



Consultation Draft – October 20, 2020

NOTE TO READER

THIS “CONSULTATION DRAFT” CONSTITUTION HAS BEEN DEVELOPED TO SHARE WITH ALL WHITECAP MEMBERS TO GET THEIR INPUT. IT IS NOT THE FINAL VERSION FOR APPROVAL. MEMBERS WILL HAVE DIFFERENT OPPORTUNITIES OVER THE NEXT FEW MONTHS TO PROVIDE INPUT AND ASK QUESTIONS ABOUT THEIR CONSTITUTION. COUNCIL WILL THEN PRESENT A FINAL VERSION FOR COMMUNITY RATIFICATION WHICH IS CURRENTLY TARGETED FOR JUNE 2021.

**WHITECAP DAKOTA FIRST NATION
 DRAFT CONSTITUTION**

Declaration of Whitecap Dakota First Nation/Wapaha Ska Oyate

Preamble

We are the Whitecap Dakota Oyate, a Sovereign Nation, and this is our written Constitution. This Constitution exists alongside and is guided by our Dakota traditions and customs that we have passed down from Generation to Generation.

The Whitecap Dakota, by virtue of our Creator and original occupation of the land since time immemorial, has the inherent right to maintain, improve and establish connection to our Dakota heritage, lands, resources, language and laws as ancestors of our Nation, the Oceti Sakowin have exercised.

Our Dakota teachings and values are the roots of our Constitutional principles and guide the interpretation and implementation of our Constitution.

The Whitecap Dakota and the Whitecap Government are committed to the principle of honouring and respecting the customs and traditions of our ancestors and our oral history.

We, the people of Whitecap Dakota First Nation, hereby adopt and approve this Constitution.

Preamble

The Preamble introduces our Constitution. It addresses many things:

- Who we are and where we come from
- Our connection to our ancestors and the Oceti Sakowin
- The lands and territory that are part of our heritage which we have never ceded nor surrendered
- That we have there has been Dakota Government through the laws of the Oceti Sakowin
- The importance of our teachings, language, and culture.
- Our historic alliance with the British Crown and our contributions to Canada
- The Role of this Constitution in our Nation





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Our People and Territory

The Whitecap Dakota Members are from the Seven Council fires also known as the Oceti Sakowin. The Dakota are the people from the plains organized as a member under the laws of the Oceti Sakowin.

Our traditional territories include the vast prairie region watered by the Missouri and the upper waters of the Saskatchewan Rivers, ranging from modern-day Wisconsin through Minnesota, and north to Ontario through the Prairie Provinces.

The Dakota are not a conquered Nation. Whitecap Dakota traditional territory has never been ceded, released, or surrendered.

From time immemorial we have been a sovereign, self-sufficient Nation with our own language, customs and traditions, and government, education, military, economic systems.

From time immemorial we have occupied and protected the traditional territories of our people.

Our Teachings and Culture

We honour and respect our Dakota teachings, which belong to the Dakota people and the people of Whitecap Dakota, and commit to protect, promote, preserve and maintain our distinct Dakota language, culture, and values.

We recognize the important role of our Elders to preserve and protect our language, culture, and Dakota way of life and to pass it down from generation to generation.

It is our traditional way that all Whitecap Dakota Members have a place in our community and a responsibility to contribute to our well-being. We are responsible for working together in accordance with Kinship Laws to promote the harmony of individuals and families within the Whitecap Dakota First Nation.

The Principles of the Dakota people have endured over time and will persist and guide us into the future. We will retain our Nation's self-sufficiency and the shared holding of Lands for all Whitecap Dakota Members.





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Our Alliances and Contributions to Canada

We have welcomed others into our traditional territories with the understanding that they respect our Dakota ways, teachings and values. This includes alliances with other First Nations, as well as with the French and British Crowns.

Our long-standing alliance with the British Crown began in the 18th Century and led to treaties, military alliances, and economic partnerships.

Our alliance with the British Crown was recognized through ceremony and by treaty in the 1700s. We as Dakota people played a vital role in the creation of Canada, through our alliances with the British Crown in the Pontiac War, the American Revolution, and again in the War of 1812.

Although our relationship with the Crown has diminished over time through legislation, policies and practices such as the Indian Act and Residential Schools, as descendants of the Oceti Sakowin, it is our inherent right to continue to build and restore our Nation and to restore the relationship with the Crown to one of mutual co-existence.

Our Inherent Right to Self-Govern

Our inherent right to self-government, self-determination, and sovereignty flows from the Creator and our natural laws, and are guided by our Dakota origin story, oral histories, traditions, and Elders' teachings.

The Crown has recognized, affirmed and protected our inherent right to self-government and self-determination through *The Royal Proclamation of 1763*, and s.35(1) of the *Constitution Act, 1982*. These rights are recognized in the Treaties with the British Crown and also within the *United Nations Declaration on the Rights of Indigenous Peoples*.





WAPAHA SĀ DAKOTA OYĀĒ IHDUHĀPI
Oyāē Ho Uñtāñjīpi
The Voice of Our Nation
WHITECAP DAKOTA GOVERNMENT



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The Role of Our Constitution

The supreme written law of the Whitecap Dakota is this Constitution, which gives legitimacy to the Whitecap Dakota First Nation Governance Agreement. This Constitution creates the power and authority to make our own laws, build programs, and create an environment which will enable our people to find their place and thrive within our Nation.

The purpose of this Constitution is to honour and uphold Dakota traditional natural laws to guide the Whitecap Dakota in both modern and traditional ways of life to best promote the welfare of the Nation and future generations.

By virtue of these founding principles, the Whitecap Dakota Members exercise the rights and responsibilities inherent in the governing of its members, as our ancestors have since time immemorial, through the adoption of this Constitution.





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PART 1 DEFINITIONS AND INTERPRETATION

1. In this Constitution:

- (a) “**Election Code**” means the *Whitecap Dakota First Nation #94 Custom Election Act, 2020*, as amended from time to time.
- (b) “**Financial Management and Accountability Code**” means the Whitecap Dakota financial management and accountability code set out in Part 9 of this Constitution.
- (c) “**Membership Code**” means the *Whitecap Dakota First Nation Membership Code*, as amended from time to time.
- (d) “**Land Code**” means *Whitecap Dakota First Nation Land Code, 2015*, as amended from time to time.
- (e) “**Membership Meeting Vote**” will be required to amend a WDFN Code and requires that at least 50% plus one of eligible WDFN Members at a duly convened Whitecap Dakota membership meeting vote in favor of the amendment.
- (f) “**Principles**” means the Dakota principles which are Wówicąke – Honesty, Ohañwašte – Generosity, Wówaditika – Bravery, Wóohoda/Oho’da – Respect, Wóksape – Wisdom, Wóuñšida – Humility and Teñjida – Love.
- (g) “**Register of Laws**” means a register where an official list or record of WDFN Laws are kept by Whitecap Dakota.
- (h) “**WDFN Act**” is a WDFN Law approved and implemented in accordance with section 23 of this Constitution.
- (i) “**WDFN Code**” is a WDFN Law approved and implemented in accordance with sections 21 and 22 of this Constitution.

Definitions

The Constitution begins with the definition of key words in order to avoid legal misinterpretations in the text.

Key examples:

- Whitecap Dakota Council
- WDFN Member
- Ratification Vote
- Self-Government Agreement

This part also declares that this Constitution is our supreme law and prevails over all other WDFN laws.





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- (j) **“WDFN Election”** means a General Election or a By-Election for the positions of Chief and Councillors of the WDFN in accordance with the Election Code.
- (k) **“WDFN Governance Code”** means the Whitecap Dakota governance code which is outlined in Part 5 of this Constitution.
- (l) **“WDFN Institution”** means an organization, body or entity controlled by Whitecap Dakota that administers a specific government policy or program and includes the WDFN public service.
- (m) **“WDFN Lands”** are those lands, or any portion of those lands, defined in the *Whitecap Dakota First Nation Land Code, 2015*, as amended from time to time, and includes all rights and resources belonging to those lands.
- (n) **“WDFN Law”** includes altogether this Constitution, WDFN Codes, WDFN Acts, and any related WDFN regulations and policies.
- (o) **“WDFN Member”** means a person whose name appears on, or is entitled to appear on, the Membership List referenced in the WDFN Membership Code.
- (p) **“Whitecap Dakota”** or **“Nation”** means the Whitecap Dakota Oyate or Whitecap Dakota First Nation.
- (q) **“Whitecap Dakota Council”** means the governing Council of the Whitecap Dakota Government in accordance with Part 3 of this Constitution and the WDFN Governance Code.
- (r) **“Whitecap Dakota Government”** includes both the elected Whitecap Dakota Council and unelected officials in accordance with Part 3 of this Constitution and the WDFN Governance Code.





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(s) **“Ratification Vote for WDFN Code”** will be required to approve and implement new WDFN Codes and requires that:

- (i) At least 25% of all eligible WDFN Members participate in the ratification vote for passing a WDFN Code
- (ii) At least 25% of all eligible WDFN Members cast their vote in favor of approving and implementing the WDFN Code at issue; and; and
- (iii) At least 50% plus one of the eligible WDFN Members who do participate in the ratification vote, vote in favor of the WDFN Code.

(t) **“Self-Government Agreement”** means the Whitecap Dakota First Nation Governance Agreement as between the Whitecap Dakota and Her Majesty the Queen in right of Canada.

2. This Constitution prevails over all other WDFN Laws.





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PART 2 PURPOSE

3. This Constitution serves as the supreme written law of Whitecap Dakota First Nation by:
 - (a) Creating the Whitecap Dakota Government to replace the Whitecap Dakota Band Council established through the *Indian Act*;
 - (b) Recognizing and giving effect to the Whitecap Dakota First Nation Governance Agreement made with the Her Majesty the Queen in Right of Canada;
 - (c) Incorporating and adopting existing WDFN Laws, such as the Land Code, Membership Code and Election Act, as part of WDFN’s framework of laws;
 - (d) Providing for the exercise of legislative powers and duties by the Whitecap Dakota Government to adopt new Codes, Acts, regulations and policies; and
 - (e) Honouring and upholding Dakota Traditional laws and that can be combined with modern and traditional ways of life to promote the welfare and sustainability of the Nation and future generations of the Whitecap Dakota.

PART 3 WHITECAP DAKOTA GOVERNMENT

4. The Whitecap Dakota people as WDFN Members create the Whitecap Dakota Government through this Constitution.
5. The Whitecap Dakota Government will be determined by WDFN Law.
6. The Whitecap Dakota Council is comprised of a Chief and no more than four (4) Councillors, as provided for in the WDFN Governance Code.

Purpose of the Constitution

- To create WDFN Government in WDFN Council
- To put Governance Agreement with Canada into effect
- To Create our system of laws
- To adopt our existing laws (e.g. Land Code, Membership Code)
- Honour traditional Dakota ways

WDFN Government

- Whitecap Dakota Government created by WDFN Law
- Council will have Chief and no more than 4





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PART 4 WHITECAP DAKOTA GOVERNMENT AND WDFN MEMBERS

7. The Whitecap Dakota Government will honour traditional Dakota governance practices within a modern context and its responsibilities will include:
 - (a) Supporting the well-being of WDFN Members;
 - (b) Promoting and enhancing Dakota culture and language in the Nation;
 - (c) Supporting and enabling WDFN Members to honour Dakota teachings and Dakota ways;
 - (d) Working with other Dakota nations to revitalize the traditional governance system of the Oceti Sakowin;
 - (e) Advocating for and promoting Whitecap Dakota interests by building alliances with other governments, businesses and organizations;
 - (f) Upholding and abiding by the Principles of this Constitution; and
 - (g) Being transparent and accountable to WDFN Members.
8. The Whitecap Dakota Government will recognize and protect the rights of WDFN Members set out in the *Canadian Charter of Rights and Freedoms* and this Constitution.

WDFN Government Responsibilities

- Well-being of members
- Promote Dakota culture and language
- Revitalize traditional governance
- Build alliances and partnerships
- Be accountable to members
- Whitecap Government will abide by Canada's Charter of Rights





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9. WDFN Members will respect and honour our ancestors and Dakota laws, practices, and customs, and will hold themselves accountable, along with the Whitecap Dakota Government, to promote a healthy and safe Nation for all WDFN Members. This includes:
- a) Respecting Dakota Kinship Laws and Principles by working together, being good relatives, and respecting one another;
 - b) Honouring the sense duty and responsibility to one another and all living things;
 - c) Restoring and revitalizing traditional Dakota ceremonies and language as part of a community-wide, collective process;
 - d) Adopting a work ethic in education and employment as a contributing citizen to strengthening our Nation now and for future generations; and
 - e) Following the traditional laws which acknowledge and recognize that no one WDFN Member is above or below other WDFN Members.

PART 5 WDFN GOVERNANCE

10. WDFN shall enact a WDFN Governance Code that will:
- (a) Subject to Part 3 of this Constitution, set out the structure and composition of the Whitecap Dakota Government, including the number of Councillors who will constitute the Whitecap Dakota Council, and their term of office;
 - (b) Set out the processes and procedures for changing the composition of the Whitecap Dakota Council;

WDFN Member Responsibilities

- Members role in observing Dakota Kinship Laws
- Honouring Dakota ceremonies and language
- Equality of all members

Governance Code

Constitution requires a supporting Governance Code that:

- Defines structure of WDFN Government, including size of Council (as long as not greater than 4 Councillors)
- Procedures for changing size of Council, subject to maximum of 5 (see s. 6)





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- (c) Set out the duties and responsibilities of the Whitecap Dakota Council;
- (d) Provide a standard of ethics that the Whitecap Dakota Government must follow;
- (e) Outline principles and processes relating to conflicts of interest;
- (f) Set out the expectations for Whitecap Dakota Council conduct and the processes and procedures for removal of elected officials;
- (g) Respect FN Members' right to privacy and right to access information;
- (h) Set out the Whitecap Dakota Oyate Oath of Office;
- (i) Set out Whitecap Dakota Council's ability to establish and maintain committees and boards;
- (j) Set out WDFN Law making processes and procedures, including a requirement for three (3) readings of a draft WDFN Law before approval and provisions for passing WDFN Laws in specified emergency circumstances;
- (k) Require adequate WDFN Member consultation and input when approving and passing WDFN Laws in order to ensure informed consent and open and transparent processes;
- (l) Set out mechanisms and criteria for delegating authorities conferred through WDFN Law;
- (m) Provide for a Register of Laws; and

Governance Code

- Sets out responsibilities of Council
- Conflict of interest rules
- Conduct of Council
- How to remove Chief/Council from office
- Rules for protection of privacy
- Law making procedures;
 - Three readings of new laws
- Member input
- Delegating certain powers
- Register of Laws





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- (n) Set out the roles, rights, and responsibilities of non-Members residing on WDFN Lands, including:
 - (i) Mechanisms for input into Whitecap Dakota Government decision making; and
 - (ii) Rights of appeal and redress mechanisms for people who are not WDFN Members, but who are affected by decisions of the Whitecap Dakota Government.

11. The WDFN Governance Code shall be developed, implemented, and interpreted in a manner that observes and respects traditional Dakota governance structures, practices, and values.

PART 6 ELECTIONS

- 12. WDFN Elections will continue to be held in accordance with WDFN Law, including the Election Code.
- 13. WDFN Laws relating to elections will:
 - (a) Set out the processes and procedures for WDFN Elections;
 - (b) Set out the processes and procedures for appealing decisions relating to WDFN Elections;
 - (c) Set out the requirements and procedures relating to partial terms of WDFN elected officials; and
 - (d) Set out eligibility requirements for voting and running for Whitecap Dakota Council.

Governance Code

- How non-Members can have input on certain matters, including a way to appeal WDFN government actions.

Elections

WDFN election law will continue with processes under current Election Code, including:

- election procedures
- requirements for voting and running for office
- appeal procedures





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PART 7 MEMBERSHIP

14. WDFN Membership will be determined in accordance with WDFN Law and the Membership Code.
15. WDFN Laws relating to membership will:
 - (a) Promote and maintain the cultural integrity, social harmony, and economic stability of Whitecap Dakota based on traditions and values of the Dakota people;
 - (b) Ensure that membership is not unjustly taken away from any WDFN Member;
 - (c) Set out the criteria for membership in WDFN;
 - (d) Set out the processes and procedures for applying for membership in WDFN; and
 - (e) Set out the processes and procedures for appealing decisions about entitlement to membership in WDFN.

Membership

WDFN Membership Code will continue with a membership law that will:

- respect Dakota ways
- promote harmony and stability
- define process for applying for WDFN membership
- be fair in its membership processes





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PART 8 WHITECAP DAKOTA LANDS AND RESOURCES

16. WDFN Lands will continue to be governed by WDFN Law, in accordance with the Land Code.
17. WDFN Lands will continue to be set apart by Her Majesty the Queen in Right of Canada for the exclusive use and benefit of the Whitecap Dakota.
18. WDFN Council may, pursuant to the Land Code enact such other WDFN Laws as it considers necessary for the proper administration of WDFN Lands.
19. WDFN Laws relating to WDFN Lands will:
 - (a) Set out the principles, rules, and structures that apply to WDFN Lands;
 - (b) Set out principles, rules, and procedures that apply to changes to boundaries of WDFN Lands and to land transactions conducted by the Whitecap Dakota Government;
 - (c) Ensure that WDFN Lands are preserved, protected, maintained, and respected;
 - (d) Allow for WDFN to hold title to fee simple lands and for WDFN Law to apply on those lands, subject to any agreements with other governments; and
 - (e) Ensure that the Whitecap Dakota Government consults with WDFN Members regarding matters involving WDFN Lands and land use planning.

Lands and Resources

WDFN Land Code will continue with land laws that will:

- protect WDFN lands
- control land transactions and uses of WDFN lands
- enable WDFN to own lands other than Reserve Lands
- consult WDFN members on how their lands are used





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PART 9 FINANCIAL MANAGEMENT AND ACCOUNTABILITY

20. Whitecap Dakota financial management and accountability will be governed by WDFN Law.
21. WDFN will enact a Financial Management and Accountability Code which will:
- (a) Set out the principles and procedures of WDFN financial management and administration;
 - (b) Require annual audited financial statements;
 - (c) Require annual reporting to WDFN Members; and
 - (d) Ensure that the financial management of WDFN will be prudent, transparent, accountable, and provide effective and efficient use of WDFN's financial resources.

PART 10 WDFN LAWS

22. WDFN will govern itself primarily through this Constitution, WDFN Codes, and WDFN Acts.
23. WDFN Codes will:
- (a) Be mandated by this Constitution;
 - (b) Be approved and implemented by Ratification Vote for WDFN Code;
 - (c) Be amended by Membership Meeting Vote; and
 - (d) Provide authority for WDFN Acts based on principles and criteria set out in the WDFN Code.

Financial Management & Accountability

Constitution requires a supporting Financial Management and Accountability Code that enables:

- strong financial management procedures
- annual audits and reporting to Members
- prudent and transparent financial management

Law Making Process

Three levels of WDFN Laws:

1. Constitution
2. Codes
3. Acts

WDFN Codes

- Process for passing and amending Codes is easier than Constitution but more difficult than passing an Act





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24. Existing WDFN Codes are deemed to be ratified as WDFN Codes under this Constitution, including:
- (a) the Land Code;
 - (b) the Election Code; and
 - (c) the Membership Code.
25. WDFN Acts will:
- (a) Be authorized by a WDFN Code or this Constitution based on the jurisdictions set out in the Self-Government Agreement;
 - (b) Be approved and implemented by the Whitecap Dakota Government; and
 - (c) Be amended by the Whitecap Dakota Government.

WDFN Codes

- New Codes (e.g. Governance Code, Finance Code) will require a vote by members.
- Existing Land, Membership and Election Codes have already been approved.

WDFN Acts

- WDFN Acts will be passed much like current Land Laws under the WDFN Land Code
- WDFN Acts can be passed based on law-making powers set out in Governance Agreement





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PART 11 WDFN INSTITUTIONS AND INTERGOVERNMENTAL RELATIONS

26. Whitecap Dakota recognizes the vital role that WDFN Institutions contribute to the Nation's sustainability.
27. The Whitecap Dakota Council may establish WDFN Institutions to perform functions of the Whitecap Dakota Government.
28. The Whitecap Dakota Council has authority to enter into agreements with other entities, including governments and corporations, for the benefit of WDFN.
29. The Whitecap Dakota Government has authority to hire and maintain employment relationships with employees, including those employees constituting the public service, which will be administered in accordance with a human resource policy as approved by the Whitecap Dakota Council.

PART 12 DISPUTE RESOLUTION

30. The validity of a WDFN Law may be challenged in the Court of Queen's Bench of Saskatchewan, the Federal Court of Canada, or a tribal court created by WDFN.
31. Any contravention of this Constitution by the elected Whitecap Dakota Council may be met by penalties and consequences including the removal from office in accordance with WDFN Law and the WDFN Governance Code.

Institutions & Intergovernmental Relations

Council can establish institution and bodies to help run WDFN governance

- Advisory Committees
- Early Learning Centre
- Whitecap DevCorp

Council can enter into agreements with other governments and groups

- WDFN-SPS Education Partnership
- Court Services MOA
- Infrastructure projects

Dispute Resolution

- Whitecap Law can be challenged in current courts or a future WDFN tribal court
- Council is penalized if they do not follow Constitution





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PART 13 VOTING PROCEDURES

32. Ratification Votes, Membership Meeting Votes, and other Nation approvals will be governed by WDFN Law and the WDFN Governance Code.
33. WDFN Laws relating to Ratification Votes, Membership Meeting Votes, and other Nation approvals will:
 - (a) Set out the processes and principles of Ratification Votes, Membership Meeting Votes, and Nation approvals; and
 - (b) Ensure that WDFN Members are appropriately consulted while allowing WDFN to make decisions efficiently and effectively.

PART 14 RATIFICATION OF CONSTITUTION

34. Ratification of this Constitution requires that a special vote be held, and that:
 - (a) At least 40% of eligible WDFN Members participate in the vote; and
 - (b) Of the eligible WDFN Members who participate in the vote, at least 60% plus one shall vote in favor of the Constitution being ratified.

Voting Process

WDFN laws for two types of votes that are used in passing WDFN Law

- Ratification Vote -Votes to approve new Codes or amend Constitution; 25% of all eligible Members.
- Membership Meeting Vote-Votes to amend Codes; majority at a Band Membership meeting (See Definitions)

Approving Constitution

- Requires a vote of Members with 40 per cent participating and passing with 60 per cent majority





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PART 15 AMENDMENT OF CONSTITUTION

35. Amendments to this Constitution will be approved by way of a Ratification Vote where:

- (a) At least 25% of all eligible WDFN Members participate in the ratification vote for passing a WDFN Code
- (b) At least 25% of all eligible WDFN Members cast their vote in favor of approving and implementing the WDFN Code at issue; and; and
- (c) At least 50% plus one of the eligible WDFN Members who do participate in the ratification vote, vote in favor of the WDFN Code.

PART 16 GENERAL AND COMING INTO FORCE

36. This Constitution will come into force in principle as part of the Self-Government Agreement Ratification Vote.
37. This Constitution will come into legal effect as part of the self-government ratification and enactment process.
38. In the event that this Constitution is ratified but the Governance Agreement is not, this Constitution will come into legal effect by approval of a Band Membership Meeting Vote.

Amending Constitution

- Requires 25 per cent of Members to participate and support (see definition)

Coming into Force

- Constitution will be adopted “in principle” if it approved as part of self-governance ratification vote in June 2021.
- E.g. Complete work on new Codes
- Constitution will take full legal effect as part implementation.

