

# Part 2 - Articles of the Constitution

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# Article 1 – The Constitution

## 1.01 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

## 1.02 The Constitution

This Constitution, and all its appendices, is the Constitution of the Thanet District Council.

## 1.03 Purpose of the Constitution

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership to the community in partnership with residents, businesses and other organisations;
2. support the active involvement of residents in the process of local authority decision-making;
3. help Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no one will review or scrutinise a decision for which they were directly responsible;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.

## 1.04 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council may monitor and evaluate the operation of the Constitution as set out in Article 15 and may make changes to it at any time.

# Article 2 – Members of the Council

## 2.01 Composition and eligibility

- (a) **Composition.** The Council will comprise 56 members, otherwise called councillors. One or more councillors will be elected by the voters of each ward in accordance with the law applicable at the time of any election.
- (b) **Eligibility.** Only registered voters of the district or those living or working there will be eligible to hold the office of councillor.

## 2.02 Election and terms of Councillors

**Election and terms.** The regular election of councillors will be held on the first Thursday in May every four years beginning in 2003. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

## 2.03 Roles and functions of all Councillors

- (a) **Key roles.** All councillors will:
  - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (ii) represent their communities and bring their views into the Council's decision-making process;
  - (iii) effectively represent the interests of their ward and of individual constituents;
  - (iv) respond to constituents' enquiries and representations, fairly and impartially;
  - (v) participate in the governance and management of the Council;
  - (vi) maintain the highest standards of conduct and ethics; and
  - (vii) be eligible to represent the Council on other bodies.
- (b) **Rights and duties**
  - (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
  - (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.

- (iii) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Rules in Part 4 of this Constitution.

#### 2.04 **Conduct**

Councillors must at all times observe the Members’ Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

#### 2.05 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Part 6 of this Constitution.

# Article 3 – Residents and the Council

## 3.01 Residents' rights

**NB. These rights are subject to the provisions of the relevant legislation and, where applicable, to the provisions of this Constitution.**

Residents have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution.

- (a) **Voting and petitions.** Residents on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.
- (b) **Information.** Residents have the right to:
  - (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) attend meetings of the executive when key decisions are being considered;
  - (iii) find out from the forward plan what key decisions will be taken by the Cabinet and when;
  - (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet; and
  - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Residents have the right to participate in the Council's question time and contribute to investigations by overview and scrutiny Panels.
- (d) **Complaints.** Residents have the right to complain to:
  - (i) the Council itself under its complaints scheme;
  - (ii) the Ombudsman after using the Council's own complaints scheme;
  - (iii) about the conduct of a member if they have evidence which they believe shows that a member has breached the Council's code of conduct.

## 3.02 Residents' responsibilities

Residents must not be violent, abusive or threatening to councillors or officers and must not wilfully harm things owned by the council, councillors or officers.

### 3.03 **Contacting the Council**

Residents can contact the Council through its website, by email, in person or on the telephone.

# Article 4 – The Full Council

## 4.01 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:
- Community Safety Plan;
  - Plans and strategies which together comprise the Local Plan
  - Council’s Corporate Plan;
  - Housing, Homelessness and Rough Sleeping Strategy
  - Housing Assistance Policy
  - HRA Business Plan
  - Treasury Management Strategy

*Other plans and strategies which the council may decide should be adopted by the Council meeting*

- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council’s borrowing requirement, the control of its capital expenditure and the setting of virement limits.
- (c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

## 4.02 Functions of the full Council

Except as otherwise allowed by Article 13 and Article 15, only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) appointing the leader;

- (e) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2.05;
- (h) changing the name of the area;
- (i) confirming the appointment of the head of paid service;
- (j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the executive; and
- (l) all other matters which, by law, must be reserved to Council.

#### 4.03 **Council meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### 4.04 **Responsibility for functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.



# Article 5 – Chairing the Council

## 5.01 Role and function of the chairman

The chairman of council and in their absence, the vice-chairman, will have the following roles and functions:

- Ceremonial role
- Chairing the council meeting

The Chairman will be elected by the Council annually. The chairman will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on the Cabinet or hold committee chairs are able to hold the cabinet members and committee chairmen to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council; and
6. to attend such civic and ceremonial functions as the Council and they determine appropriate.

# Article 6 – Overview and Scrutiny Panel

## 6.01 Terms of reference

The Council will always appoint at least one overview and scrutiny panel to discharge the functions conferred by section 21 of the Local Government Act 2000 and set out in detail in 6.03 of this article.

## 6.02 General role

Within their terms of reference, the Overview & Scrutiny Panel will:

- (a) Lead in reviewing proposals by the executive regarding policy development matters affecting the delivery of services in Thanet
- (b) To consider matters relating to community wellbeing and safer neighbourhoods.
- (c) Within the remit of the Panel, make reports and/or recommendations to the Cabinet, Council or any appropriate Committee in connection with the discharge of any functions;
- (d) Consider any matter affecting the area or its residents within the remit of the Panel; and
- (e) Exercise the call-in function of the Council

## 6.03 Specific functions

Terms of Reference

- (a) To lead on overview and scrutiny policy matters having specific regard for developing new approaches to policy and making appropriate recommendations to assist the Cabinet and the Council in the development of its policy framework. This includes reviewing all the plans and strategies within the policy framework as set out in Article 4 of the Constitution;
- (b) Considering the Council's Forward Plan;
- (c) Consider all petitions that request for new services or requiring council action on an emerging matter affecting the local community;
- (d) Consider all community safety matters and act as the community safety scrutiny panel;
- (e) To deal with all call-in matters arising under Overview and Scrutiny Procedure Rule 15 and Budget and Policy Framework Procedure Rule 6;

- (f) Consider all valid Councillor Call for Action (CCfA) submissions made through the CCfA protocol in the Constitution;
- (g) Within the constraints of officer time and budgets, conduct research, community and other consultation in the analysis of policy issues and possible options;
- (h) Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (i) Within the remit of the Panel, to make reports or recommendations to the authority or the Cabinet (where appropriate) with respect to the discharge of any functions which are not the responsibility of the Cabinet;
- (j) Liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
- (k) To make reports on community wellbeing and policy development recommendations to the authority or the Cabinet on matters which affect the authority's area or the inhabitants of the area

#### 6.04 **Annual Report**

The Overview & Scrutiny Panel will report annually to Full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

#### 6.05 **General role**

Within their terms of reference, the Overview & Scrutiny Panel will:

- (a) Review and/or scrutinise the decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) Within the remit of the Panel, make reports and/or recommendations to the Cabinet, Council or any appropriate Committee in connection with the discharge of any functions;
- (c) Review matters relating to the Council budget;
- (d) Review the corporate performance of Thanet District Council and joint arrangements in delivering services to residents; and
- (e) Within the remit of the Panel, consider any matter affecting the area or its residents.

#### 6.06 **Specific functions**

## Terms of Reference

- (a) To review the Council budget process, budget proposals and budget performance (monitoring) and make recommendations to Cabinet;
- (b) Considering the Council's Forward Plan with regards to post decision scrutiny;
- (c) To undertake a review of the delivery of the corporate plan and any action plans arising, including progress on their implementation;
- (d) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the Cabinet;
- (e) Consider petitions that require reviewing or rescinding of a Cabinet or Council decision;
- (f) To review external partnership working and the performance of external service providers;
- (g) Within the remit of the Panel, to make reports or recommendations to the authority or the Cabinet (where appropriate) with respect to the discharge of any functions which are not the responsibility of the Cabinet;
- (h) Liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
- (i) Within the remit of the Panel, to make reports or recommendations to the authority or the Cabinet on matters which affect the authority's area or the inhabitants of the area.

### 6.07 **Annual Report**

The Overview & Scrutiny Panel will report annually to Full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

### 6.08 **Proceedings of Overview and Scrutiny Panel**

The Overview and Scrutiny Panels will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

# Article 7 – The Cabinet

## 7.0 The Role Of The Cabinet

### 7.01 Role

The Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### 7.02 Form and composition

The Cabinet will consist of the Leader of the Council together with the Deputy Leader and at least one but not more than 8 councillors appointed by the leader.

### 7.03 Leader

The Leader will be a councillor elected to the position of leader by the Council. The Leader will hold office until:

- (a) they resign from the office; or
- (b) they are no longer a councillor; or
- (c) they are removed from office by resolution of the Council.

### 7.04 Replacement of Leader upon Resignation etc.

Should the Leader cease to hold office for any reason other than removal by a resolution of the Council, the Council will elect a new Leader at the next Ordinary Meeting of Council. Should the Leader cease to hold office by resolution of the Council, the Council will at the same meeting elect a new Leader. In either case the term of office of the new Leader will be the unexpired residue of the term of office of the former Leader.

### 7.05 Deputy Leader

Upon election as Leader, the Leader will appoint a Councillor to the office of Deputy Leader. The Deputy Leader will have full power to act in the absence of the Leader and will hold office until the date of the Annual Meeting of Council in the next year of an ordinary election of Councillors (i.e. for a term of four years), unless:

- (a) they resign from the office; or
- (b) they cease for any reason to be a Councillor; or
- (c) they are removed from office by the Leader, in which case the Leader will give notice in writing to that effect to the proper officer who shall immediately give a copy of the notice to the Deputy Leader and to the Chief Executive (unless it is

clear that this has already been done). The removal will take immediate effect upon receipt of the notice by the proper officer.

#### **7.06 Replacement of Deputy Leader upon Resignation etc.**

Should the Deputy Leader cease to hold office for any reason other than suspension from being a Councillor, the Leader will appoint a Councillor as the new Deputy Leader and will notify the Council of the identity of the new Deputy Leader at the next Ordinary Meeting of Council. The term of office of the new Deputy Leader will be the unexpired residue of the term of office of the former Deputy Leader.

#### **7.07 Other Cabinet members**

In each Council Year in which the Leader holds office, they will:

- (a) within the prescribed limits, determine the number of Councillors who together with the Leader and Deputy Leader shall comprise the Cabinet for the ensuing Council Year;
- (b) be responsible for appointing them;
- (c) notify Council at the Annual Meeting of their decisions in relation to (a) and (b) above.

#### **7.08 Term of office of other Cabinet members**

Other Cabinet members shall hold office until:

- (a) they resign from office; or
- (b) they are no longer councillors; or
- (c) they are removed from office by the Leader in which case the Leader will give written notice of any removal to the proper officer who shall immediately give a copy of the notice to the Cabinet member in question and to the Chief Executive (unless it is clear that this has already been done). The removal will take immediate effect upon receipt of the notice by the proper officer.

#### **7.09 Cabinet Portfolios**

In each Council Year the Leader will allocate a range of functional responsibilities (called 'a portfolio') to the members of the Cabinet and will at the Annual Meeting also notify Council of such allocation and will cause that to be recorded in the Constitution of the Council.

#### **7.10 Proceedings of the Cabinet**

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4 of this Constitution.

#### 7.11 **Responsibility for functions**

The Leader will maintain a list in Part 3 of this Constitution setting out which individual members of the Cabinet, committees of the Cabinet, officers or joint arrangements are responsible for the exercise of particular executive functions.

# Article 8 – Regulatory and other Committees

## 8.01 **Regulatory and other Committees**

The Council will appoint the Committees set out in Part 3 of this Constitution – ‘Responsibility for Council Functions’ – to discharge the functions described.

8.02 No member or substitute member of the General Purposes Committee, Planning Committee or the Licensing Board will be allowed to take their seat on the committee unless they have received relevant, appropriate, up-to-date training.

8.03 In relation to the Planning Committee this is attending at least one training session run by the Council’s Planning team every year. In relation to the Licensing Board this is attending at least one training session run by the Council’s Licensing team every year. In relation to the General Purposes Committee this is attending at least one training session run by the Council’s Monitoring Officer at least every year.

## 8.04 **Equalities, Diversity and Inclusion Training**

8.05 The Equalities, Diversity and Inclusion training is mandatory for all councillors to attend.



# Article 9 – The Standards Committee

## 9.01 Standards Committee

The Council meeting will establish a Standards Committee.

## 9.02 Composition

- (a) **Membership.** The Standards Committee will be composed of at least:
- Seven councillors [other than the Leader];
  - Four independent members;
  - Three members of a parish council wholly or mainly in the Council's area (Parish Members).
- (b) **Independent members.** Independent members will be entitled to vote at meetings;
- (c) **Parish members.** At least one Parish or Town Council member must be present when matters relating to those parish councils or their members are being considered;
- (d) **Chairing the Committee.** The Chairman and Vice chairman of the Committee shall be drawn from among the independent members.

## 9.03 Role and Function

The Standards Committee will have the following roles and functions:

- (a) To promote and maintain high ethical standards of conduct for elected and co-opted Members.
- (b) To help elected and co-opted Members to observe the Members' Code of Conduct.
- (c) To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/Officer relations.
- (d) To monitor the effectiveness of the Members' Code of Conduct.
- (e) To deal with complaints that elected and co-opted Members have breached the Members' Code of Conduct and in connection with this function:
- (i) To develop and adopt:
- Assessment Criteria for dealing with complaints;

- Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
  - Arrangements for dealing with complaints and publicising the arrangements;
  - Procedures for dealing with local investigations; and
  - Such other provisions and procedures as may be required.
- (ii) To establish and maintain Assessment and Hearings Sub-Committees.
- (f) To grant dispensations under S.33 Localism Act 2011.
- (g) To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory and Constitutional requirements and in connection with this function:
- (i) To develop and adopt procedures for dealing with such Hearings; and
  - (ii) To establish and maintain a **Hearings Sub-Committee** with its own terms of reference.
- (h) To undertake the functions set out above in respect of [insert names of parish councils if any].
- (i) To approve proposed amendments to the Constitution of the Council except those approved by the Monitoring Officer under the provisions of Article 12 of this document.

## Article 10 – Area Committees and Forums

10.01 The Council may appoint area committees as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

10.02 Conflicts of interest – membership of area committees and overview and scrutiny committees

(a) **Conflict of interest.** If an overview and scrutiny committee is scrutinising specific decisions or proposals in relation to the business of the area committee of which the councillor concerned is a member, then the councillor may not speak or vote at the overview and scrutiny committee meeting unless a dispensation to do so is given by the Standards Committee.

(b) **General policy reviews.** Where the overview and scrutiny committee is reviewing policy generally the member must declare their interest before the relevant agenda item is reached, but need not withdraw.

10.03 **Area Committees – access to information**

Area committees will comply with the Access to Information Rules in Part 4 of this Constitution.

Agendas and notices for area committee meetings which deal with both functions of the Cabinet and functions which are not the responsibility of the Cabinet will state clearly which items are which.

10.04 **Cabinet members on area committees**

A member of the Cabinet may serve on an area committee if otherwise eligible to do so as a councillor.

# Article 11 – Joint Arrangements

## 11.01 Arrangements to promote well being

The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

## 11.02 Joint arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their executives to exercise functions which are not executive functions in any of the participating authorities, or advise the Council. [Such arrangements may involve the appointment of a joint committee with these other local authorities].
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) The Cabinet may appoint members to a joint Committee from outside the Cabinet in the following circumstances:
  - the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet executive may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area;
  - the joint committee is between a county Council and a single district Council and relates to functions of the executive of the county council. In such cases, the executive of the county council may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within the area.

In both of these cases the political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

**11.03 Access to information**

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the members of a joint Committee are members of the Executive in each of the participating authorities then its access to information regime is the same as that applied to the executive.
- (c) If the joint committee contains members who are not on the executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

**11.04 Delegation to and from other local authorities**

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority.
- (b) The Cabinet may delegate executive functions to another local authority or the Cabinet of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

**11.05 Contracting out**

The Council for functions which are not executive functions and the Cabinet may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

# Article 12 – Officers

## 12.01 Management structure

- (a) **General.** The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The full Council will engage persons for the following posts, who will be designated chief officers:

The Full Council may delegate these functions to another body or officer.

Post	Functions and Areas of Responsibility
Chief Executive (and Head of Paid Service)	Overall corporate management and operational responsibility (including overall management responsibility for all officers).  Executive Support Unit, Strategy and Transformation Economic Development
<del>Deputy Chief Executive</del> Director of Corporate Resources and S.151 Officer	Finance, Procurement, Human Resources, Legal and Democracy, Elections, Information Governance <del>Communications</del> , <del>Policy and Business Planning</del> , Housing Services
Director of Environment <del>Corporate Director</del> Communities	Safer Neighbourhoods, Built Environment, Open Spaces, Street Cleansing, Waste and Recycling, Civil Enforcement, Street Scene Enforcement, Technical Services, Crematorium & Cemeteries, Maritime and Harbours
<del>Corporate Director</del> Governance	<del>Legal, Democratic Services, Elections, Information Governance</del> , Asset Management, Building Control, Land Charges, Facilities Management, Leisure Management
Director of Place	Asset Management, Building Control, Land Charges, Facilities Management, Housing and Planning, Leisure Management, Regeneration and Growth

- (c) Head of Paid Service, Monitoring Officer and Chief Financial Officer. The Council will designate the following posts as shown:

**Chief Executive** - Head of Paid Service

**Director of Corporate Resources** - Chief Finance Officer (S151 Officer)

**Interim Head of Legal and Democracy** - Monitoring Officer

Such posts will have the functions described in Article 12.02–12.04 below.

The roles of these posts are underpinned by the fundamental principles of political neutrality and service to the whole Council.

- (d) **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.
- (e) **Accountability.** Within the fundamental principles of political neutrality and service to the whole Council, the Head of Paid Service shall report to the Leader of the Council concerning the efficient and effective implementation of the Council's policies. The Chief Finance Officer shall similarly report to the Head of Paid Service. They shall both ensure that other Cabinet Members are appropriately briefed regarding matters relevant to their individual portfolio areas.

#### 12.02 Functions of the Head of Paid Service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will report to Full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

#### 12.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making in accordance with the powers and duties contained in the Local Government and Housing Act 1989.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to an Executive function if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration.

Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

- (d) **Conducting investigations.** The Monitoring Officer will conduct or commission investigations into complaints about the conduct of members and make reports or recommendations in respect of them to the Standards Committee.
- (e) **Proper officer for access to information.** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible in accordance with this Constitution.
- (f) **Advising whether Cabinet decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (g) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

#### 12.04 **Functions of the Chief Finance Officer (“Section 151 Officer”)**

- (a) Ensuring lawfulness and financial prudence of decision making in accordance with the powers and duties contained in the Local Government Act 1972 and the Local Government Finance Act 1988. After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Cabinet in relation to an Executive function and the Council’s external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### 12.05 **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**



The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### 12.06 **Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

#### 12.07 **Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

# Article 13 – Decision Making

## 13.01 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

## 13.02 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) the presumption in favour of openness and transparency;
- (b) the need for due consultation;
- (c) the need to take account of relevant professional advice from appropriate staff;
- (d) the need for clarity of aims and desired outcomes;
- (e) the need to identify the range of options considered;
- (f) the need to give reasons and explanation for a decision;
- (g) the need to ensure that all necessary requirements of legality and confidence are observed.

## 13.03 Types of decision

- (a) Decisions reserved to Full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated.
- (b) Key decisions.

A “key decision” which must be included in the Forward Plan, is an executive Decision:

1. Which is likely to involve the incurring of expenditure, or the making of one-off savings, by the Council, which are anticipated to be £250,000 or more\*. The exceptions to this rule being:
  - a) Where approval has previously been received to incur that expenditure by the Cabinet.\*\*
  - b) For the acquisition, enhancement or disposal of land or property with a value of £1m, a new key decision would be needed even if previous generic permission has been received via another key decision.

2. Which is likely to have an annual expenditure of less than £250,000, but has a total contract value over the lifetime of the contract of over £750,000.

or

3. Where the effect would be on communities living or working in the district, in an area comprising two or more wards. However, decisions that impact on communities living or working in one ward will be treated as “key” if the impact is likely to be very significant. \*With regard to property leases the £250k value is defined as the letting or taking of a lease with a cumulative rental value in excess of £250k over the first 5 years of the lease

\*\*Having the budget approved by Council does not mean that an individual has permission to proceed with their project.

- (c) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

#### **13.04 Decision making by the full Council**

Subject to Article 13.08, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.05 Decision making by the Cabinet**

Subject to Article 13.08, the Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.06 Decision making by overview and scrutiny committees**

Overview and scrutiny committees will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.07 Decision making by other committees and sub-committees established by the Council**

Subject to Article 13.08, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

#### **13.08 Decision making by Council bodies acting as tribunals**

The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

# Article 14 – Finance, Contracts and Legal Matters

## 14.01 Financial management

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 4 of this Constitution.

## 14.02 Contracts

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

## 14.03 Legal proceedings

- (1) The Head of Legal and Democracy or Monitoring Officer can take any legal action necessary to carry out the Council's decisions or protect its interests e.g. starting defending, withdrawing or settling any claims or legal proceedings.
- (2) All Officers in the senior management structure (see Part A of Section E of the Scheme of Delegations) may start, defend or withdraw any claims or legal proceedings or authorise Officers to appear on behalf of the Council in court and take default action under relevant legislation if:
  - the action taken is about a function that they or an Officer who reports to them has budgetary or management responsibility for; and
  - the Constitution or the law does not require any action to be taken by someone else; and
  - they have had regard to any advice from the Director of Law and Democracy.

## 14.04 Authentication of documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Head of Legal and Democracy or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value exceeding £10,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the council attested by at least one officer.

## 14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal and Democracy. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Legal Services Officer, Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by a Member of the Council and one of the said officers or some other person authorised by him/her. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by a person who has attested the seal.

14.06 **NB:** 'With effect from 17 March 2020 the Monitoring Officer suspended this requirement for a councillor to attest the fixing of the common seal, because it created an unnecessary health risk during the coronavirus emergency'.

# Article 15 – Review and Revision of the Constitution

## 15.01 Duty to monitor and review the constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

In undertaking this task the monitoring officer may:

1. observe meetings of different parts of the member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with them by members, officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

## 15.02 Changes to the Constitution

- (a) **Approval.** Changes to the constitution will only be approved by the full Council after consideration of the proposal by the Standards Committee. Such proposals to be formulated by the Constitutional Review Working Group.
- (b) The Monitoring Officer in consultation with the Chief Executive and the group leaders shall have the power to make minor amendments to the Constitution to correct errors or to comply with any legal requirement or to reflect changes in the Council's structure.
- (c) **Change from a mayoral form of executive to another form of executive or to alternative arrangements, or from alternative arrangements to a mayoral form of executive.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum. The change will not take effect until the end of the mayor's term of office.
- (d) **Change from a leader and cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

# Article 16 – Suspension, Interpretation and Publication of the Constitution

## 16.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless more than one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension.** The following Rules may be suspended in accordance with Article 16.01:
- Council Procedure Rules
  - Access to Information Procedure Rules
  - Budget and Policy Framework Procedure Rules
  - Cabinet Procedure Rules
  - Overview and Scrutiny Procedure Rules
  - Financial Procedure Rules
  - Contract Standing Orders
  - Officer Employment Procedure Rules

## 16.02 Interpretation

The ruling of the chairman of council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

## 16.03 Publication

- (a) “The Committee Services Manager will provide an electronic copy of this Constitution to each member of the authority upon delivery to them of that individual’s declaration of acceptance of office on the member first being elected to the Council.”

- (b) The Committee Services Manager will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Committee Services Manager will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.