PART 2: ARTICLES

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THE ARTICLES

ARTICLE – 1 – THE CONSTITUTION

1.1 Powers of the Council

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

1.2 The Constitution

This Constitution, and all its appendices, is the Constitution of Basingstoke and Deane Borough Council.

1.3 Purpose of the Constitution

The purpose of the Constitution is to:

a) enable the Council to provide clear leadership to the community in partnership with the public, voluntary sector, businesses and other organisations;

b) support the active involvement of the public in the process of local authority decision-making;

c) enable Councillors to represent their constituents effectively;

d) enable decisions to be taken efficiently and effectively;

e) create a powerful and effective means of holding decision-makers to public account;

f) ensure that no one will review or scrutinise a decision in which they were directly involved;

g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for their decisions; and

h) provide a means of improving the delivery of services to the community.

1.4 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 will monitor and evaluate the operation of the Constitution as set out in Article 13.

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ARTICLE – 2 – MEMBERS OF THE COUNCIL

2.1 Composition and Eligibility

(a) Composition

The Council will comprise 54 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 Commission and approved by the Secretary of State.

(b) Eligibility

Only registered voters of the Borough or those living or working there will be eligible to hold the office of Councillor. The Local Government Act 1972 sets out in full the qualifications for standing for election as a Councillor.

2.2 Election and Terms of Councillors

Councillors are elected by thirds on a four yearly cycle. This means that in wards with three Councillors, one Councillor will retire each year (except in the fourth year when there are no Borough elections) and hold office for four years. All Councillors will be eligible to stand again for election.

Elections are held every year on the first Thursday of May, unless the Secretary of State changes this, with every fourth year being a Hampshire County Council election.

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. Where a Councillor is elected at a by-election to fill a casual vacancy his/her term of office will finish on the date when his/her predecessor would have retired.

2.3 Roles and functions of all Councillors

Key Roles

All Councillors will:

a) collectively be the policy-makers and carry out a number of strategic and corporate functions;

b) contribute to the good governance of the area and actively encourage community participation and public involvement in decision making;

c) effectively represent the interests of their ward and community as well as individual constituents;

d) respond to constituents' enquiries and representations, fairly and impartially;

e) participate in the governance of the Council;

f) be available to represent the Council on other bodies; and

g) maintain the highest standards of conduct and ethics.

2.4 Rights and Duties

a) Councillors will have rights of access to documents, information, land and buildings of the Council, as are necessary for the proper discharge of their functions and in accordance with the law, as set out in the Members' Rights of Access to Information Procedure Rules in Part 4 of this Constitution.

b) Councillors should 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. If there is any question regarding whether information is confidential or exempt Councillors should seek the advice of the Head of Law and Governance or Monitoring Officer. Councillors can refer to the Whistleblowing Policy and Procedure of the Council.

c) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Procedure Rules in Part 4 of this Constitution**.**

2.5 Conduct

Councillors will observe the Members' Code of Conduct, and The Probity in Planning; Code of Practice for Councillors and Officers set out in Part 5 of this Constitution.

2.6 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 – THE PUBLIC AND THE COUNCIL

The public have a number of rights and responsibilities. The following list is a general summary of rights in terms of information, the opportunity to participate and the ability to make complaints

3.1 The Publics Rights

The public have the following rights.

(a) Voting

Members of the public on the electoral roll for the area have the right to vote in elections, both Local and General, as well as any referendum.

(b) Information

The public have the right to:

a) attend**,** record and report on meetings of the Council, the Cabinet and Committees, see any agendas, reports and background papers, and any records of decisions made by them, except where confidential or exempt information is likely to be disclosed, and part of the meeting is therefore held in private;

b) find out from the Forward Plan what Key Decisions will be taken by the Cabinet and when;

c) inspect the Council's accounts and make their views known to the external auditor;

d) contact their Ward, or other, Councillor, or Cabinet Member, about any matter of concern;

e) ask questions at Council, Cabinet and Committee meetings on matters for which the Council has a responsibility or which affect the Borough in accordance with the Council's Public Participation Scheme;

f) make deputations or present petitions to the Council; and

g) obtain a copy of this Constitution (www.basingstoke.gov.uk)

(c) Complaints

The public have the right to complain to:

a) the Council itself under its Complaints Scheme;

b) the Ombudsman after using the Council's complaints procedure, if they feel the Council has not followed its procedures correctly; or

c) the Council's Monitoring Officer about a breach of the Councillor's Code of Conduct.

3.2 The Public's Responsibilities

Members of the public must not be violent, abusive or threatening to Councillors or Officers and must not wilfully damage or harm anything owned by the Council, Councillors or Officers.

ARTICLE – 4 – THE FULL COUNCIL

4.1 Introduction

The Full Council is a formal meeting of all Councillors and is required by law to take important decisions, including setting the Council's Budget and Council Tax and approving a number of key plans and strategies which together form the Policy Framework (listed below). The Full Council must also, by law, take decisions on a number of specific matters.

Full Council provides a central forum for debate and gives the opportunity for Councillors, and members of the public**,** to ask questions about the Council or matters affecting the Borough.

4.2 The Council

4.2.1 Role

A meeting of the Full Council is one which all 54 Councillors are entitled to attend and to speak and vote. The Full Council is responsible for the Budget and Policy Framework of the Council and for all of the functions which are allocated as the responsibility of the Council. It will carry out some functions itself but others will be delegated to Committees or named Officers.

4.2.2 Plans and Budgets

Full Council is responsible for the determination of the Council's Budget and Policy Framework. It is also responsible for regulatory and other non-Cabinet functions. It has a role in holding the Cabinet to account.

4.3 Policy Framework

The Policy Framework means the following three categories of plans and strategies:

(a) Those required by law to be adopted by the Council, namely:

(i) Local Plan documents

(ii) The Licensing, Gambling and Sex Establishment Policy Statements

(iii) Medium Term Financial Strategy

(iv) Treasury Management Policy Statement and Annual Strategies

(v) Treasury Management mid-year review

(b) Those which the Council has chosen to adopt as part of the Policy Framework, namely

(i) Council Plan

(ii) Strategic Asset Management Plan

(iii) Basingstoke Transport Strategy

(iv) Community Safety Strategy

(v) Housing and Homelessness Strategy

(c) Any plan or strategy required by law to be sent to a Minister of the Crown for approval.

4.4 Budget

Responsibility for the Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, determining the Council tax base, setting the Council tax level, decisions relating to the control of the Council's borrowing requirements, investments, the control of its capital expenditure and the setting of expenditure limits and permitted budget transfers.

4.5 Functions of the Full Council

Only Full Council will exercise the following functions**;**

i. adopting and changing the Constitution;

ii. approving or adopting material changes to the Policy Framework, the Budget and any application to the Secretary of State in respect of any Housing Land Transfer;

iii. approving the Statement of Accounts and the Council's Final Accounts (unless dealt with by Audit and Accounts Committee);

iv. making decisions about any matter where the Cabinet is proposing to take a decision which would be contrary to the Policy Framework or contrary to, or not wholly in accordance with, the Budget;

v. appointing and removing the Leader;

vi. determining which Committees and Sub-Committees shall be established, their terms of reference, the number of members (voting and non-voting) that each consists of, and making the necessary appointments to them;

vii. entering into joint arrangements in respect of Joint Committees or Agency arrangements with other authorities involved in Council functions in so far as these have not been delegated;

viii. appointing representatives to Joint Authorities, Joint Committees and other outside bodies unless the appointment is an executive function or has been delegated by the Council;

ix. adopting a scheme for Members' allowances;

x. changing the name of the Council's area;

xi. conferring the title of Honorary Alderman or the Freedom of the Borough;

xii. confirming the appointment of the Head of Paid Service, Directors and other Officers listed in Article 10, designating the Monitoring Officer, Returning Officer and Chief Finance Officer, and the taking of any disciplinary action against these Officers, and the designation of "Proper Officers".

xiii. making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills;

xiv. adopting a Code of Conduct for Members (Councillors);

xv. taking decisions in respect of functions which are not the responsibility of the Leader and which have not been delegated by the Council to Committees, Sub-Committees or Officers;

xvi. the making of Procedure Rules in Part 4 including Contract Standing Orders, Financial Regulations and those for the Disposal of Land

xvii. the delegation of Council functions to Committees, Sub-Committees, to another Local Authority and Officers, subject to the right to amend the delegation scheme from time to time as may be required;

xviii. all other matters which, by law, must be reserved to the decision of the Council as a whole;

xix. to allow Councillors to ask questions on matters relevant to the Council's functions;

xx. to allow Councillors to bring forward motions for debate on matters which fall within the Council's responsibilities or which affect the Borough and its residents;

xxi. to receive reports from the Leader, the Cabinet, and the Audit and Accounts Committee which they have referred to Council;

xxii. to consider and decide on recommendations of Committees on Council functions not within their delegation or which a Committee has referred to the Council for decision;

xxiii. to consider reports on lawfulness and maladministration;

xxiv. to receive reports from the Leader or Cabinet on urgent decisions contrary to the Budget and Policy Framework;

xxv. to take all decisions in respect of delegating council functions to another Local Authority;

xxvi. to set the Council Tax base and the Council Tax;

xxvii. to determine the Council Tax Support Scheme;

xxviii. to agree the annual Pay Policy Statement;

xxix. to determine any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of The Local Authorities Functions and Responsibilities (England) Regulations, 2000 as amended; and

xxx. to make applications to the Secretary of State under Section 10 of the Representation of the People Act 2000 for an Order to proceed with pilot election arrangements.

4.6 Council Meetings

There are three types of Council meeting:

a) the annual meeting;

b) ordinary meetings; and

c) extraordinary meetings.

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

4.7 Responsibility for Functions

The Council will keep under review 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

The Mayor is the First Citizen of the Borough.

The office of Mayor and Deputy Mayor will be filled annually by election of Councillors in accordance with the Mayoral Protocol.

In the event that, after an election, the Mayor is no longer a Councillor, they shall remain in office until the first Annual General Meeting following that election. Contrary to the rule that Councillors retire 4 days after the election the Mayor as the Chair of the Council remains in office until the Annual Meeting of the Council replaces her/him.

The Mayor, and in his/her absence**,** the Deputy Mayor, will have the following roles and responsibilities:

Responsibilities of the Mayor

a) to promote the interests and reputation of the Council and the Basingstoke and Deane area as a whole and act as an ambassador for both;

b) to undertake civic, community and ceremonial activities and foster community identity and pride;

c) to attend such civic and ceremonial functions as the Council and s/he determines appropriate;

d) to promote public involvement in the Council's activities;

e) to uphold and promote the purpose of the Constitution and to interpret the Constitution when necessary;

f) to be consulted on any matters as required under this Constitution;

g) to determine any matter referred to him/her under the urgency provisions of the Access to Information Procedure Rules or the Budget and Policy Framework Procedure Rules in Part 4 of the Constitution;

h) to preside over meetings of the Council so that its business can be carried out fairly and efficiently and with regard to the rights of Councillors and the interests of the community; and

i) 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 Councillors who are not in the Cabinet are able to hold the Cabinet and Committee Chairs to account.

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ARTICLE – 6 – OVERVIEW AND SCRUTINY

6.1 Introduction

The Council is required to discharge overview and scrutiny functions conferred by law. These functions are an essential component of local democracy. Overview and Scrutiny Committees can contribute to the development of Council policies and also hold the Cabinet to account for its decisions. Another key part of the overview and scrutiny role is to review existing policies, consider proposals for new policies and recommend new policies.

Overview and scrutiny should be carried out in a constructive way and should aim to contribute to the delivery of efficient and effective services that meet the needs and aspirations of local inhabitants. The Committees should also be prepared to challenge and question decisions and make constructive criticism.

6.2 Role, Scope and Committee Size

The Council will establish Overview and Scrutiny bodies to discharge the functions conferred by law.

These will be:

(i) Resources Overview and Scrutiny Committee
(ii) Environment and Infrastructure Overview and Scrutiny Committee
(iii) Resident Services Overview and Scrutiny Committee
(iv) Crime and Disorder Joint Scrutiny Committee established by Basingstoke and Deane, Hart and Rushmoor Councils. This shall be designated as the Council's Crime and Disorder Committee in accordance with the Police and Justice Act 2006 for the purposes of scrutinising crime and disorder and community safety matters.
(v) South Ham and Buckskin Regeneration Overview and Scrutiny Committee

The size of the Committees shall be agreed by the Council, including any additional co-opted members as the Council may see fit to appoint. Members of the Cabinet may not be members of the Committees.

The Committees may, from time to time, establish such Sub-Committees or task and finish groups as they see fit.

6.3 General Functions

Within their terms of reference, which are set out in Part 4 of the Constitution in the Overview and Scrutiny Procedure Rules the Overview and Scrutiny Committees may:-

a) Review and scrutinise decisions after they are made by the Leader, Cabinet, Cabinet committees, sub-committees, Cabinet members and council officers;

b) Make reports and/or recommendations to the Council and/or the Cabinet and/or the Cabinet member in connection with the discharge of any functions

c) Make reports or recommendations on any matter affecting the council area or its inhabitants

d) Participate in and make recommendations on the development of council policy;

e) Be consulted as appropriate on key decisions and on such other decisions as those making them see fit before these are made by the Cabinet, Cabinet committees, sub-committees, Cabinet members or Council officers; and

f) Exercise the right to call-in, for reconsideration of decisions made but not yet implemented by the Cabinet and Officers in the case of key and non key executive decisions (as defined by article 11.3)

6.4 Specific Functions

g) Policy Development: The Overview and Scrutiny Committees may participate in policy development. They may:

   (i) assist the Council, Leader and Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;

   (ii) conduct research, as well as community and other consultation, for the analysis of policy issues the identification of possible options and to make recommendations to Cabinet or Council;

   (iii) consider the impact of policies to assess if they have made a difference;

   (iv) question the Leader and other members of the Cabinet and/or Committees and senior Officers of the Council about their views on issues and proposals affecting the area;

   (v) liaise with external organisations operating in the area, whether national, regional or local, and invite reports from them and/or

request them to address the Committee about their activities and performance; and

(vi) question and gather evidence from any person or body (with their consent).

h) Review and Scrutiny: The Overview and Scrutiny Committees may:

(i) review and scrutinise the decisions by the Leader and Cabinet, Cabinet members, Committees and senior Officers of the Council;

(ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;

(iii) require the Leader, members of the Cabinet, and senior Officers of the Council to attend to question them about their decisions whether generally in comparison with the Council Plan and targets over a period of time, or in relation to particular decisions, initiatives or projects;

(iv) make recommendations to the Cabinet, appropriate Committees and/or Council arising from the outcome of the scrutiny process;

(v) review and scrutinise the performance of other public bodies in the area and invite reports from them and/or request them to address the Committee about their activities and performance;

(vi) question and gather evidence from any person or body (with their consent); and

(vii) exercise the right to call in, for reconsideration, decisions made but not yet implemented by the Leader and Cabinet and Officers.

i) Crime and Disorder: The Basingstoke and Deane, Hart and Rushmoor Councils Crime and Disorder Joint Scrutiny Committee may:-

(i) scrutinise decisions made or other action taken in connection with the discharge of the crime and disorder functions by the Joint Community Safety Partnership;

(ii) act as a consultative body for the joint Community Safety Partnership and Police and Crime Commissioner responding to requests in relation to new and changed policies and services in relation to any matter within their purview;

(iii) monitor and review the performance of the joint Community Safety Partnership;

(iv) make reports or recommendations to the Local Authorities, Joint Community Safety Partnership and Police and Crime Commissioner with respect to the discharge of the crime and disorder functions; and

(v) the Committee shall prepare an annual report for the Councils.

6.5 Finance

The Overview and Scrutiny Committees will exercise overall responsibility for any budget allocated to the function.

6.6 Annual Report

The Overview and Scrutiny Committee must report annually to Council on their workings and make recommendations for future work programmes and amended working methods, if appropriate.

6.7 Proceedings of Overview and Scrutiny Committees

The Overview and Scrutiny Committees shall conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution and the Overview and Scrutiny and Cabinet Protocol as set out in Part 5 of the Constitution.

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ARTICLE – 7 – THE LEADER AND CABINET

7.1 Introduction

The Cabinet is appointed to carry out 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. Many decisions will be made by the Cabinet, rather than the Full Council.

7.2 Form and Composition of the Cabinet

The Cabinet will consist of:-

a) the Leader of the Council (the "Leader")

b) the Deputy Leader; and

c) at least two, but not more than 8, other Councillors appointed to the Cabinet by the Leader.

7.3 Leader Election

The Leader will be a Councillor elected to the position of Leader by the Council at an Annual Meeting. The election will be held on the day of the Annual Meeting after the incumbent's term of office as Leader expires.

7.3.1 Term of Office

The Leader will hold office for a period of 4 years, until the Leader's ordinary term of office as a Councillor expires, or until any of the following events arises:

a) s/he resigns from the office; or

b) s/he is disqualified from being a Councillor; or

c) where the Council passes a resolution removing him/her from office.

If the Council passes a resolution to remove the Leader, Council shall elect another Councillor as Leader at the meeting at which the Leader is removed from office, or at a subsequent meeting of the Council. If there is a vacancy in the office of Leader for any other reason, the Council shall elect another Councillor as Leader at the first council meeting after the vacancy occurs, or when reasonably practicable to do so.

In the event of any casual vacancy in the position of Leader, the Deputy Leader shall act in the Leader's place until the appointment of a new Leader by the Council.

7.3.2 Role of the Leader

The Leader will carry out all of the Council's Executive Functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

7.4 Deputy Leader

7.4.1 Appointment

The Leader shall designate one of the members of the Cabinet as Deputy Leader.

7.4.2 Duties of the Deputy Leader

The Deputy Leader shall exercise all the functions of the Leader where the position is vacant or where the Leader is absent or is otherwise unable to act.

7.4.3 Removal from Office

The Leader may, if s/he thinks fit, remove the Deputy Leader from office at any time.

7.5 Other Cabinet Members

Other Cabinet Members will be Councillors appointed to the position by the Leader. Each Cabinet Member shall hold office until:-

a) s/he resigns from that office; or

b) s/he is removed from that office by the Leader upon such notice (if any) as the Leader considers appropriate; or

c) s/he ceases to be a Councillor

The Leader may at any time appoint a Councillor to fill any Cabinet vacancies.

7.6 Proceedings of the Cabinet

The proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules in Part 4 of this Constitution.

7.7 Delegation of Functions

The Leader may exercise Executive Functions him/herself or may otherwise make arrangements to delegate responsibility for their discharge as set out below.

The Leader may delegate Executive Functions to:-

a) the Cabinet as a whole;

b) a Committee of the Cabinet (comprising Executive Members only);

c) an individual Cabinet Member;

d) a Joint Committee;

e) another Local Authority or the Executive of another Local Authority;

f) an Officer.

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ARTICLE – 8 – REGULATORY AND OTHER COMMITTEES

8.1 Introduction

The Council will appoint Committees to undertake a variety of regulatory and other functions that are the responsibility of the Council but which do not have to be carried out by the Full Council.

8.2 Standing Committees

The Standing Committees are listed below and full details of their functions can be found in Part 3 of this Constitution – Responsibility for Functions.

8.2.1 Planning Committee

The Council will appoint a Planning Committee, which will be responsible for dealing with planning applications and other planning and conservation related functions.

8.2.2 Licensing Committee

The Council will appoint a Licensing Committee, which will be responsible for the Council's licensing functions. A Licensing Sub Committee will be formed from members of Licensing Committee to hear appeals against decisions of the Committee and any Licence decision appeals.

8.2.3 Audit and Accounts Committee

The Council will appoint an Audit and Accounts Committee, which will be responsible for audit, corporate governance and the regulatory framework.

8.2.4 Human Resources Committee

The Council will appoint a Human Resources Committee, which will be responsible for the Council's Human Resource functions. The Human Resources Sub Committee will be formed from the members of the Human Resources Committee to deal with appointments.

8.2.5 Standards Committee

The Council will appoint a Standards Committee, which will be responsible for promoting and maintaining high standards of conduct by Members.

8.2.6 Investigating and Disciplinary and Standards Appeals Committee

The Council will appoint an Investigating and Disciplinary and Standards Appeals Committee to deal with disciplinary matters relating to relevant officers.

The Committees will meet in accordance with the Committee Procedure Rules set out in Part 4 of this Constitution. The Members of each Committee shall have a “reserve“ Councillor who may attend in their stead upon giving notice to Democratic Services prior to the meeting.

8.3 Other Committees and Sub-Committees

a) The Council will appoint such other Committees as it considers appropriate to exercise any of its functions.

b) Any Committee appointed by the Council may at any time appoint additional Sub-Committees and Panels throughout the year. Their terms of reference and delegation of powers to them shall be explicit and within the appointing Committee’s terms of reference.

c) The Council in the case of standing Committees, or the parent Committee in the case of Sub-Committees or Panels, will appoint the members to serve on the Committee, Sub-Committee or Panel subject to the statutory right of a political group to make nominations for those appointments.

ARTICLE – 9 – JOINT ARRANGEMENTS

9.1 Introduction

There are a number of circumstances where the Council or the Cabinet is entitled to carry out certain functions jointly with another Local Authority

9.2 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 Executive Functions. Such arrangements may involve the appointment of Joint Committees with these other Local Authorities. Except as set out below, or as permitted or required by law, the Cabinet may only appoint Cabinet Members to such Joint Committees and those members need not reflect the political composition of the Council as a whole.

c) The Cabinet may appoint Councillors to a Joint Committee from outside the Cabinet where the Joint Committee has functions for only part of the area of the Council and that area is smaller than two fifths of the Local Authority, by area or population. In such cases, the Cabinet may appoint to the Joint Committee any Councillor who is member for a Ward contained within the area. Political balance requirements do not apply to such appointments.

9.3 Access to Information

The following Access to Information Procedure Rules apply.

a) If all the members of a Joint Committee are members of the Executive in each of the participating authorities, then the Cabinet rules, on access to information will apply.

b) If the Joint Committee contains members who are not on the Executive of any participating authority, then the access to information rules relating to meetings of the Full Council and its Committees, will apply.

9.4 Delegation to and from other Local Authorities

a) The Council can delegate Council functions to another Local Authority or, where those functions are the responsibility of the Executive of another Local Authority, to that Executive.

b) The Cabinet can delegate Executive functions to another Local

Authority or the Executive of another Local Authority.

c) The decision whether or not to accept such a delegation from another Local Authority is reserved to the Full Council.

9.5 Contracting Out

The Council (in respect of Council functions) and the Cabinet (in respect of Executive Functions) may contract out to another body or organisation functions:-

a) 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

b) 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 – 10 – OFFICERS

10.1 Management Structure

10.1.1 General

The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions. The Council Officer structures will change from time to time to reflect the changing organisational needs of the Council

10.1.2 Chief Officers

The Council must, by law, appoint certain Statutory Officers. These are the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (the Section 151 Officer). It may also appoint Directors. The Head of Paid Service shall have the responsibility and power to amend the functions and areas of responsibility of the Statutory Officers within the statutory roles defined in the legislation and Directors as s/he considers necessary to deliver the Council's functions, vision and priorities. Such changes will be carried out in accordance with any relevant Human Resource policies and within the statutory regime.

10.1.3 Post Functions and Areas of Responsibility

Post	Duties
Chief Executive	Overall corporate management and operational responsibility (including overall management and responsibility for all Officers) Principal adviser to the Council on general policy Overall responsibility for delivering the Council's policies and programmes Provision of professional advice to all parties in the decision-making process To act as Head of Paid Service. Management of workforce and of Council

10.1.4 Head of Paid Service, Monitoring Officer and Chief Finance Officer

The Council will designate the following posts as shown:

Designation	Post
Head of Paid Service	Chief Executive
Monitoring Officer	Head of Law and Governance
Chief Finance Officer	Chief Finance Officer (Section 151 Officer)

Such posts will have the functions described below.

10.1.5 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 in Part 7 of this Constitution.

10.2 Functions of the Head of Paid Service

The Head of Paid Service is appointed under Section 4 Local Government and Housing Act 1989 and is responsible for the organisation, appointment and proper management of staff.

10.2.1 Discharge of Functions by the Council

The Head of Paid Service will keep under review 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.

10.2.2 Restrictions on Functions

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer, if they are a qualified accountant.

10.3 Functions of the Monitoring Officer

The Monitoring Officer is appointed under Section 5 Local Government and Housing Act 1989 and may, in writing, appoint one or more Deputy Monitoring Officers to carry out any of their duties under the Act and Constitution. Any references in the Act, or Constitution, to the Monitoring Officer shall include a reference to the Deputy Monitoring Officer(s).

10.3.1 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 Councillors, Officers and the public.

10.3.2 Ensuring Lawfulness and Fairness of Decision Making

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 s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rise to a finding of maladministration by the Local Government Ombudsman. Such a report must be considered by the Council within 21 days and will have the effect of stopping the proposal or decision being implemented until the report has been considered.

When the report is completed, the Monitoring Officer shall send a copy to each Member of the Council.

10.3.3 Supporting the Standards Committee

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee.

Notwithstanding the duty of confidentiality, the Monitoring Officer shall be at liberty to disclose any information relating to the Council's affairs, and provide copies of any records or documents belonging to the Council, to the Standards Committee, an Independent Person or Independent Assessor for the purposes of investigation or determination of a complaint against a Councillor.

10.3.4 Conducting Investigations

The Monitoring Officer will conduct investigations into Code of Conduct complaints in accordance with the arrangements for dealing with complaints agreed by the Council.

10.3.5 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.

10.3.6 Advising Whether Executive 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.

10.3.7 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. Where the Monitoring Officer considers that a Councillor(s) has acted contrary to his/her advice it is open to him/her to issue a report to the Council under section 5 of the Local Government and Housing Act 1989.

10.3.8 Restrictions on Post

The Monitoring Officer cannot be the Head of Paid Service or the Chief Finance Officer.

10.4 Functions of the Chief Finance Officer (Section 151 Officer)

The Chief Finance Officer is appointed under Section 151 Local Government Act 1972 and Section 6 Local Government and Housing Act 1989.

10.4.1 Ensuring Lawfulness and Financial Prudence of Decision Making

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 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.

10.4.2 Administration of Financial Affairs

The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.

10.4.3 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.

10.4.4 Providing Advice

The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity issues to all Councillors and will support and advise Councillors and Officers in their respective roles.

10.4.5 Giving Financial Information

The Chief Finance Officer will provide financial information to Councillors, the media, members of the public and the community.

10.5 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.

The Council and the Chief Finance Officer will operate in accordance with the Chief Finance Officer (Section 151) Protocol set out in Part 5 of this Constitution.

10.6 Employment

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

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ARTICLE – 11 – DECISION MAKING

11.1 Responsibility for Decision Making

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

11.2 Principles of Decision Making

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

a) the action must be proportionate to the desired outcome;

b) after due consultation with, and the taking of professional advice from, Officers;

c) with a respect for human rights;

d) with a presumption in favour of openness;

e) with a clarity of aims and desired outcomes;

f) following the consideration of any alternative options; and

g) giving reasons for the decision and the proper recording of those reasons.

11.3 Type of Decision

11.3.1 Decisions reserved to Full Council

Decisions reserved to the Council in Article 4 (functions of the Full Council) will be made by the Full Council and will not be delegated.

11.3.2 Key Decisions –

A “Key Decision” means an Executive decision which is likely to:

a) result in the Local Authority incurring expenditure which is, or the making of savings which are, significant having regard to the Local Authority’s budget for the service or function to which the decision relates. As an indication, savings or expenditure are likely to be considered significant if they are worth more than the greater of

   (i) £50,000

   (ii) 25% of annual revenue budget for the service, or function or of the capital allocation to the scheme concerned;

or

(b) be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Local Authority. As an indication, an impact is likely to be significant if it;

(i) affects individuals or organisations outside the Borough;

(ii) affects individuals or organisations in more than one ward; or

(iii) will have a long term (more than 5 years) or permanent effect on the Council or the Borough

In accordance with Section 9Q Local Government Act 2000, in determining the meaning of “significant” regard shall be had to any guidance issued by the Secretary of State.

A decision taker may only make a Key Decision in accordance with the requirements of the Access to Information Procedure Rules and the Cabinet Procedure Rules, set out in Part 4 of this Constitution.

11.4 Decision Making by the Full Council

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

11.5 Decision Making by the Cabinet

Subject to Article 7, Cabinet meetings will follow the Cabinet Procedure~~s~~ Rules set out in Part 4 of this Constitution when considering any matter.

11.6 Overview and Scrutiny Committees

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

11.7 Decision-making by Other Committees and Sub-Committees established by the Council

Subject to Article 11.8 other Council Committees and Sub-Committees will follow those parts of the Committee Procedure~~s~~ Rules set out in Part 4 of this Constitution.

11.8 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.

11.9 Decision Making by Cabinet Members

Cabinet Members may make Executive Decisions on those areas of responsibility delegated to them by the Leader under such restrictions (if any) as may be imposed. If the Cabinet Member is absent or unable to exercise those delegated powers for any reason, the Leader shall be able to recover those powers and exercise them, or delegate them, in writing, to another Cabinet Member for either a set period of time as they may determine, until the happening of a specified event or until formally recovered by the Leader in writing.

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ARTICLE – 12 – FINANCE, CONTRACTS AND LEGAL MATTERS

12.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Part 4 of this Constitution. These rules may be amended from time to time in accordance with the provisions that are contained within them.

12.2 Contracts

Every contract made by the Council will comply with Contract Standing Orders set out in Part 4 of this constitution. These standing orders may be amended from time to time in accordance with the provisions that are contained within them.

12.3 Legal Proceedings

The Head of Law and Governance, or in her/his absence the Legal Services Manager, is authorised to institute, defend, participate in or settle any legal proceedings and take all necessary steps in any case where such action is necessary to give effect to decisions of the Council, or in any case where the Head of Law and Governance considers that such action is necessary to protect the Council's interests.

The Head of Law and Governance, or in their absence the Legal Services Manager, has delegated powers to authorise Officers to appear in court on the Council's behalf.

12.4 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 Law and Governance, or other person authorised by them, unless any enactment otherwise requires, or the Council has given authority to some other person.

Any contract with a value exceeding £75,000, entered into on behalf of the Council shall be made in writing. Subject to Contract Standing Orders, such contracts must be signed by an authorised Officer and, where appropriate, witnessed by a second Officer of the Council or made under the Common Seal of the Council attested by at least one authorised Officer. Such signatures may be applied electronically where the law permits.

In addition to any other person who may be authorised by resolution of the Council, the Proper Officer for the purposes of authentication of documents under the Local Government Acts shall be:

a) The Chief Executive;

b) The Head of Law and Governance and Monitoring Officer;

c) Any Director of the Council concerned with the matter to which the document relates; or,

d) Any Officer authorised in writing by such Director or by the Head of Law and Governance.

12.5 Common Seal of the Council

12.5.1 Common Seal

The Common Seal of the Council shall be kept in a safe place in the custody of the Head of Law and Governance. A decision of the Council, Cabinet or Committee or any duly authorised Officer will be sufficient authority for sealing any document necessary to give effect to the decision.

The Common Seal of the Council may be affixed by either physical means or by such electronic means as the Head of Law and Governance may from time to time authorise. References in this Rule and elsewhere in the Constitution to the Common Seal (or the Seal) of the Council and to the sealing of documents shall be taken to refer to the official seal and any accompanying attesting signatures as being affixed either by physical means or by the electronic means provided for in this Rule.

12.5.2 Sealing and Execution of Documents

The Common Seal of the Council shall be affixed to a document only on the authority of:

a) a resolution of the Council or Cabinet;

b) a resolution of a Committee or Sub-Committee which the Council has empowered to authorise the use of the seal;

c) a decision by the Council, or by a Committee, Sub-Committee or Officer exercising delegated functions, to do anything where a document under the Common Seal is necessary or desirable as part of the action.

The instructing Officer shall provide written authority showing the Council, Cabinet, Committee or Sub Committee authority or the exercise of appropriate Officer delegated powers prior to the affixing of the Common Seal. The affixing of the Common Seal shall be attested by the Head of Law and Governance or any qualified lawyer authorised by him/her.

12.5.3 Record of Sealing of Documents

An entry of the sealing of every deed or document to which the Common Seal of either Council has been affixed shall be made and evidenced by

signature by the Head of Law and Governance, or other person authorised in writing by her/him and consecutively numbered in a book (one for each Council) to be provided for the purpose. The authority for attesting that sealing shall be entered into the Sealing Register.

12.5.4 Disposal of Land and Real Property

Every disposal of land and real property made by the Council will comply with the Disposal Procedure for Land and Property, set out in Part 4 of the Constitution.

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ARTICLE – 13 – REVIEW AND REVISION OF THE CONSTITUTION

13.1 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. The Chief Finance Officer (Section 151 Officer) shall be responsible for keeping under review the Financial Regulations set out in Part 4 of the Constitution and shall make any necessary amendments and revisions as are required from time to time. They shall report any amendments made to Part 4 to the next available Council meeting for noting.

13.2 Protocol for Monitoring and Review of Constitution by Monitoring Officer

A key role for the Monitoring Officer is to make recommendations for ways in which the Constitution could be amended in order to better achieve the purposes set out in Article 1. In undertaking this task, the Monitoring Officer may:

a) Observe meetings of different parts of the Member and Officer structure;

b) Undertake an audit trail of a sample of decisions;

c) Record and analyse issues raised with her/him by, Councillors, Officers, the public and other relevant stakeholders; and,

d) Compare practices in this Council with those in comparable authorities, or national examples of best practice.

13.3 Changes to the Constitution

Subject to the following paragraph, changes to the Constitution will only be approved by the Full Council. The Council may, if it considers necessary, appoint a special Committee or working group to make recommendations for that purpose. Where the table of Officers in Article 10 or the Management Structure section of the Constitution needs to be updated, the Monitoring Officer may make the necessary changes upon receipt of notification from the Chief Executive that s/he has made changes to these structures following Council or relevant Committee approval.

If, in the reasonable opinion of the Monitoring Officer, a change is:

a) A minor variation; or

b) Required to be made to remove any inconsistency or ambiguity; or

c) Required to be made so as to put into effect any decision of the

Council or its Committees or the Cabinet;

the Monitoring Officer may make such a change. Any such change made shall come into force with immediate effect but shall be referred to Full Council as soon as is reasonably practicable and shall continue to have effect thereafter only if Full Council agree.

13.4 Legislative Change

Any part of the Constitution may be amended by the Monitoring Officer where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer so decides or the legislation (where relevant) so provides. Such changes shall be reported to the next Full Council meeting as is reasonably practical.

ARTICLE – 14 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

14.1 Suspension of the Constitution

14.1.1 Limit to Suspension

The Articles of this Constitution may not be suspended. The Council Procedure Rules in Part 4 of this Constitution may be suspended by the Full Council to the extent permitted within those rules and the law.

14.1.2 Procedure to Suspend

A motion to suspend any rules will not be moved without notice, unless at least one half of the whole number of Councillors 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.

14.2 Interpretation

The ruling of the Mayor (or other person presiding) 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.

14.3 Publication

a) Copies of the Constitution are available to view on the council's website or from Democratic Services. The Monitoring Officer will make available a printed copy of this Constitution for Councillors if requested, but every Councillor has access to this Constitution online.

b) The Monitoring Officer will ensure that this Constitution is available for inspection at Council offices and on the Council's website. Printed copies can be purchased by members of the local press and the public on payment of a reasonable fee.

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