.1 There will be over fifty shared service arrangements and each service arrangement requires a Receiver and Provider agreement. Work has been underway within the service areas to prepare the arrangements which will inform the agreements and to ensure that those arrangements will enable service delivery.
- 9.2 The IAAs are the method by which the formal governance arrangements are put in place alongside the creation of the Joint Committee. Many of the terms of the agreements would be common across all service areas, however there will need to be some practical differences to cover matters such as the description of the service, the performance standards, monitoring arrangements and the operating arrangements, etc.
- 9.3 As there may be different intentions between the Hosted and Lead Authority services there will be two different forms of agreement; as terms and conditions on the matters set out below may well vary, even though by and large the same areas would need to be covered.
- 9.4 The proposed Heads of Terms of the IAAs (of whatever form) should contain agreed terms and conditions about the following matters:
- i. Description of the service to be provided and any exclusions;
  - ii. Performance standards and monitoring arrangements;
  - iii. Operational arrangements;
  - iv. Finance Arrangements;
  - v. Staffing arrangements;
  - vi. Length, notice and termination arrangements
  - vii. Information, data sharing, data protection and confidentiality;
  - viii. Dispute resolution;
  - ix. Accountability;
  - x. Compliance with any legal requirements applicable to the service area;
  - xi. Insurance and indemnities;
  - xii. Any standard terms for the authorities.
- 9.5 Although the shared arrangements cover a number of services the implications of those sharing arrangements are significantly different in terms of size and cost. For example, an agreement which is providing for a long term commissioning arrangement where the commitment is for many millions over the life of the contract will require greater accountability and less delegation than a service providing low cost services through existing delivery

arrangements. Those services which are ‘hosted’ and therefore short term, ie in anticipation of disaggregation will carry fewer risks than Lead Authority, which need to provide for unforeseen future events and changes in administration. It is therefore proposed that the agreements will be broadly similar and all contain the same minimum content whilst some may have more specific provisions.

- 9.6 In order to evaluate the nature of the services and establish the most appropriate form of agreement a detailed questionnaire has been sent out which will enable the classification of the services into groups, to enable them to be prioritised according to risk and to further describe the length and nature of the agreements. It is proposed that a skeleton agreement is approved alongside the governance arrangements, with key heads of terms, pending the return of the questionnaires. Once the form of agreement is approved schedules for each service area will be drawn up and will be presented to a meeting of the Executive of each Council in March to enable the Council to put the agreements in place before they are required to take effect on 1<sup>st</sup> April 2021. The draft skeleton agreement is attached at **Appendix B**.

## 11. Next Steps

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- 11.1 The timetable for completion of the proposed work necessary to give effect to the Blueprint is set out in the following table:

| Where               | What                              | When                              |
|---------------------|-----------------------------------|-----------------------------------|
| JIB                 | Share IAA Principles Report       | 3rd Feb                           |
| NIE/WIE/JIE         | Share IAA Principles Report       | 10th Feb                          |
| W & N Shadow Exec’s | Approval of IAA Principles Report | 12th and 15th Feb                 |
| W & N Shadow Exec’s | Set up Joint Committee            | 23rd Feb and 25 <sup>th</sup> Feb |
| JIB                 | Detailed IAA’s                    | 3rd Mar                           |
| NIE/WIE/JIE         | Detailed IAA’s                    | 10th Mar                          |
| W & N Shadow Exec’s | Approval of detailed IAA’s        | 23rd and 25 <sup>th</sup> Mar     |

## 12 Implications (including financial implications)

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### 12.1 Resources and Financial

The proposed terms of reference outline that the Joint Committee will determine the financial arrangements and will do so within the budgets set for each of the Councils. This report therefore proposes that the financial arrangements would be the subject of later decisions through the Joint Committee. There are nevertheless significant financial implications if shared governance arrangements cannot be agreed and the services are required to disaggregate without the necessary planning.

## 12.2 Legal

The detailed legal options and implications are set out in the body of the report.

## 12.3 Risk

The following chart sets out the risks in relation to this report:

| Risks  |        |  |
|--------|--------|--|
| 12 (A) | 12 (A) | There is a risk that the <b>appropriate arrangements</b> are not put in place for day 1, meaning a potential legal challenge, or impact to service delivery  |
| 12 (A) | 12 (A) | There is a risk that not all of the Inter Authority <b>over arching contracts</b> will be in place for vesting day, meaning a potential legal challenge, or impact to service delivery   |
| 12 (A) | 12 (A) | There is a risk that the Councils do not agree the <b>terms of reference</b> of the Joint Committee / Joint Officer Board, meaning decisions could not be made whilst negotiations took place, this could lead to potential legal challenge or impact to service delivery. |
| 12 (A) | 8 (A)  | There is a risk that not all of the <b>service schedules</b> will be in place under each of the over arching inter authority agreements, meaning a potential legal challenge, or impact to service delivery  |

## 12.4 Consultation

Include the details of any statutory or other consultation undertaken with the public and/or agencies/interested parties. Also include the consultation results and any amended recommendations to draft policy or proposals that have resulted.

## 12.5 Climate Impact

The arrangements proposed are designed to achieve continuity of vital services in the Northamptonshire. The absence of these arrangements will have a negative impact on Council's ability to manage climate impact. The creation of governance structures is a necessary feature of the arrangements and as with all Council governance is managed electronically to minimise the impact on the environment and climate.

## 12.6 Community Impact

There is no specific community impact in the proposed arrangements, but the governance is designed to provide continuity of service to avoid a negative impact on service delivery and on communities.

## **13 Background Papers**

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Report to the Shadow Executive Committee on 24<sup>th</sup> September 2020 Item 9 – in relation to the Blueprint

Report to the Shadow Executive Committee on 27<sup>th</sup> August 2020 Item 6 – in relation to the Blueprint