

# **PART B**

## **ARTICLES OF THE CONSTITUTION**

## **Article 1 - The Constitution**

### **1.01 Duties and powers of the Council**

Cotswold District Council (“the Council”) will exercise all its duties and powers in accordance with the law and this Constitution.

### **1.02 The Constitution**

This Constitution, and all its appendices, is the Constitution of the Cotswold 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 citizens, businesses and other organisations;
2. support the active involvement of citizens in the process of local authority decision-making;
3. help District Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently, effectively and transparently, with due regard to probity and equity;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that in the Audit and Scrutiny Committee no one will review or scrutinise a decision in which s/he was directly involved;
7. ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;

8. provide a means of improving the delivery of services to the community; and
9. ensure that high standards of probity and ethics are evident in decision-making and all activities of the Council

#### 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 in Article 1.03.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 14 (Review and Revision of the Constitution).

## Article 2 - Members of the Council

### 2.01 Composition and Eligibility

- (a) **Composition.** The Council comprises 44 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Boundary Committee and approved by the Secretary of State for Communities and Local Government.
- (b) **Eligibility.** Only registered voters of the District or those living or working or holding property there will be eligible to hold the office of Councillor. Detailed eligibility qualifications are set out in Section 79 of the Local Government Act 1972

### 2.02 Election and Term of Office of Councillors

**Election and Term of Office.** The regular election of Councillors will be held on the first Thursday in May every four years. (The next District Council election will take place in 2015). If a Councillor resigns, dies or becomes ineligible to serve as a Councillor between regular elections, an election will be held to fill the “casual vacancy” unless the vacancy arises within six months before a regular election. The terms of office of Councillors will start on the fourth day after being elected and will finish on the third day after the date of the next regular election.

The Secretary of State may in a year when a European Parliamentary Election or a General Election is held, make an Order to change the ordinary day of election of Councillors so as to be the same day as the Poll in that European or General 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, taking a District-wide view; including setting the Council's budget.
  - (ii) contribute to the good governance of the District and actively engage community participation and involvement and bring the views of the community into the Council's decision-making process (i.e. become an advocate of and for their communities);
  - (iii) represent the interests of their respective Ward and of any individual constituent;
  - (iv) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - (v) participate in governance and management of the Council;
  - (vi) be available to represent the Council on other bodies; and
  - (vii) maintain the highest standards of conduct and ethics, and show respect for fellow Members, staff and the community.

(b) **Rights and Duties**

- (i) Councillors will have 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. The Chief Executive may refuse inspection of documents where the documents are, or in the event of legal proceedings would be, protected by privilege arising out of a Solicitor and Client relationship;
- (ii) Councillors will not make public information which is confidential or exempt without the express consent of the Council or Cabinet as the case may be or divulge information given to them in confidence to anyone other than a Councillor or officer entitled to know it.

For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part D of this Constitution.

Councillors have a right to support from Officers to help them discharge their duties to the Council and their constituents.

2.04 **Conduct**

Councillors will at all times observe the Members’ Code of Conduct and the following protocols set out in Part E of this Constitution:-

- (i) Protocol on Member/Officer Relations: Part E
- (ii) Planning Protocol - Guidelines for Councillors and Officers: Part E.

The Council is required to maintain and update a Register of Interests of its Members and co-opted Members. Details of the Register are set out in the Members' Code of Conduct. The Register is available for public inspection at the Council's offices and on the Council's website.

#### 2.05 **Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme, a summary of which is set out in Part F of this Constitution. Details of allowances paid to/claimed by Members will be published on the Council's website on an annual basis, as soon as possible after the close of each financial year.

## Article 3 - Citizens and The Council

### 3.01 Citizens' Rights

Citizens have the following rights:-

- (a) **Voting and Petitions.** Citizens on the electoral roll for the district have the right to vote at relevant elections.
- (b) **Petitions.** Citizens on the electoral roll for the district have the right to:
  - (i) sign a petition to request a referendum to replace the Leader and Cabinet of the Council with an elected Mayor and Cabinet - no more than one such referendum can, however, be held in any ten year period from any previous such referendum. Information on this right can be obtained from the Head of Democratic Services;
  - (ii) sign a petition to request that the Council take action on a particular matter.
- (c) **Councillor Call for Action.** Citizens have the right to initiate a 'Councillor Call for Action' in respect of a matter relating to an individual Ward where they feel that the Council should take action.
- (d) **Information.** Citizens have the right to:
  - (i) attend meetings of the Council, the Cabinet and Committees except where confidential or exempt

information is likely to be disclosed, in which case the meeting or part of it could be held in private;

- (ii) find out from the Forward Plan what Key Decisions will be taken by the Cabinet and Portfolio Holders and when;
- (iii) inspect agendas, reports and background papers, minutes and any records of decisions made by the Council, the Cabinet, Committees and Portfolio Holders, except where these contain confidential or exempt information;
- (iv) inspect the Council's accounts and make their views known to the external auditor. The name and address of the external auditor can be obtained from the Chief Finance Officer;
- (v) contact their local Councillor about any matter of concern to them; and
- (vi) obtain a copy of this Constitution (also available on the Council's website).

(Citizens' rights to information are explained in more detail in the Access to Information Rules in Part D of this Constitution).

- (e) **Participation.** Citizens have the right to submit and ask questions at ordinary Council, Cabinet and Committee meetings - see Council Procedure Rule No.10; take part in deputations and present petitions/calls for actions to the Council and contribute to investigations by the Audit and Scrutiny Committee.

- (f) **Complaints.** Citizens have the right to complain to:
- (i) the Council itself under its complaints procedure;
  - (ii) the Local Government Ombudsman, after using the Council's own complaints procedure, if they think that the Council has not followed its procedures properly;
  - (iii) the Monitoring Officer for the District about the breach of the Councillors' Code of Conduct if they have evidence which they think shows that a Councillor has not followed the Councillors' Code of Conduct (Part E of this Constitution). Contact details of the Monitoring Officer can be found in Part 7 of this Constitution.

### 3.02 **Citizens' Responsibilities**

Citizens must not be violent, abusive or threatening to Councillors or Officers and must not wilfully harm property owned by the Council, Councillors or Officers.

## Article 4 - The Council

The principal function of full council is to approve, adopt and change the Council's Budgetary and Policy Framework. The documents that make up the Policy Framework are prescribed by law under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations) as amended, but may in addition include the plans and strategies that the Council decide should be considered by full Council.

### 4.01 Meanings

- (a) **Policy Framework.** The policy framework currently comprises the following plans and strategies:-
- (i) The Council's Corporate Strategy and Plan;
  - (ii) Sustainable Community Strategy;
  - (iii) Crime and Disorder Reduction Strategy;
  - (iv) Local Development Framework;
  - (v) Housing Strategy;
  - (vi) Licensing Policy Statement;
  - (vii) Gambling Policy Statement.

Note: The names and descriptions of the above policies/strategies etc. may be subject to change from time to time.

- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, the Medium Term Financial Plan, proposed contingency funds, setting the Council Tax, decisions relating to the control of the Council's borrowing requirements, the Capital Strategy, the control of capital expenditure and the setting of virement limits.

Note: The Council will receive recommendations from the Cabinet in relation to the Policy Framework and Budget matters identified above.

#### 4.02 **Functions of the Council**

The Council will have sole responsibility for the following functions:

- (a) adopting and changing the Constitution (other than those Protocols which fall within the Terms of Reference of the Standards Committee);
- (b) approving and adopting the Policy Framework and the Budget, including the Medium Term Financial Plan;
- (c) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them (unless the function has been delegated by the Council);
- (d) decisions not consistent with the Policy and Budgetary Framework, unless they have been taken as a matter of urgency by the Cabinet under the Procedure Rules set out in Part D of the Constitution;
- (e) appointing the Leader of the Council;

- (f) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (g) dealing with matters of governance;
- (h) delegating functions to other local authorities or their executives and deciding whether or not to accept such a delegation from another local authority;
- (i) changing the name of the District;
- (j) conferring the title of Honorary Alderman;
- (k) appointing (and dismissing) the Head of Paid Service;
- (l) arranging the authority's Pay Policy Statement
- (m) appointing any Officer where pay (incorporating all payments and benefits in kind) exceeds £100,000
- (n) arranging any severance payments where the compensation sum exceeds £100,000
- (o) determining any delegation to Officers which does not fall within the purview of the Cabinet;
- (p) approving the acquisition/disposal of land and property over £500,000;
- (q) approving the annual Treasury Management Investment Strategy;

- (r) approving the Prudential Indicators including the Council's Minimum Revenue Provision Policy;
- (s) approving and adopting a scheme of allowances for Members;
- (t) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal bills;
- (u) all local choice functions set out in Part C of this Constitution which the Council has decided should be undertaken by itself rather than the Cabinet, Officer or Committee; and
- (v) all other matters which by law must be reserved to the Council.

#### 4.03 **Council Meetings**

There are three types of Council meetings:

- (a) the Annual Meeting;
- (b) Ordinary Meetings (including the Budget Meeting);
- (c) Special/Extraordinary Meetings;

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

## **Article 5 - Chairing the Council**

### **5.01 Election/Appointment of the Chairman/Vice-Chairman of the Council**

The Chairman and Vice-Chairman of the Council will be elected by the Council each year at its Annual Meeting.

### **5.02 Role and Function of the Chairman**

The Chairman, and in his/her absence the Vice-Chairman, will have the following roles and functions:-

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary. The Chairman shall first consult the Monitoring Officer where appropriate;
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 Council meetings are a forum for the debate of matters of concern to the local community and the place at which Councillors who are not on the Cabinet are able to hold Cabinet to account;
4. to promote public involvement in the Council's activities;
5. to attend such civic and ceremonial functions as the Council and/or he/she considers appropriate.

5.03 The Chairman of the Council shall not be a Cabinet Member, or a Member of the Audit and Scrutiny Committee.

5.04 The Vice-Chairman of the Council shall not be a Cabinet Member.

5.05 The Chairman of the Council shall not serve on any Committee of which the Vice-Chairman of the Council is a Member; and vice versa.

## **Article 6 - The Cabinet**

### **6.01 Role**

The Cabinet (as known as the Executive) will be responsible for all of the Council's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

### **6.02 Form and Composition**

The Cabinet is made up of the Leader of the Council who must be a District Councillor and up to nine other District Councillors. This Council currently has a Leader and six Councillors in its Cabinet. Full Council is responsible for appointing the Leader at the Annual Meeting of Council following a regular election or, if the Council fails to elect a Leader at that post-election annual meeting, at a subsequent meeting of the Council. The Leader of the Council is responsible for determining the number of other members of the Cabinet, which shall be between two and nine, and also appointing them and allocating portfolios for these appointees. If a vacancy occurs in the Cabinet, a replacement may be approved by the Leader.

### **6.03 Delegation**

Cabinet functions may be delegated to individual Cabinet Members (Portfolio Holders) or Officers. The Scheme of Delegation to Officers shall be determined by the Leader of the Council or by the Cabinet and not by individual Portfolio Holders so as to ensure consistency. The Cabinet and individual Portfolio Holders shall not carry out functions which are included within the Scheme of Delegation to Officers unless an Officer chooses not to exercise the authority which has been given to him/her.

6.04 There may be no co-options, deputies (except for Deputy Leader) or substitutes for members of the Cabinet.

6.05 **Leader of the Council**

The Leader of the Council will be a Councillor elected to that position by the Council. The term of office of the Leader will start on the day of his/her election as Leader and end on the day of the next post-election annual meeting unless:

- (a) he/she resigns from the office; or
- (b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she ceases to be a Councillor; or
- (d) the Council passes a simple resolution to remove him/her from the office at an earlier date but normally only in the event of a change of political control of the Council. If the Council passes a resolution to remove the Leader, a new Leader will be elected at the meeting at which the Leader is removed from office or at a subsequent meeting.

6.05 **Deputy Leader**

The Leader shall appoint one of the Members of Cabinet to be his/her deputy, to hold office until the end of the term of office of the Leader unless he/she resigns as Deputy Leader or ceases to be a Member of Council or is removed from office by the Leader under the following provisions;

- the Leader may, if he thinks fit, remove the Deputy Leader from office and must appoint another member of the Cabinet in his/her place;
- If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in his/her place.

#### 6.06 **Other Cabinet Members**

The Leader of the Council will nominate other Cabinet Members to the Council for ratification.

Cabinet Members must be Councillors.

Cabinet Members shall hold office until:-

- (a) they resign from office; or
- (b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they are no longer Councillors; or
- (d) they are removed from office by the Leader.

#### 6.07 **Proceedings of the Cabinet**

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

## **Article 7 - The Audit and Scrutiny Committee**

- 7.01 The Audit and Scrutiny Committee supports the work of the Council as a whole. It holds the Cabinet and Portfolio Holders to account and makes recommendations on the development of policies. It also has a key role in considering other matters of local concern.
- 7.02 The guiding principle of the work of scrutiny is that it should be consensual and positive. The emphasis of the work should be on making a proactive and positive contribution to the development of policy and the discharge of the Council's functions under Section 9F of the Local Government Act 2000 (as amended). This is best achieved by an inclusive process covering Members, the Council's partners, service users and officers.
- 7.03 The Audit and Scrutiny Committee will perform an over-arching scrutiny role and will also co-ordinate, plan and approve the programme of scrutiny work. It will have the right to create such task and finish groups, scrutiny panels or working parties as it thinks fit to carry out the Scrutiny programmes and delegate such functions as it thinks appropriate. Each task and finish group or working party will scrutinise the work of the Council, and/or the Cabinet, on a service-based and/or cost-cutting basis.
- 7.04 The Committee can also seek to scrutinise the work of external organisations and partners.
- 7.05 The Audit and Scrutiny Committee will also perform a broad base overview role across all areas of the Council, while promoting and ensuring effective internal control and individual assurance mechanisms. The Audit and Scrutiny Committee will provide independent assurance of the adequacy of the risk management framework and the associated control environment; to assess the

Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment; to oversee the financial reporting process, and to ensure that Members maintain high standards of probity in their public life by carrying out investigations in respect to allegations of misconduct by a Member.

#### 7.06 **Audit and Scrutiny Committee - General Role**

The Audit and Scrutiny Committee shall have the functions, powers and responsibilities set out below

- (a) co-ordinate, champion and lead on the scrutiny of Council and Cabinet decisions;
- (b) have all the functions, powers and duties conferred by Section 9F of the Local Government Act 2000 (as amended);
- (c) have all the powers and functions, powers and duties conferred by Section 19 of the Crime and Justice Act 2006 and to act as the Council's Crime and Disorder Committee;
- (d) determine the allocation of work in the event that the scope of the subject matter of scrutiny study or the investigation overlaps the role of more than one task and finish group;
- (e) review the operation of the scrutiny process and work programmes of the Audit and Scrutiny Sub-Committees and task and finish groups and inform and advise Council in relation to priorities and the allocation of resources;

- (f) oversee and review the resources, support, training and development of Audit and Scrutiny Members;
- (g) develop a positive “critical friend” approach to the role of scrutiny of the Council and community issues;
- (h) provide and co-ordinate the input to an annual report to Council on such issues or topics as the Committee sees fit;
- (i) give consideration to the management of matters called in for review in accordance with the Audit and Scrutiny Procedure Rules;
- (j) give consideration to matters referred to it through the Councillor Call for Action process;
- (k) give consideration to matters referred to it through the petitions process;
- (l) review and scrutinise the work of the Cabinet;
- (m) review and scrutinise the content of the Forward Plan;
- (n) review and scrutinise the policies and proposed policy of the Council;
- (o) consider any matters which affect the Authority, the District of Cotswold (or part of it) or its inhabitants (or some of them).
- (p) (i) consider the Head of Internal Audit’s annual report and a summary of the internal audit activity (actual and proposed) and the level of assurance it can give over the

Council's corporate governance arrangements, including an opinion on the overall adequacy and effectiveness of the Council's internal control environment.

- (ii) consider summaries of specific internal audit reports, quarterly.
- (iii) consider an annual report on the performance of the internal audit service and review the effectiveness of the service in accordance with the Accounts and Audit Regulations.
- (iv) consider a report from internal audit on agreed recommendations not implemented within a reasonable timescale.
- (v) consider the external auditor's annual letter, relevant reports, and the report of those charged with governance.
- (vi) consider specific reports as agreed with the external auditor.
- (vii) comment on the scope and depth of external audit work and to ensure it gives value for money.
- (viii) monitor the effective development and operation of risk management and corporate governance.
- (ix) consider summaries of specific risk management reports, quarterly.
- (x) monitor Council policies on Whistleblowing, the anti-fraud and anti-corruption strategy and the Council's complaints process.
- (xi) oversee the production of the authority's 'Annual Governance Statement' and recommend its adoption, and to approve it.
- (xii) consider the Council's arrangements for corporate governance and recommend the necessary action to ensure compliance with best practice.
- (xiii) consider the Council's compliance with its own published standards and controls.

- (xiv) review the annual statement of accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.
  - (xv) consider the external auditor's report on issues arising from the audit of the accounts.
  - (xvi) commission work from internal and external audit.
  - (xvii) review any issues referred to it by the Chief Executive or a Strategic Director or any Council body.
- (q) The ability to require the Chief Executive and Strategic Directors to attend and be questioned on audit, risk management and corporate governance matters relating to their roles and responsibilities.
  - (r) The power to call expert witnesses from outside the Council to give advice on matters under review or discussion.
  - (s) To discharge powers under section 101 of the Local Government Act 1972 acting as a Sub-Committee of the Council for Statement of Auditing Standards (610) purposes.
  - (t) To approve the Internal Audit Periodic Plan, receive reports on progress and as a consequence approve any material changes to the plan.

- 7.6 (i) To formulate and keep under review a code of conduct to promote high ethical standards amongst Officers and to do anything that is calculated to promote and maintain high standards of conduct by Officers.

(ii) To promote maintain and assist the achievement of high standards of conduct by Members in accordance with the Council's Code of Conduct for Members.

- To monitor the operation of the Code of Conduct for Members
- To advise the Council on any amendment or revision of the Code
- To secure adequate and appropriate training of Members on the Code of Conduct for Members.
- To give general guidance and advice to Members on Members' interests and keep under review the Register of Members' Interests maintained by the Monitoring Officer.
- To give general guidance and advice to Members and employees on gifts and hospitality.

(iii) To conduct hearings following any formal investigation into an allegation that a Member of the Council has failed or may have failed to comply with the Council's Code of Conduct for Members; and assist the Monitoring Officer to determine, in consultation with an independent person, if this is the case and whether, in the case of a breach, any of the following sanctions should be imposed:

- Censure;
- Report to Council;
- Recommend actions to the Leader of the Council;
- Recommend actions to Group Leader;
- Removal from Outside Bodies;
- Withdrawal of facilities, such as Council email/website/internet access;
- Exclusion for the Council offices or other premises with the exception of meeting rooms as necessary for attending

Council, Committees or Sub-Committees and/or nominating a single point of contact;

- Requesting the Member to undertake actions deemed appropriate e.g. training, issue of an apology.

(iv) To set up when necessary an interview panel comprising representatives of each political group, and a non-aligned member (if there are any), to shortlist and interview candidates for the role of Independent Person; and to recommend successful candidates to the Council to be chosen by a majority of Councillors

## **7.7 Policy Development and Review**

The Audit and Scrutiny Committee may consider and implement mechanisms to encourage and enhance community participation in the development of policy options.

## **7.8 Proceedings of Audit and Scrutiny Committee**

The Audit and Scrutiny Committee will conduct its proceedings in accordance with Section 9F of the Local Government Act 2000 (as amended) and the Audit and Scrutiny Procedure Rules set out in Part D of this Constitution.

## **7.9 Whipping**

The Whip will not apply from any of the political groups on their respective Members of the Committee while they are taking part in Audit and Scrutiny Committee business. No political meetings of Audit and Scrutiny Committee Members shall take place. Each political group shall present to the Proper Officer at the start of each municipal year a statement that demonstrates the necessary freedom of its Members from the whipping process on the Audit and Scrutiny Committee.

## **Article 8 - The Planning Committee and the Licensing Committee**

There are certain local authority functions which cannot be the responsibility of Cabinet. The Council shall, therefore, appoint the following quasi-judicial Committees to discharge the functions described in Part C of this Constitution.

### **8.01 The Planning Committee**

The Planning Committee shall comprise fifteen Members of the Council, whose membership is to be allocated in proportion to the political composition of the Council.

The Planning Committee will be responsible for dealing with all planning applications and related matters, unless they are delegated under the Council's Scheme of Delegation. The Scheme of Delegation is available on the Council's website.

Members shall have completed training approved by the Monitoring Officer before taking part in decisions by the Planning Committee.

Members appointed to the Planning Committee shall be obliged to abide by the Planning Protocol - Guidance for Councillors and Officers which is set out in Part E of this Constitution.

### **8.02 The Licensing Committee**

The Licensing Committee shall comprise fifteen Members of the Council, whose membership is to be allocated in proportion to the political composition of the Council.

The Licensing Committee will be responsible for dealing with licensing applications and related matters.

Members shall have completed training approved by the Monitoring Officer before taking part in decisions by the Licensing Committee.

Members appointed to the Licensing Committee shall be obliged to abide by the Probity in Licensing Code of Practice which is set out in Part E of this Constitution.

### 8.03 **Whipping**

The Whip will not apply from any of the political groups on their respective Members of the Planning Committee and the Licensing Committee while they are taking part in the Committees' business. No political meetings of the Committee Members shall take place. Each political group shall present to the Proper Officer at the start of each municipal year a statement that demonstrates the necessary freedom of its Members from the whipping process on these Committees.

## **Article 9 - Area Committees and Forums**

### **9.01 Area Committees and Forums**

The Council may appoint Area Committees and/or Forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of continuous improvement and more efficient, transparent and accountable decision making.

The Council will carry out appropriate consultation with relevant Parish and Town Councils, the Chairmen of relevant Parish Meetings, and the public before considering whether, and if so how, to establish Area Committees and/or Forums.

### **9.02 Form, Composition and Function**

These matters will be resolved, in advance, in the event that the Council decides to create Area Committees and/or Forums.

### **9.03 Conflicts of Interest - Membership of Area Committees and the Audit and Scrutiny Committee**

(a) **Conflicts of Interest.** If the Audit and Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of an Area Committee on which a Member of the Audit and Scrutiny Committee also serves, then the Councillor may not speak or vote at the Audit and Scrutiny Committee meeting unless a dispensation to do so is given by the Monitoring Officer.

(b) **General Policy Review.** Where the Audit and Scrutiny Committee is reviewing policy generally, the Member

must declare his/her interest before the relevant agenda item is reached, but need not withdraw.

9.04 **Area Committees - Access to Information**

Any Area Committees created shall comply with the Access to Information Procedure Rules in Part D of this Constitution.

## **Article 10 - Joint Arrangements**

### **10.01 Arrangements to Promote Well Being**

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

- (a) entering into arrangements or agreements with any person or body;
- (b) co-operating with, or facilitating or co-ordinating the activities of, any person or body; and
- (c) exercising on behalf of another person or body any functions that are the responsibility of that person or body.

### **10.02 Joint Arrangements**

- (a) The Council may establish joint arrangements with one or more local authorities to exercise non-Cabinet functions or to advise the Council. Such arrangements may involve the appointment of joint committees whose members may include members of other Local Authorities.
- (b) The Cabinet may establish joint arrangements with other local authorities to exercise Cabinet functions. Such arrangements may involve the appointment of joint committees whose members may include elected members of these 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 non-Cabinet Members to a joint committee when the joint committee has functions for only part of the area of the district and that area is smaller than two-fifths of the district per area of population. In such cases, the Cabinet 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 political balance requirements do not apply to such requirements.
- (e) Details of any joint arrangements, including any delegations to Joint Committees, shall be included in the Council's Scheme of Delegation in Part C of this Constitution.

#### 10.03 **Access to Information**

- (a) The Access to Information Rules in Part D of this Constitution shall apply to any joint committee established under these provisions.
- (b) If all Members of a joint committee are Members of the Cabinet in each of the participating authorities then its Access to Information regime shall be the same as that applied to the Cabinet in the respective authorities.
- (c) If a joint committee contains Members who are not on the Cabinet of any of the participating authorities, then the Access to Information Rules in Part V(A) of the Local Government Act 1972 shall apply.

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

- (a) The Council may delegate or accept the delegation of non-executive functions to or from another local authority or, in certain circumstances, the executive of another local authority.
- (b) The Cabinet may delegate or accept the delegation of Cabinet functions to or from another local authority or, in certain circumstances, the executive of another local authority.
- (c) The decision as to whether to delegate or accept such delegation from another local authority, or the executive of another local authority, shall be reserved to the Council.

10.05 **Contracting Out**

The Council and the Cabinet may contract out some of their functions to other organisations under section 70 of the Deregulation and Contracting Out Act 1994, or under an agency agreement, provided there is no delegation of the Council's discretionary decision-making.

## Article 11 - Officers

### 11.01 Management Structure

- (a) **General.** The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions. The Council's staff structures and designated posts will be varied from time to time to meet the changing organisational needs of the Council.
- (b) **Chief Officers.** The Council will engage persons for the following posts, who will be designated Chief Officers, with wide strategic responsibilities and dedicated responsibilities for service areas as may be prescribed from time to time.

Post	Areas of Responsibility
<p>Chief Executive (and Head of Paid Service)</p>	<ul style="list-style-type: none"> <li>• Overall responsibility as policy adviser</li> <li>• Overall corporate management and operational responsibility (including overall management responsibility for all Officers)</li> <li>• Provision of professional advice to all political groups and non-aligned Members in the decision-making process</li> <li>• Together with the Monitoring Officer and the Head of Democratic Services, responsibility for a system of record keeping for all the Council's decisions</li> <li>• Representing the Council on partnership and external bodies (as required by statute, the Council or the Cabinet)</li> </ul>

Strategic Directors (numbers to be determined from time to time)

- Provision of policy advice
- Provision of professional advice to all political parties and non-aligned Members in the decision-making process
- Community Engagement
- Operational and service performance

- (c) **Head of Paid Service, Chief Finance Officer and Monitoring Officer.** The Council has designated the following statutory posts:

Designation	Post
Head of Paid Service	Chief Executive
Chief Finance Officer	Head of GO Shared Services
Monitoring Officer	Head of Legal & Property Services

The Head of Democratic Services shall act as Deputy Monitoring Officer.

Such posts will have the functions described in Article 13.02 - 13.04 below.

- (d) **Structure.** The Head of Paid Service will determine and publicise a description of the overall management structure of the Council showing the deployment of officers. This is set out at Part G of this Constitution.

## 11.02 **Functions of the Head of Paid Service**

- (a) **Discharge of Functions by the Council.** The Head of Paid Service will report to the Council on how Council ought to be state managed and organised so it operates efficiently and effectively.

- (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.

#### 11.03 **Functions of the Chief Finance Officer**

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council, or the Cabinet in relation to any Cabinet function, and the Council's external auditor, if s/he considers 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 and 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.

#### 11.04 **Functions of the Monitoring Officer**

- (a) **Ensuring lawfulness and fairness of decision making.** After consulting the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will prepare a report to the Council or Cabinet if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission is likely to result in a finding by the Local Government Ombudsman of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered, and must be considered by the Council within a period of twenty-one days after preparation and distribution.
- (b) **Supporting the Audit and Scrutiny Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Scrutiny Committee.
- (c) **Determining Code of Conduct Complaints.** The Monitoring Officer will receive and act upon complaints received against Members of the District Council and Parish Councils for alleged breaches of the Members Code of Conduct respectively and will seek the view of an Independent Person to determine if an allegation of misconduct warrants a full investigation and whose view will be sought by the Audit and Scrutiny Committee to determine if a Member has broken the Council's Code of Conduct.

- (d) **Granting Dispensations to Members of the District Council.** The Monitoring Officer has delegated authority, in consultation with the Chairman of the Audit Committee and an independent person, to determine applications for dispensations in respect of District Councillors
- (e) **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.
- (f) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity, budget and framework issues to all Councillors.
- (g) **Deputy Monitoring Officer.** A Deputy Monitoring Officer shall be designated to assist in the work of the Monitoring Officer. The Deputy Monitoring Officer shall have the same rights and duties of the Monitoring Officer in his/her absence, on occasions when the Monitoring Officer is unable to act, or when the matter is delegated to the Deputy by the Monitoring Officer.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

11.05 **Duty to provide sufficient resources to the Head of Paid Service, Chief Finance Officer and Monitoring Officer**

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

11.06 **Conduct**

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

11.07 **Employment and Dismissal of Officers**

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

11.08 **Proper Officer**

The Council's Head of Democratic Services shall be the Proper Officer for the purposes of this Constitution.

## Article 12 - Decision Making

### 12.01 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 C of this Constitution.

### 12.02 Principles of Decision Making

All decisions of, or on behalf of, the Council will be made in accordance with the following principles:

- (a) the rule of law;
- (b) clarity of aims and desired outcomes.
- (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- (d) due consideration of professional advice from Officers and/or appropriately qualified consultants (including consideration of sufficient and adequate information);
- (e) respect for human rights (see below for further details);  
and
- (f) a presumption in favour of openness (including compliance with the Access to information provisions).
- (g) they should be properly reasoned and alternatives that are discounted should be identified and the reasons for their rejection explained adequately

### 12.03 Types of Decisions

- (a) **Decisions reserved to Full Council and which cannot be delegated** - decisions relating to the functions listed in

Article 4.02 will be made by Full Council and cannot be delegated.

- (b) **Decisions referred to Full Council** - the Cabinet or any Committee can choose not to exercise its delegated powers in respect of any matter within its purview, and decide to refer the matter to the Council for decision.
- (c) **Key Decisions** - the definition of a key decision has been agreed as follows:-
  - (i) any executive decision which requires a budget expenditure, or generates savings, of £100,000 or more;
  - (ii) any executive decision where the outcome will have a significant impact on communities living or working in an area comprising two or more District Wards.

#### 12.04 **Decision making by the Council**

Subject to Article 14.08, the Council meeting will follow the Council Procedure Rules set out in Part D of this Constitution when considering any matter.

#### 12.05 **Decision Making by the Cabinet**

Subject to Article 6, the Cabinet will follow the Cabinet Procedure Rules set out in Part D of this Constitution when considering any matter.

**12.06 Decision making by the Audit and Scrutiny Committee**

The Audit and Scrutiny Committee will follow the Audit and Scrutiny Procedure Rules set out in Part D of this Constitution when considering any matter.

**12.07 Decision making by other Committees and Sub-Committees established by the Council**

Subject to Article 14.08, other Council Committees and Sub-Committees will follow those parts of the Council Procedures Rules set out in Part D of this Constitution as apply to them.

**12.08 Decision making by Council bodies acting as tribunals**

The Council, the Cabinet, a Committee, 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 for the Protection of Human Rights and Fundamental Freedoms.

## **Article 13 - Finance, Contracts and Legal Matters**

### **13.01 Financial Management**

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

### **13.02 Contracts**

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

### **13.03 Legal Proceedings**

The Head of Legal and Property Services is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where he/she considers that such action is necessary to protect the Council's interests and he/she is satisfied as to the evidence available.

### **13.04 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 Property Services 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 the value exceeding £50,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contract must

either be signed by at least two officers of the authority or made under the Common Seal of the Council attested by the Head of Legal and Property Services 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.

#### 13.05 **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 Property Services. 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 Head of Legal and Property Services, should be sealed. The affixing of the Common Seal will be attested by the Chief Executive, any Strategic Director, Head of Legal and Property Services or Head of Democratic Services or some other person authorised by him/her.

## **Article 14 - Review and Revision of the Constitution**

### **14.01 Duty to monitor and review the Constitution**

The Chief Executive and/or the Proper Officer shall monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect and shall report as appropriate to Council, and at least annually.

### **14.02 Protocol for monitoring and review of Constitution by the Chief Executive**

A key role for the Chief Executive as Head of Paid Service is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Chief Executive 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 him/her by Members, Officers, the public and other relevant stakeholders;
4. compare practices in the Council with those in other comparable authorities or national examples of best practice; and
5. take such other action as he/she considers appropriate.

The Proper Officer shall also be afforded the above rights in conducting any similar review of the Constitution.

## 14.03 **Changes to the Constitution**

- (a) **Approval.** Changes to the Constitution will generally only be approved by the Council after consideration of a proposal from the Chief Executive and/or Proper Officer or by way of Members proposing a motion on notice in accordance with Council Procedure Rule 12, after consulting with the Chief Executive and/or Proper Officer.
- (b) The Chief Executive has delegated authority, in consultation with Group Leaders, the Chief Finance Officer and the Monitoring Officer, to approve minor amendments to the Financial Rules and Contract Procedure Rules.
- (c) Where Officer titles and responsibilities change due to organisational changes or changes in management arrangements, the Chief Executive and/or the Proper Officer shall be empowered to amend the Constitution to reflect such changes.
- (d) The Chief Executive and/or the Proper Officer has delegated authority, in consultation with the Head of Legal and Property Services, to approve updated references to legislation, minor amendments and additions required by legislation and minor amendments for greater clarity which do not affect the meaning of any of the articles and rules of the Constitution.
- (e) **Change from a Leader and Cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult local electors and other interested persons in the District when drawing up proposals.

- (f) **Change within a Mayoral form of executive.** Unless the change relates only to the operation of the Audit and Scrutiny Committee, any resolution of the Council to approve a change will have no effect without the written consent of the Mayor.
  
- (g) **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 local electors and other interested persons in the District 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.

## **Article 15 - Suspension, Interpretation and Publication of the Constitution**

### **15.01 Suspension of the Constitution**

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Council's Rules of Procedure may be suspended by the Council or the Cabinet or a Committee to the extent permitted within those Rules and the law.
  
- (b) **Procedure to suspend.** A motion to suspend any Rules of Procedure will not be moved without notice unless at least one half of the whole number of the Council or the Cabinet or the relevant Committee is 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 and will only be for so long as is necessary to transact the particular item of business necessitating suspension.
  
- (c) **Rules capable of suspension.** The following Rules of Procedure may be suspended in accordance with Article 17.01:-
  - (i) Council Procedure Rules except Rules 16.6 and 17.2; and Rule 15.1 in relation to Cabinet and Committee Meetings only.
  
  - (ii) Financial Rules.
  
  - (iii) Contract Procedure Rules.

## 15.02 **Interpretation**

The ruling of the Chairman of the Council as to the construction meaning 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.

## 15.03 **Publication**

The Head of Democratic Services will:-

- (a) give a printed or electronic copy of this Constitution to each Member of the Council upon delivery of that individual's declaration of acceptance of office on the Member first being elected to the Council;
- (b) ensure that copies are available for inspection at Council offices, and other locations as he/she considers appropriate, and can be purchased by members of the local press and the public on payment of a reasonable fee;
- (c) arrange for an electronic copy of the Constitution to appear on the Council's Internet and Intranet websites;
- (d) ensure that a summary of the Constitution is made widely available within the District, and is updated as necessary.