

OVERVIEW AND SCRUTINY MEETING

17 September 2024

SCRUTINY PROCEDURE RULES REVIEW - GUIDANCE AND PROTOCOL

Report of the Governance and Assurance Manager (Statutory Scrutiny Officer)

1.0 Purpose of the Report

- 1.1 To present the key principles of the Government's Scrutiny Protocol and Statutory Scrutiny Guidance for the Committee's information.
- 1.2 To seek consideration of a review into the Combined Authority's scrutiny procedures to reflect the Scrutiny Protocol and Statutory Scrutiny Guidance.

2.0 Recommendations

- 2.1 That the Committee note the key principles of the statutory scrutiny guidance published on 22 April 2024;
- 2.2 That the Committee note the key principles set of the scrutiny protocol published on 22 November 2023;
- 2.3 That the Committee consider a review of the Combined Authority's scrutiny procedures to reflect the above guidance and protocol.

3.0 Background

- 3.1 Schedule 5A of the Local Democracy, Economic Development and Construction Act 2009 requires that combined authorities have Overview & Scrutiny arrangements in place. This is further defined in the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.
- 3.2 The legislation requires that arrangements be made for Overview and Scrutiny to have the following powers:
 - (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the authority;
 - (b) to make reports or recommendations to the authority with respect to the discharge of any functions that are the responsibility of the authority;
 - (c) to make reports or recommendations to the authority on matters that affect the authority's area or the inhabitants of the area.
- 3.3 This Combined Authority's scrutiny arrangements are set out in its constitution and make arrangements for the above functions. The Combined Authority's

constitution is drafted in such a way that it reflects a 'safe and legal' approach to governance and scrutiny, but further work will need to be undertaken to develop these scrutiny procedures to reflect the Combined Authority's ambitions, circumstances and aspirations towards best practice. A parallel piece of work is to be undertaken by the Audit and Governance Committee to review the authority's constitution.

- 3.4 The Combined Authority must have regard to statutory guidance issued by Government and this was updated on 22 April 2024. This guidance is aimed at councils, combined authorities and combined county authorities in England to help them carry out their overview and scrutiny functions effectively. In particular, it provides advice for senior leaders, members of overview and scrutiny committees, scrutiny officers and any officers with a role in supporting scrutiny committees. The combined authority must have regard to this guidance and should observe it unless there are good reasons not to do so in a particular case.
- 3.5 In November 2023, as part of its Autumn Statement, Government additionally published a Scrutiny Protocol for all English institutions with devolved powers, including combined authorities, which seeks to strengthen and enhance the role of scrutiny in devolved authorities. Whilst non-statutory guidance, the government considers the Scrutiny Protocol a key factor in implementing Level 4 and single department-style funding settlements. It should be read alongside statutory guidance and relevant legislation.

4.0 Statutory Guidance

- 4.1 The guidance revolves around several key principles for ensuring effective scrutiny based broadly around the following:
- **Culture:** ensuring that the authority establishes an environment that is conducive to and supportive of scrutiny;
 - **Resourcing:** recognising that creating and sustaining an effective scrutiny function requires not only adequate resourcing (staffing) but identification of the necessary skills and training needed for committee members.
 - **Selecting committee members:** giving careful consideration to Members' skillsets and ensuring provision of technical advice.
 - **Power to access information:** committees have powers to access information but requests benefit from being targeted and with context.
 - **Planning work:** careful identification of topics and developing a clear work programme brings focus and helps ensure impact.
 - **Evidence sessions:** planning evidence sessions (including task and finish) and developing recommendations subsequently.
- 4.2 The guidance underlines that the role of effective overview and scrutiny across these principles is to:
- (a) Provide constructive 'critical friend' challenge;
 - (b) Amplify the voices and concerns of the public;
 - (c) Be led by independent people who take responsibility for their role;
 - (d) Drive improvement in public services and strategic decision-making.

5.0 Scrutiny Protocol

- 5.1 The Scrutiny Protocol is non-statutory guidance but should be seen as supplementary to statutory guidance and relevant legislation.
- 5.2 The Protocol primarily refers to “shoulds” – good practice, and key principles and additional scrutiny that government considers a key factor in implementing Level 4 and single department-style funding settlements. It also refers to requirements arising from legislation and statutory guidance that must be adhered to.
- 5.3 The Protocol explains that Scrutiny is most effective when it is highly focussed and seeks to achieve clear outcomes. There should be a commitment to focussing scrutiny activity through developing a clear, outcome-driven, and member-led work programme which is delivered through a committee structure that can enhance the delivery of that work programme to best effect. This could be a single committee or multi-committee model.
- 5.4 In combined authorities and combined county authorities, a single committee model should be considered to provide a shared platform from which all committee members can develop a strategic overview across all portfolio areas and an understanding of the interconnection of key policies to effectively scrutinise cross cutting issues. If another model is used it should be clear how this model is able to meet the key principles identified in this Protocol.
- 5.5 These key principles are:
1. pool of members
 2. politically balanced membership
 3. geographically balanced membership
 4. appointment of chair
 5. sustained appointments made on interest and skills
 6. well-resourced training
 7. inviting technical expertise
 8. remuneration and status
 9. holding the mayor or directly elected leader and the institution to account
 10. participation in pre-policy and pre-decision scrutiny
 11. provision to call in
 12. regular performance monitoring including agreed outcomes
 13. robust work programming
 14. focused task and finish exercises
 15. strong relationships with stakeholders
 16. regular self-evaluation and reflection
 17. access to data, research, and analysis

18. strong relationship with audit committees

5.6 Further details on each principle are contained in the Protocol, which can be found online at the following address:

<https://www.gov.uk/government/publications/scrutiny-protocol-for-english-institutions-with-devolved-powers/scrutiny-protocol>

6.0 Next Steps

6.1 Now that the Combined Authority is established, and its Overview and Scrutiny Committee appointed and commencing its work, the Committee may wish to consider undertaking a review of its Scrutiny arrangements in light of the above guidance and protocol to ensure that they are both robust and futureproof to meet best practice and the region's aspirations for deeper devolution.

6.2 If the Committee wish to undertake a piece of work then consideration should be given to the methodology for this piece of work. The Committee may opt to carry out task and finish group work, or may request that officers bring a report to a future committee meeting. A copy of the authority's Scrutiny Procedure Rules are attached at Appendix 1.

6.3 Any proposed changes to the Combined Authority's Scrutiny Procedure Rules would require consultation and agreement with the Audit and Governance Committee and onward approval of the Combined Authority.

7.0 Financial Implications

7.1 There are no direct financial implications arising from this report.

8.0 Legal Implications

8.1 Any legal implications are set out in the body of this report.

9.0 Equalities Implications

9.1 There are no direct equalities implications arising from this report.

10.0 Environmental Implications

10.1 There are no direct environmental implications arising from this report.

11.0 Combined Authority Areas Impacted (Council Areas/Wards/Divisions)

11.1 York and North Yorkshire Local Government areas.

12.0 Recommendations

12.1 That the Committee note the key principles of the statutory scrutiny guidance published on 22 April 2024;

12.2 That the Committee note the key principles set of the scrutiny protocol published on 22 November 2023;

12.3 That the Committee consider a review of the Combined Authority's scrutiny procedures to reflect the above guidance and protocol.

13.0 Reasons For Recommendations

13.1 In order to comply with the Combined Authority’s statutory duty to give regard to statutory guidance and to ensure preparedness for future devolved funding opportunities.

14.0 Contact Details

For further information please contact the author of this Report.

Author

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| Name: | Paul Clark |
| Job Title: | Governance and Assurance Manager (Statutory Scrutiny Officer) |
| Email: | Paul.clark@yorknorthyorks-ca.gov.uk |
| Report Approved: | Rachel Antonelli, Interim Deputy Monitoring Officer |
| Date: | 9 September 2024 |

Background papers

The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 - [The Combined Authorities \(Overview and Scrutiny Committees, Access to Information and Audit Committees\) Order 2017 \(legislation.gov.uk\)](#)

Overview and scrutiny: statutory guidance for councils, combined authorities and combined county authorities published on 22 April 2024 – [Scrutiny Guidance - GOV.UK \(www.gov.uk\)](#)

Scrutiny Protocol published on 22 November 2023 - [Scrutiny Protocol - GOV.UK \(www.gov.uk\)](#)

Appendices

Appendix 1 – YNYCA Scrutiny Procedure Rules

SECTION C – OVERVIEW AND SCRUTINY COMMITTEE PROCEDURE RULES

1. Establishment

- 1.1 Legislation requires that the Y&NYCA must establish one or more overview and scrutiny committees.
- 1.2 The Y&NYCA has determined to establish one overview and scrutiny committee whose remit is set out in Section D of Part 4 of this Constitution. The Y&NYCA may choose to review the scope and titles of this committee periodically.
- 1.3 In these scrutiny procedure rules, any provisions referring to an overview and scrutiny committee also apply to any sub-committees established by an overview and scrutiny committee.

2 Membership

- 2.1 The Y&NYCA will appoint to the committee annually following the annual meetings of its constituent councils.
- 2.2 The overview and scrutiny committee shall comprise twelve members appointed by the Y&NYCA from the elected members of the constituent councils.
- 2.3 In appointing members to the overview and scrutiny committee the Y&NYCA will have regard to any nominations made by constituent councils and also endeavour to ensure that the membership reflects the conurbation's diverse population.
- 2.4 The Y&NYCA must ensure that the members of the committee reflect (as far as reasonably practicable) the balance of political parties among members of the constituent councils across the whole Y&NYCA area.
- 2.5 The Y&NYCA will also appoint up to twelve substitute members who may be invited to attend as full members of the overview and scrutiny committee when apologies have been received. Substitute members will be appointed from the nominations received from constituent councils following their annual meetings and will be politically inclusive.

3 Committee Chair

- 3.1 The committee's Chair will be appointed from amongst its members.

- 3.2 The Chair must be a member of the committee who is an ‘appropriate person’ who is a member of one of the Constituent Councils. This requirement is set out in legislation.
- 3.3 An ‘appropriate person’ means:
- a person who is not a member of a registered political party of which the Mayor is a member;
 - or, where the Mayor is not a member of a registered political party, a person who is not a member of a registered political party which has the most representatives among the members of the Constituent Councils on the Y&NYCA or, where two or more parties have the same number of representatives, a member of either of those parties.
- 3.4 The overview and scrutiny committee may choose to appoint a vice chair, the vice chair should also be an appropriate person as described in rule 3.3 above.

4 Sub-Committees

- 4.1 The overview and scrutiny committee may establish one or more overview and scrutiny sub-committees to discharge its functions.
- 4.2 The overview and scrutiny committee shall determine the membership of the sub-committee, subject to meeting the requirements relating to political balance and chairing by an appropriate person (rules 2.5 and 3.2).
- 4.3 These rules also apply to any sub-committee established.

5 Meeting Frequency

- 5.1 The Overview and scrutiny committee will schedule regular meetings, of sufficient frequency to effectively discharge their function.
- 5.2 Additional meetings may be requested by the chair of the overview and scrutiny committee, or by any 5 members of the committee or by the Monitoring Officer. Notification of any additional meeting will be made by the Head of Paid Service.

6 Quorum

- 6.1 The quorum for the overview and scrutiny committee shall be two thirds of its total membership, 8 members. This is set out in legislation.
- 6.2 The quorum requirement also applies to any sub-committees established.
- 6.3 No business shall be transacted unless there are 8 members present
- 6.4 The meeting must start no later than 15 minutes after its advertised starting time, if there are not 10 members present then no meeting can take place.

- 6.5 If a meeting is inquorate those members present may still wish to informally discuss any issues which were due to be discussed at the meeting. However, this informal meeting cannot transact any formal business, its discussions cannot be minuted, and any issues which members wish to bring to a decision makers attention would need to be raised again at a formally constituted meeting of that scrutiny committee.

7 Voting

- 7.1 Each member of the overview and scrutiny committee has one vote.
- 7.2 No member is to have a casting vote.
- 7.3 Whenever a vote is taken at a meeting it shall be by a show of hands and voting will be recorded.

8 Overview And Scrutiny Committee Work Programme

- 8.1 The Overview and scrutiny committee and any sub-committees will be responsible for setting their own work programme, taking into account the wishes of members of that committee or sub-committee.
- 8.2 The overview and scrutiny committee shall also accommodate requests from the Y&NYCA and/or the Mayor to review areas of activity as soon as their work programme permits.
- 8.3 To assist with their work the overview and scrutiny committee will be provided with a copy of the Register of Key Decisions each time it is updated.
- 8.4 Legislation also requires the Y&NYCA to allow:
- a. Any member of an overview and scrutiny committee or sub-committee
 - b. Any member of the Y&NYCA
 - c. Any member of a Constituent Council to refer matters to an overview and scrutiny committee by notifying the Head of Paid Service in writing.
- 8.5 Matters to be referred must be:
- i. relevant to the functions of the committee and
 - ii. not an excluded matter²
- 8.6 The Chair of the overview and scrutiny committee in consultation with the Monitoring Officer will determine whether a matter is an 'excluded matter'.

² An excluded matter is one which is a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 or a matter of any description specified in an order made by the Secretary of State for the purposes of section 9FC of the Local Government Act 2000.

- 8.7 On receipt of a notice under Rule 8.4 the matter will be included on the agenda of the next meeting the committee or sub-committee provided it meets the statutory publication requirements.
- 8.8 When the overview and scrutiny committee considers a referred matter, it must have regard to any representations made by the member referring the item as to whether it would be appropriate to exercise its powers in relation to the matter being referred.
- 8.9 If the committee decides not to exercise its powers in relation to the referred matter, it must notify the member who referred the matter of their decision and the reasons for it.

9 Procedure at Overview and Scrutiny Committee Meetings

- 9.1 Where the overview and scrutiny committee conducts investigations (e.g., with a view to policy development), the committee may also ask people to attend to give evidence at committee meetings.
- 9.2 Following any investigation or review, the committee/sub-committee shall prepare a report, for submission to the Y&NYCA and/or the Mayor as appropriate and shall make its report and findings public.
- 9.3 The overview and scrutiny committee or sub-committee may make proposals to the Y&NYCA and/or the Mayor about any policy developments that fall within the committee's remit.
- 9.4 They may use choose to use different investigative methods, including task and finish groups to discharge this policy review function.

10 Reports and recommendations of the overview and scrutiny committee

- 10.1 The Y&NYCA 's overview and scrutiny committee may publish a report or make recommendations which may require the Y&NYCA or Mayor to:
- (a) consider the report or recommendations made by the committee;
 - (b) respond to the overview and scrutiny committee indicating what (if any) action the Y&NYCA or Mayor proposes to take;
 - (c) publish their response to the overview and scrutiny committee's report or recommendations;
 - (d) if the committee's report or recommendations were made in response to a matter referred by a member under rule 8.4 that member must also be provided with the response.
- 10.2 The Y&NYCA or the Mayor must respond to the committee's report or recommendations as soon as is practicable, but no later than two months from the date on which the Y&NYCA or the Mayor received the reports or recommendations.

- 10.3 The agenda for Y&NYCA meetings shall include the minutes of the previous month's scrutiny meetings which will highlight any recommendations for the Y&NYCA to consider.
- 10.4 Where the Mayor has delegated decision making power to another Member of the Y&NYCA, and the overview and scrutiny committee wishes to make recommendations regarding this decision they will submit a copy of their report to that delegated decision-maker (i.e. the Member of the Y&NYCA) for consideration as well as the Head of Paid Service and the Mayor.
- 10.5 If the Member with delegated decision-making power does not accept the recommendations of the overview and scrutiny committee then they must refer the matter to the Mayor for consideration before responding to the scrutiny committee in writing. This response will also be copied to the Head of Paid service.
- 10.6 Where a report or recommendation of the overview and scrutiny committee or a response of the Y&NYCA or the Mayor's response is published any confidential information must be excluded and any relevant exempt information may be excluded in line with the provisions of Article 8 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

11 Rights of Overview and Scrutiny Committee Members to Documents

- 11.1 Members of the overview and scrutiny committee have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Section B of Part 5 of this Constitution.
- 11.2 There may also be more detailed liaison between the Y&NYCA and/or the Mayor and overview and scrutiny committee as appropriate depending on the matter under consideration.
- 11.3 Additionally, the Chair of the Y&NYCA's overview and scrutiny committee has a standing invitation to attend meetings of the Y&NYCA including parts of the meeting where exempt items are discussed.

12 Members and Officers Giving Account

- 12.1 The overview and scrutiny committee or any sub-committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Y&NYCA function (including any mayoral general functions), within the remit of the committee.
- 12.2 As well as reviewing documentation, in fulfilling the scrutiny role, it may require any Member of the Y&NYCA (including the Mayor) or officer of the Y&NYCA to attend before it to explain in relation to matters within their remit:
 - (a) any particular decision or series of decisions;

- (b) the extent to which the actions taken implement Y&NYCA policy; and/or
- (c) their performance; and it is the duty of those persons to attend if so required.

12.3 Where, in exceptional circumstances, the Member or officer is unable to attend on the required date, then the overview and scrutiny committee shall, in consultation with the member or officer, arrange an alternative date for attendance.

13 Attendance by Others

13.1 The overview and scrutiny committee may invite people other than members of the Y&NYCA and/or the Mayor to support their deliberations on a matter. It may for example, wish to hear from residents, stakeholders and members and officers in other parts of the public sector or partner organisations.

14 Call-In Of Decisions

14.1 Call-in is one of a range of tools that scrutiny can use to influence decision-making.

14.2 Members appointed to the Y&NYCA's Scrutiny Committee have the power to call-in: The decisions made by:

- a. York and North Yorkshire Combined Authority (Y&NYCA)
- b. York and North Yorkshire Elected Mayor (for decisions relating to their general functions only but excluding fire and rescue functions) The decisions made under delegated powers by:
 - c. A Member of the Y&NYCA exercising delegated mayoral general functions
 - d. A Committee of the Y&NYCA
 - e. A Committee established by the Mayor to exercise mayoral general functions. and key decisions made under delegated powers by:
 - f. Officers of the Y&NYCA, (as set out in Part 3 Section F of the Constitution).

14.3 When the Y&NYCA or any of its committees (with delegated decision-making powers), makes a decision; or when the mayor makes decision relating to their mayoral general functions, a decision notice will be published which sets out the decision(s) that have been made. This notice will also be made available at the offices of the Y&NYCA. The decision notice should be usually published within working 2 days of the decision being made.

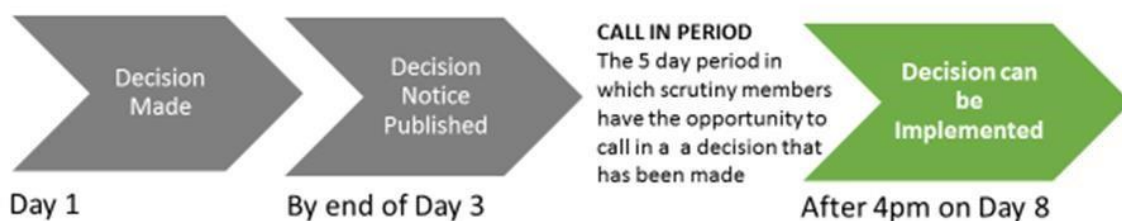
14.4 It is the responsibility of the Secretary to send electronic copies of the records of all such decisions to all members of the Y&NYCA and all members of the Y&NYCA's overview and scrutiny committee and any scrutiny sub committees (if established). This notice will enable members of the scrutiny committee to review the decisions that have been made and consider whether they would like any further information about them.

14.5 Each decision notice will bear the date on which they are published and will specify the date that the decision will come into force. Decisions may be

implemented from 4.00 pm on the fifth day after the day on which the decision was published, unless before that time three members of the committee decide to call it in. The members must give notice in writing to the Head of Paid Service that they wish to call-in the decision, stating their reason(s) why the decision should be scrutinised.

- 14.6 The period between the publication of the decision notice and the time a decision may be implemented is the call-in period. The diagram below illustrates

Decision Making Timeline



NOTE: For Key Decisions there is an additional requirement to publish an intention to make a decision on the Register of Key Decisions 28 clear days in advance (in practice this means 30 days)

- 14.7 A decision may not be called in if the overview and scrutiny committee has already made recommendations to the decision-maker and those recommendations have been accepted by the decision-maker either in whole or without significant addition or modification.

14.8 Budget Scrutiny

Provided that the views and recommendations (if any) of the Y&NYCA Overview & Scrutiny Committee on the proposals for the Transport levy and statutory contributions, non-mayoral Y&NYCA Budget, Mayor’s draft General Budget and Mayoral combined authority precept have been formally reported to both the Mayor and the Y&NYCA and considered by them, the decisions of the Y&NYCA to set the annual budgets, levies and precept shall not be susceptible to call in. A report shall be provided to the next suitable meeting of the Y&NYCA Overview & Scrutiny Committee if its recommendations are not substantially accepted.

15 Call-in Procedure

- 15.1 The purpose of call in is to give the overview and scrutiny committee the opportunity to consider whether they should ask the decision maker to review their decision. If three members of the overview and scrutiny committee request to call-in a decision the Head of Paid Service must notify the relevant decision-maker of the call-in except where paragraph 16.4 applies.

- 15.2 The Head of Paid Service must then convene a meeting of the overview and scrutiny committee on such date as they may determine, where possible after consultation with the chair of the overview and scrutiny committee.
- 15.3 The meeting must be convened within ten working days of the decision to call-in. If it is not possible to convene a quorate scrutiny meeting within this period such a meeting must instead be convened as soon as practicable to consider the call in. The decision-maker will have the right to attend the meeting to explain the reasons for the decision and to answer questions at the meeting. At the scrutiny meeting in which the call-in is reviewed the overview and scrutiny committee will consider the reasons for call-in and the decision-maker's response to any questions the committee may agree to. The committee may decide to:
- a. Make no recommendations (in which case the decision will stand and may be implemented with immediate effect); or
 - b. Refer the matter back to the decision-maker with a recommendation that the decision-maker: changes aspects of the decision; reconsiders the decision in light of the committee's views; or does something else before the final decision is made.
- 15.4 If a decision is referred by a meeting of the overview and scrutiny committee the decision-maker must reconsider the original decision before adopting a final decision. After reconsidering their decision, the decision maker must write to the overview and scrutiny committee and set out if they have amended their decision or explain the reasons why their decision stands.

16 Urgent decisions: Call-in

- 16.1 In York & North Yorkshire the grounds for a decision to be considered as urgent (and therefore not subject to call-in) are that if any delay likely to be caused by the calling in process would seriously prejudice the legal or financial position of the Y&NYCA or the constituent councils, or the interests of the residents of York and North Yorkshire.
- 16.2 The chair of the overview and scrutiny committee must agree both that the making of the decision is urgent, cannot reasonably be deferred and that it can be treated as a matter of urgency. In the absence of the chair of the overview and scrutiny committee, the chair of the Y&NYCA must agree the grounds of urgency, or in the absence of the chair of the Y&NYCA, the vice chair of the Y&NYCA may agree the grounds for urgency.
- 16.3 As soon as agreement has been obtained by the decision maker that the making of the decision is urgent the decision maker must publish a notice in its offices and on its website which states the reason why the decision is urgent and cannot reasonably be deferred.

- 16.4 Where a decision is exempted from call-in it will become effective immediately or (if later) as soon as the agreement of the chair of the overview and scrutiny committee (or of the chair or vice chair of the Y&NYCA) has been obtained.
- 16.5 Decisions taken as a matter of urgency must be reported to the next meeting of the Y&NYCA, together with the reasons for urgency.
- 16.6 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to the Y&NYCA with proposals for review if necessary.

17 Scrutiny Officer

- 17.1 The Y&NYCA must designate one of its officers as the scrutiny officer of the overview and scrutiny committee(s) to discharge the following functions:
- (a) to promote the role of the overview and scrutiny committee(s);
 - (b) to provide support and guidance to the overview and scrutiny committee(s) and to members of such committees; and
 - (c) to provide support and guidance to Members of the Y&NYCA and to the Mayor in relation to the functions of the overview and scrutiny committee(s).
- 17.2 The Y&NYCA may not designate as the scrutiny officer any officer of a Constituent Council.