

Part 2 – Articles of the Constitution

Article 1 – The Constitution

1.01 Powers of the Council

This is the Constitution of Winchester City Council, and the Council will exercise all its powers and duties in accordance with the law and this Constitution.

1.02 The Constitution

This Constitution and all its appendices is the Constitution of Winchester City Council.

1.03 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 citizens, businesses and other organisations;
- b) Support the active involvement of citizens in the process of local authority decision-making;
- c) Help Members represent their constituents more 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 Member 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 decisions;
- h) Provide a means of improving the delivery of services to the community.

1.04 Interpretation and Review of the Constitution

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

Amendments will be made to the electronic version of the Constitution as soon as reasonably practical and published on the Council website to provide transparency.

These amendments will either be those made under the delegated powers given to the Chief Executive and Monitoring Officer set out in Article 15 or amendments made by Full Council.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

Article 2 – Members of the Council

2.01 Composition and Eligibility

The Council will comprise 45 Members (otherwise called Councillors). One or more Councillors will be elected by the voters of each Ward in accordance with the scheme drawn up by the Local Government Boundary Commission for England.

Only registered voters of the District 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.

2.02 Election and Terms of Councillors

The ordinary election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May in each year beginning in 2018, except in 2021 and every 4th year after then when there will be no regular election. For Councillors elected from 2018 onwards, the terms of office will be four years, starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.¹

2.03 Roles and Functions of all Councillors

All Councillors will undertake the following key roles:

- a) Collectively be the ultimate policy makers and carry out, and participate in a number of strategic and corporate management functions;
- b) Contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
- c) Effectively represent the interests of their ward and individual constituents;
- d) Respond to constituents' enquiries and representations, fairly and impartially;
- e) Participate in the governance of the Council;
- f) Maintain the highest standards of conduct and ethics.

¹ Councillors Terms of Office are governed by the provisions of the Local Government Act 1972, Section 7. The Leader, Chairs and Vice-Chairs, subject to remaining an elected Councillor, hold office until the annual meeting of the Council.

2.04 Rights and Duties of Councillors

As detailed in the Access to Information Procedure Rules (Part 4) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions, and in accordance with the law. They will not make public any information which is confidential or exempt, or divulge information given 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 Rules in Part 4 of this Constitution.

2.05 Conduct

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

2.06 Allowances

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

Article 3 – Citizens and the Council

3.01 Citizens Rights

Citizens have the following rights (their rights to information and to participate are explained in more detail in the Access to Information Procedure Rules in Part 4 of this Constitution):

- a) Voting and Petitions – citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution;
- b) Information – citizens have the right to :
 - (i) Attend meetings of the Council and its Committees except where confidential or exempt information is likely to be considered and where the meeting is therefore held in private;
 - (ii) Attend meetings of the Cabinet except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (iii) Establish from the Forward Plan what key decisions will be taken by the Cabinet and when;
 - (iv) See reports and background papers, and any record of decisions made by the Council and the Cabinet (except in relation to confidential or exempt business);
 - (v) Inspect the Council's accounts and complain or make representations to the Council's external auditors.
- c) Participation – citizens have the right to present petitions at full Council and address the meeting in line with the Council's petition scheme. There is also a public participation process which operates immediately after the start of Cabinet and committee meetings. At the invitation of the Chairman, citizens may also address any meeting of Cabinet, a Committee (including a Scrutiny Committee) or Sub Committee. Special procedures for public representations apply at the Development Management and Licensing Committees.
- d) Complaints – citizens have the right to complain to:
 - (i) The Council itself under its complaints scheme;
 - (ii) The Ombudsman, after exhausting the Council's own complaints scheme;

- (iii) The Audit and Governance Committee or the Monitoring Officer about a breach of the Councillors Code of Conduct.

3.02 Citizens Obligations

Citizens must not be violent, abusive, or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers. When attending meetings citizens will be expected to comply with the decision of the Chairman of that meeting.

Article 4 – The Full Council

4.01 Meaning

The Council means every member of Winchester City Council meeting together formally. By law, there are some things that only the Council has the power to do. Other matters are allocated by this Constitution.

4.02 Policy Framework and Budget

The policy framework includes the following plans and strategies:

- a) The Council Strategy;
- b) Plans and strategies which together comprise the Winchester City Council Local Plan, supplementary planning documents, final Master Plans and associated development guidance;
- c) A plan or strategy for the control of the Authority's borrowing, investments or capital expenditure or for determining the Authority's minimum revenue provision;
- d) The Licensing Authority Policy Statement;
- e) Any plan or strategy (whether statutory or not) which has been identified by resolution of Council as a matter for full Council decision, or where Cabinet has referred a plan or strategy for Full Council decision;
- f) Variations to any of the above mentioned plans.

4.03 Budget

The Council will be responsible for the adoption of its annual budget. Once the annual budget is in place it will be the responsibility of the Cabinet to implement it. The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council tax base, setting the Council tax, decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

4.04 Housing Land Transfer

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993, or to dispose of land used for residential purposes where

approval is required under Section 32 or 43 of the Housing Act 1985.

4.05 Functions of the Full Council

Only the Council will exercise the following functions:

- a) Adopting and changing those parts of the Constitution outlined in Article 15 as requiring full Council approval;
- b) Approving or adopting the policy framework, the annual budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- c) Matters which the Financial Procedure Rules in Part 4 of this Constitution require Council approval;
- d) Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget framework where the decision-maker is minded to make it in a manner which will be contrary to the policy framework or contrary to/not wholly in accordance with the budget framework;
- e) Electing the Leader, removing the Leader by resolution and electing a replacement in accordance with this Constitution;
- f) Determining the political balance of the Council and the allocation of seats in accordance with it, or by unanimous vote in some other way as the Council sees fit. In accordance with the Local Government and Housing Act 1989 Section 15 and any subsequent amendment.(Which define the term 'political balance.')
- g) Deciding which committees of the Council to establish for the municipal year and the size and terms of reference for those committees.
- h) Receiving or arranging the delegation of nominations of members to serve on each committee of the Council and any outside body to which a new appointment or reappointment is required unless the appointment is an executive function or it has been delegated by the Council;
- i) Adopting a Members Allowances Scheme under Article 2;
- j) Changing the name of the area, confirming the title of Honorary Alderman or Freedom of the City;

- k) Approving the appointment or dismissal of the Head of Paid Service;
- l) Making, amending, revoking, re-enacting or adopting byelaws, and promoting or opposing the making of local legislation or personal Bills;
- m) Making a request under Section 57 (requests for single member electoral areas) of the Local Democracy, Economic Development and Construction Act 2009 for single-member electoral areas;
- n) Passing a resolution to change a scheme for elections under Section 32(1), 37(1) or 39(1) (resolutions for Schemes for Elections) of the Local Government and Public Involvement in Health Act 2007;
- o) The functions under the Local Government Act 2000 of:
 - i) Deciding whether to make proposals for a change in governance arrangements of the kind set out in sections 9KA and 9KB of the 2000 Act;
 - ii) Deciding whether a change of the kind set out in Section 9KA of the 2000 Act should be subject to approval in referendum under Section 9M of the Act;
 - iii) Passing a resolution to make a change in governance arrangements under Section 9KC of that Act;
- p) The function of making an Order giving effect to recommendations made in a Community Governance Review under Section 86 (reorganisation of community governance) of the Local Government and Public Involvement in Health Act 2007;
- q) The duty to make a change in governance arrangements under paragraph 3 or 8 of Schedule 4 to the Local Government and Public Involvement in Health Act 2007;
- r) Adopting the local authority's code of conduct and any local protocols on Member conduct;
- s) The powers to establish, confer functions on, and request a dissolution of, a joint committee to be, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004, a local planning authority, under Sections 29, 30 and 31 of that Act.

- t) All local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet;
- u) All other matters which, by law and/or by this Constitution are reserved to Council.

The Council may also:

- a) Represent the views of the community on matters of significance; and
- b) Take decisions on matters which are not the responsibility of Cabinet

4.05 Council Meetings

There are three types of Council meeting:

- a) The annual meeting;
- b) Ordinary meetings;
- c) Extraordinary meetings

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

4.06 Responsibility for Functions

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

Article 5 – Chairing the Council

5.01 The Role and Functions of the Mayor

The Mayor will be elected by the Council annually and will chair all meetings of Council. In the absence of the Mayor, the Deputy Mayor (also elected annually) will chair the Council meeting.

The Mayor (or Deputy Mayor) will have the following responsibilities:

- a) To uphold and promote the purposes of the Constitution, and to interpret the Constitution where necessary;
- b) 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;
- c) To ensure that the Council meeting is a forum for the debate of matters of concern to the local community and a place at which Members who are not on the Cabinet are able to hold the Cabinet to account;
- d) To promote public involvement in the Council's activities;
- e) To be the conscience of the Council;
- f) To decide in the absence of the Chair of the relevant Overview and Scrutiny Committee whether a matter is so urgent as to allow the Cabinet to take a decision in respect of it even though it is not contained in the Forward Plan and five clear days' notice of the decision has not been given, or that a decision concerns a plan or strategy forming part of the Budget or Policy Framework and would be contrary to it or in the case of the budget not solely in accordance with that framework.
- (g) The Mayor, and in his/her absence, the Deputy Mayor, will attend such civic and ceremonial functions as the Council and he/she shall decide, and undertake those functions in a non-political manner, appropriate to the customs and practice of this ancient office.

Article 6 – The Cabinet (The Executive)

6.01 Role

The Leader and the Cabinet (the title given in this Constitution to the body otherwise known as the Executive in some constitutions, and in various recitals in legislation) will 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.

The role of the Cabinet therefore is to:

- a) Make key decisions as defined
- b) Formulate the annual Budget and Policy Framework for submission to Council in accordance with the budget and policy framework procedure in Part Four of the Constitution
- c) Implement the approved budget and policy framework
- d) Determine recommendations and other matters referred to it by committees, subcommittees or the council
- e) Carry out all the functions which by law, the Cabinet must carry out or it has chosen to carry out and which have not been delegated elsewhere.

6.02 Form and Composition

The Cabinet will consist of:

- a) The Leader of the Council,
- b) The Deputy Leader and
- c) At least two, but not more than eight, other councillors appointed to the Cabinet by the leader.

6.03 The Leader

The Chairman of Cabinet will be a member elected to the position of Leader by the Council. The Leader will hold office for a four year term unless:

- a) He or she resigns;
- b) He or she is no longer a Councillor;
- c) He or she is removed from office by an ordinary resolution on notice of the Council.

6.04 Other Cabinet Members

Other Members of the Cabinet shall hold office for a term up to four years until:

- a) They are removed from office or resign; or
- b) They are no longer Councillors; or
- c) The Leader removes them from office, either individually or collectively.

6.05 Proceedings of Cabinet

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

The Leader or Cabinet may appoint cabinet committees as set out in the Cabinet Procedure rules.

6.06 Responsibility for the 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
- c) An individual Cabinet Member
- d) A Joint Committee

6.07

The Monitoring Officer will maintain a list in Part 3 of this Constitution setting out which individual Members of the Cabinet, Committees of the Cabinet, officers or joint arrangements are responsible for the exercise of particular executive functions. Committees of Cabinet can only include members of Cabinet.

Article 7 – Overview and Scrutiny Committees

7.01 General Role

The general role for the overview and scrutiny function is set out in Section 21 Local Government Act 2000.

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 made constructive criticism.

The Council has split its overview and scrutiny responsibilities across three overview and scrutiny committees.

Two policy-focused committees, which undertake forward looking, policy development work and pre-decision scrutiny relevant to their specific areas. These are the Business and Housing Policy Committee and the Health and Environment Policy Committee.

A Scrutiny Committee (which holds the Cabinet to account, has a strategic outlook and solely holds the power of Call-In).

The detailed definitive Terms of Reference are listed in Part 4 of the Constitution – Overview and Scrutiny Procedure Rules.

7.02 Terms of Reference

In general the two policy committees will:

- a) Assist the Council, Leader and Cabinet in the development of its budget and policy framework by in depth analysis of the policy issues within the priority areas allocated to them in the Council strategy.
- b) 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. They will consider the impact of policies to assess if they have made a difference
- c) Question the Leader and other Members of the Cabinet and/or committees and senior officers of the Council about their views and issues of proposals affecting the delegated priority of the Council strategy in each Committee's remit.
- d) May ensure that the Council adopts an entrepreneurial approach in achieving all the outcomes in the Council strategy.

The two new policy focussed Committees' broad terms of reference are as follows:

Business and Housing Policy Committee

To maintain a strategic overview of the progress towards the achievement of the first two priorities in the Council strategy namely:

- a) Making the District a premier business location
- b) Delivering quality housing options

Health and Environment Policy Committee

To maintain a strategic overview of the following priorities:

- a) Improving the quality of the District's environment
- b) Improving the health and happiness of the community

The broad terms of reference are as follows:

- a) It will hold the Cabinet to account by reviewing and scrutinising executive decisions.
- b) Reviewing and scrutinising the performance of the Council in relation to its policy objectives and performance targets
- c) Exercise the right to Call-In for reconsideration of decisions made but not yet implemented by the Leader, the Cabinet and Portfolio Holders and Officers

Matters in the remit of more than one Overview and Scrutiny Committee

The Overview and Scrutiny Committee procedure rules in Part 4 sets out rules for the operation of these committees and includes provision for resolving overlapping jurisdictions. In the first instance it is intended that the chairs of each committee will meet to agree a solution in such situations.

Article 8 – Regulatory and other Non-Executive Decision Making Committees

8.01 Regulatory and other Non-Executive Decision making Committees

Regulations made under the Local Government Act 2000 specify that certain functions shall be the responsibility of the Council (rather than the Cabinet).

The Council will appoint Committees as set out in ‘Responsibility for Council Functions’ in Section 4 of Part 3 of this Constitution, to discharge these functions. The Council’s main regulatory committees are set out below.

A brief summary of the main areas of work of these committees are set out below. All the functions discharged by these committees are set out in detail in Part 3 of the Constitution.

8.02 The Development Management Committee

This Committee is responsible for matters relating to the control of the use of land including planning and listed building consents, the preservation of buildings and trees, conservation areas and enforcement.

8.03 The Licensing and Regulation Committee

This Committee is responsible for regulating the sale of alcohol, the provision of public entertainment and gambling, taxis/private hire vehicles and drivers, and such other matters within the remit of the Committee as set out in this Constitution.

8.04 The Audit and Governance Committee

This Committee will be responsible for Audit, Corporate Governance and the Regulatory Framework. Within its Terms of Reference are the appointments of:

- a) A Standards sub-committee which will have delegated responsibility for promoting and maintaining high standards of conduct by Members.
- b) A Personnel Committee which will be responsible for the Council’s Human Resources function where there is requirement for this to be undertaken by a committee which shall include disciplinary matters relating to relevant officers.

8.05 Other Committees

The Council will appoint such other committees as are set out in Part 3 of the Constitution to discharge the functions described therein.

Article 9 – Audit and Governance Committee Appointment

The Council will appoint an Audit and Governance Committee. It will normally be politically balanced.

In addition there will be two sub-committees. These are:

- a) The Standards Sub-Committee; the role of this Sub-Committee is set out later in this Article. This Committee will conduct hearings relating to breaches of the Member Code of Conduct. The procedures for hearings and the procedures for complaint handling are set out in Part 5 of the Constitution.
- b) The Human Resources Sub-Committee; the role of this Sub-Committee is set out later in this Article.

Composition

The size and composition of this Committee will be determined by Council from time to time. It will be separate, organisationally and practically, from the Cabinet and will not comprise of any Cabinet members.

The Members of the Sub-Committees will be appointed from the main Committee.

Terms of Reference

The Committee will have the following terms of reference relating audit functions, governance functions and human resources functions.

Audit functions

- a) Act as the Council's Audit Committee for internal and external audit.
- b) Agree and oversee the Council's Internal Audit Plan and monitor progress against this Plan.
- c) Receive and consider the work of the external auditor.
- d) Ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.
- e) Overview the Council's risk management arrangements and provide independent assurance of the adequacy of the risk management framework.
- f) Seek assurance that action is being taken on risk-related issues identified by auditors and inspectors.

- g) Approve the Governance and Assurance Statements, Statement of Accounts and anti-fraud and anti-corruption arrangements.
- h) To notify, report or recommend to Cabinet and Council as appropriate.
- i) Have continued due regard for CIPFA (Chartered Institute of Public Finance and Accountancy) guidance.
- j) To review, monitor and consider reports from the Chief Finance Officer on Treasury management, functions and activities.

Governance functions

- a) Promoting and maintaining high standards of conduct by Councillors and any co-opted members.
- b) Assisting the Councillors and co-opted members to observe the Members' Code of Conduct.
- c) To operate the overall scheme in respect of the local determination of Code of Conduct complaints against Council and Parish/Town Members, via sub-committees where appropriate (this role is largely delegated by the Constitution to a Standards Sub-Committee and the Monitoring Officer as set out in greater detail in the Constitution).
- d) Approving, and keeping under review, codes of conduct and protocols for Councillors and staff.
- e) Monitoring the local operation of codes and protocols.
- f) Promoting training of Councillors and co-opted members in the context of codes and protocols.
- g) Granting dispensations, where referred by the Monitoring Officer and in accordance with the Localism Act 2011 or other legislation.
- h) To monitor the use of dispensations.
- i) Dealing with any reports from the Monitoring Officer on any matter relating to standards issues or standards complaints.
- j) To appoint sub-committees consisting of members drawn from its own membership, excluding group leaders, to determine complaints under the Code of Conduct and referred by the Monitoring Officer. Meetings of these sub-committees are to follow the procedure as set out in the Council's agreed procedure for dealing with Code of Conduct complaints.
- k) Overview of the Council's whistle blowing policy.

Human Resource Functions

The Human Resources Sub-Committee will be responsible for the Council's Human Resources function where not delegated under the Scheme of Delegation. This includes:

- a) All matters, where not delegated, in relation to the Council's role as an employer including the recruitment of the Head of Paid Service and Strategic Directors
- b) All disciplinary matters relating to specified officers that are required to have Member or Committee involvement. This is elaborated in the Officer Employment Procedure Rules later in this Constitution.

Standards Sub-Committee Terms of Reference

- a) To consider investigation reports in respect of Code of Conduct complaints that are referred to it by the Monitoring Officer.
- b) To conduct a hearing into an allegation that a Member or co-opted Member of the Council or Town/Parish Council has breached the relevant code of conduct. At such hearing, the Member against whom a complaint has been made may respond to the investigation report.
- c) Following the hearing the Sub-Committee can make one of the following findings:
 - i) that the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the hearing
 - ii) that the Member has failed to comply with the Code of Conduct but no further action needs to be taken in respect of the matters considered at the hearing; or
 - iii) that the Member has failed to comply with the Code of Conduct and a sanction and/or an informal resolution should be imposed.
- d) The Sub-Committee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it either by law or policy.
- e) After making a finding the Sub-Committee shall, as soon as reasonably practicable, provide written notice of its findings and the reason for its decision to the Member and the complainant.

- f) To apply the Council's Standards Complaints Procedure and Complaints Standards Sub-Committee Procedure to hearings before the Sub-Committee.

Article 10 – Area Committees and Forums

10.01 Area Committees and Forums – Position Statement

The Council may appoint area committees and/or forums as it sees fit, if it is satisfied that to do so would ensure improved service delivery.

The Council will consult with relevant parish and town councils and the chairman of relevant parish meetings when considering whether and how to establish area committees.

The Council has not established any area committees in the parished part of the District, but has established a Winchester Town Forum, which covers the five (unparished) District Wards in Winchester Town. All 14 Members who represent the Town Wards are members of the Forum.

The Forum has been established as an area committee with an advisory role and some decision-making powers as defined in Part 3 of the Constitution.

The following three paragraphs apply to the Winchester Town Forum and any other area committee/forum the Council may establish.

10.02 Conflicts of Interest – Membership of Area Committees and Forums and Overview or Scrutiny Committees

Conflict of interest – if an overview and scrutiny committee is scrutinising specific decisions or action taken in relation to the business of an area committee of which the Councillor concerned is a member, then the Councillor must consider whether he/she can speak or vote at the overview and scrutiny meeting, having regard to the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution or the Council's Code of Conduct in Part 5 of the Constitution.

General Policy Reviews – where the overview or scrutiny committee is reviewing policy generally, the member need not withdraw.

10.03 Area Committees and Forums – Access to Information

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

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

10.04 Cabinet Members on Area Committees and Forums

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

Article 11 – Joint Arrangements

11.01 Arrangements to Promote Well-being (under the power of general competence in chapter 1 of the Localism Act 2011)

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

- a) Enter into arrangements or agreements with any person or body.
- b) Co-operate with, or facilitate or co-ordinate the activities of, any person or body.
- c) Exercise on behalf of that person or body any functions of that person or body.

11.02 Joint Arrangements

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.

The Leader or Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

Except as set out below, the Leader or Cabinet may only appoint Cabinet members to such a joint committee and those members need not reflect the political composition of the local authority as a whole.

The Leader or Cabinet may appoint members to a joint committee from outside the Cabinet where the joint committee has functions for only part of the area of the authority, and that area is smaller than two fifths of the authority by area or population. In such cases, the Cabinet may appoint to the joint committee any Councillor who is a member for a ward which is wholly or partly contained within the area.

Details of any joint arrangements, including any delegations to joint committees, will be found in the Council's Scheme of Delegation in Part 3 of this Constitution.

11.03 Access to Information

The Access to Information Rules in Part 4 of this Constitution apply.

If all the members of a joint committee are members of the executive in each of the participating authorities, then its access to

information regime is the same as that applied to the executive of the administering authority.

If the joint committee contains members who are not on the executive of any participating authority then the Access to Information Rules in Part VA of the Local Government Act 1972 will apply.

11.04 Delegation to and from other Local Authorities

The Council may delegate non-executive functions to another local authority, or in certain circumstances, the executive of another local authority.

The Leader or Cabinet may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.

11.05 Contracting Out

The Council, for non-executive functions, and the Leader or Cabinet for executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under Section 70 of the De-Regulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent, under usual contracting principals, provided there is no delegation of the Council's discretionary decision making, other than to the extent permitted by law.

Article 12 – Officers

12.01 Management Structure

The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions. The division of responsibilities are set out in Section 6 of Part 3.

12.02 Head of Paid Service, Monitoring Officer and Section 151 Officer

The Council must by law, appoint certain statutory officers. These are: the Head of Paid Service, the Chief Finance Officer (the Section 151 Officer), and the Monitoring Officer.

The Chief Executive is designated the Head of Paid Service.

The Council will designate suitably experienced and qualified members of staff to undertake the following two statutory posts:

- a) Section 151 Officer
- b) Monitoring Officer

Such posts will have the functions described below. The Scheme of Delegation to Officers in Part 3 at Section 4 cross-references with the provisions in this Article. The duties of the Section 151 Officer and Monitoring Officer can be carried out by a deputy appointed by them.

12.03 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 the Constitution.

12.04 Functions of the Head of Paid Service

The functions of the Head of Paid Service are as follows:

- a) Discharge of functions by the Council – the Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- b) Restrictions on functions – the Head of Paid Service may not be the Monitoring Officer but may hold the post of Section 151 Officer if a qualified accountant.

12.05 Functions of the Monitoring Officer

The functions of the Monitoring Officer are as follows:

- a) Maintaining the Constitution – the Monitoring Officer will maintain an up to date version of the Constitution and will ensure that it is widely available for members, staff and the public.
- b) Ensuring lawfulness and fairness of decision making – after consulting with the Head of Paid Service and the Section 151 Officer, the Monitoring Officer will report to the full Council (or to the Cabinet in relation to an executive function) if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c) Supporting the Audit and Governance Committee - the Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct, through provision of support to the Audit and Governance Committee on matters within the Monitoring Officer's remit.
- d) Conducting investigations – the Monitoring Officer will conduct investigations into matters under the arrangements made in relation to the Code of Conduct and make reports or recommendations in respect of them to the Audit and Governance Committee.
- e) Proper Officer for Access to Information – the Monitoring Officer will ensure that the Cabinet's decisions, together with reason for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.
- f) Advising whether Cabinet decisions are within the budget and policy framework – the Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- g) Contributing to corporate management – the Monitoring Officer will contribute to the corporate management of the Council, in particular through the provision of professional legal advice.
- h) 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.

- i) Restrictions on post – the Monitoring Officer cannot be the Section 151 Officer or the Head of Paid Service.

12.06 Functions of the Section 151 Officer

The functions of the Section 151 Officer are as follows:

- a) Ensuring lawfulness and financial prudence at decision making – after consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the full Council, or to the Cabinet in relation to an executive function, and the Council’s external audit if he or she 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 Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.
- c) Contributing to corporate management – the Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- d) Providing advice – the Section 151 Officer will provide advice on the scope of powers and authority to take decisions with regard to the financial affairs of the Council, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- e) Give financial information - the Section 151 Officer will provide financial information to the media, members of the public and the community.

12.07 Duty to provide sufficient resources to the Monitoring Officer and Section 151 Officer

The Council will provide the Monitoring Officer and Section 151 Officer with such officers, accommodation and other resources as are in their opinions sufficient to allow their duties to be performed.

12.08 Conduct

Officers will comply with the Employees Code of Conduct and the protocol on officer/member relations set out in Part 5 of this Constitution.

12.09 Employment

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

Article 13 – Decision Making

13.01 Responsibility for Decision Making

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

13.02 Principles of Decision Making

Decisions of the Council will be made in accordance with these principles:

- a) The actions must be proportionate to the desired outcome
- b) After due consultation and the taking of professional advice from officers
- c) With a respect for human rights
- d) With a presumption in favour of openness
- e) Natural justice
- f) With a clarity of aims and design options
- g) Giving reasons for the decision and the proper recording of those reasons

13.03 Types of Decisions

Decisions reserved to full Council - decisions relating to the functions listed in Article 4 will be made by the full Council and not delegated.

Key decisions – a key decision is defined by Regulation 8 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 as being an executive decision which is likely:

- a) To 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;

(For Winchester City Council, the financial limit above which a decision is regarded as significant is £250,000), or;

- b) To be significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules, Access to Information Procedure Rules (Part 4) and the Officer Scheme of Delegation (Part 3) of this Constitution.

Non-Key Decisions

Officers will usually take non-key executive decisions.

A non-key decision is an executive decision that does not meet either criterion of a key decision as laid out above. These decisions are divided into significant operational decisions and administrative decisions.

Significant Operational (Non-Key) Decisions

This is a decision in relation to a council or executive function which is not a key decision and results in one of the following:

- a) Revenue expenditure or making savings (including the receipt or loss of income) between £100,000 and £250,000 per year;
- b) Capital expenditure (i.e. if they involve entering into new commitments and/or making savings) and/or contract awards of between £100,000 and £250,000
- c) When, in the opinion of the Chief Executive, the Section 151 Officer or Monitoring Officer, a published record of the decision is required to provide openness and transparency.
- d) A significant decision should be recorded in order to comply with Regulation 13 (Recording of executive decisions made by individuals) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (No. 2089).

An Administrative Decision:

- a) Is within an approved budget; and
- b) Is not in conflict with the Budget and Policy Framework or other approved policies approved by full Council, and
- c) Does not raise new issues of policy

13.04 Decision made by the full Council

Subject to Article 13, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.05 Decision making by the Cabinet

Subject to Article 13, the Cabinet will follow the Cabinet Procedure Rules set out in Part 4 of this Constitution when considering any matter.

13.06 Decision making by Overview and Scrutiny Committees

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

13.07 Decision making by other Committees and Sub Committees

Subject to Article 13, other Council committees and sub committees will follow the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

13.08 Decision making by Council bodies acting as tribunals

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

13.09 The Party Whip

The Party Whip is understood to mean any instructions given by or on behalf of a political group to any Member who is a Member of that group as to how that Member shall speak or vote, or the application of threat to apply any sanctions by the Group in respect of that Member should they speak or vote in any particular manner.

There shall be no Party Whip at meetings of:

- a) The Development Management Committee
- b) The Overview and Scrutiny Committees
- c) The Audit and Governance Committees, and any Sub-Committees

- d) The Licensing and Regulation Committee, and any Sub-Committees where hearings are conducted
- e) Any other committees where the Committee meets to determine applications, hearings, appointments or acts in any quasi-judicial matter

Article 14 – Finance, Contracts and Legal Matters

14.01 Financial Management

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

14.02 Contracts

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

Legal Proceedings

The Head of Legal Services or a suitably qualified Corporate Head of Service, or Strategic Director 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 it is considered that such action is necessary to protect the Council's interests.

However, where cases in the High Court are involved, all actions will be subject, wherever practicable, to consultation with the Leader or Deputy Leader if it concerns an executive matter, or the Chairman or Vice Chairman of the relevant committee if it concerns a non-executive matter.

14.03 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 Services or other person authorised by him or her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value exceeding £10,000 entered into on behalf of the Council shall be made in writing. Such contracts must either be signed by at least two officers of the Council or made under the Common Seal of the Council attested by at least one authorised officer.

14.04 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 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 Services should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Services or some other person authorised by him or her.

In addition to the Common Seal being attested by the officer(s) referred to above, documents of a ceremonial nature shall also, if appropriate, bear the signature of the Mayor and/or the Chief Executive.

Article 15 – Review and Revision of the Constitution

15.01 Duty to Monitor and Review the Constitution

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

15.02 Protocol for Monitoring and Reviewing the Constitution by Monitoring Officer

A key role for the Monitoring Officer 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 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 him/her by members, officers, the public and other relevant stakeholders.
- d) Compare practices in this Council with those in other comparable authorities, or national examples of best practice.

15.03 Changes to the Constitution

Changes to this Constitution will only be approved at a meeting of the Full Council after consideration of any proposals by the Monitoring Officer or the Chief Executive save that there is set out below an exception to this requirement within the text of this paragraph.

A vote at Full Council to change the Constitution should be passed by a simple majority of those present and voting. The Monitoring Officer, in consultation with the Chief Executive, has delegated authority to amend any part of the Constitution where such amendment is required to be made to comply with any legislative provisions or to make minor amendments to comply with changes to staffing structures, job descriptions or changes in terminology.

Implementation of such amendments will be decided by the Monitoring Officer in consultation with the Chief Executive and reported to Full Council as soon as practicably possible.

15.04 Change from a Leader with Cabinet to a Mayoral Form of Executive

The Council must take reasonable steps to consult the local electors and other interested parties in the area when drawing up proposals. If the proposed new form of Executive involves an elected Mayor the Council must hold a referendum.

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

16.01 Suspension of the Constitution

The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the Council, Cabinet or a committee, to the extent permitted within those Rules and the law.

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. The motion shall not be carried unless approved by at least one half of the members present and voting.

The following rule may be suspended in accordance with Article 16:

Council Procedure Rules, except those that are not subject to suspension as set out in the Rules.

16.02 Interpretation

The ruling of the Mayor 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 full Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

16.03 Publication

The Monitoring Officer will ensure that this Constitution is readily available to all, available for inspection at the Council's offices and published on the Council's website, and kept up-to-date.

The Monitoring Officer will deliver an electronic copy of the Constitution to each Member of the Council upon delivery to him/her of that individual's acceptance of office on the Member first being elected to the Council.

Schedule 1 – Description of the Executive Arrangements

The following parts of this Constitution constitute the executive arrangements:

- a) Article 6 (The Cabinet) and the Cabinet Procedure Rules.
- b) Article 7 (Overview and Scrutiny Committees) and the Overview and Scrutiny Procedure Rules.
- c) Article 10 (Area Committees and Forums)
- d) Article 11 (Joint Arrangements) Article 13 (Decision Making) and the Access to Information Procedure Rules.
- e) Part 3 (Responsibility for Functions)