

# The Articles



This page is intentionally left blank

## **Part 2 – Articles of the Constitution**

### **Article 1 – The Constitution**

#### **1.1 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.

#### **1.2 The Constitution**

This Constitution and all its appendices **forms** the Constitution of Winchester City Council **(the Constitution)**.

#### **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 its residents, businesses and other organisations;
- b) Support the active involvement of residents in the process of local authority decision-making;
- c) Help **Councillors to** 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 Councillor 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.

#### **1.4 Interpretation and Review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option which it thinks is **most consistent** with 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 or amendments that are made by Full Council.

## **Article 2 – Members of the Council**

### **2.1 Composition and Eligibility**

The Council comprises of 45 **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**.

### **2.2 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 2021, except in 2025 and every 4th year after then when there will be no regular election. For **Councillors** elected from 2021 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.

### **2.3 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 best 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; and
- f) Maintain the highest standards of conduct and ethics.

---

<sup>1</sup> 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.

## 2.4 Rights and Duties of Councillors

As detailed in the Access to Information Procedure Rules 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 this Constitution.

## 2.5 Conduct

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

## 2.6 Allowances

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

## Article 3 – Members of the Public

### 3.1 Member of the Public Rights – Contacting Councillors and Council Officers

The term member of the public refers to all the people of Winchester District who we serve.

Councillors and Council officers welcome contact from the public and encourage positive engagement. Details of how to contact Councillors and particular Council officers or services can be found on our website. members of the public have a right to expect responses within agreed timescales and respectful behaviour from Councillors and Council officers.

In return members of the public are expected to treat Councillors and Council officers with politeness and courtesy. If members of the public act in an abusive, intimidating or threatening manner Councillors are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.

**Members of the Public** have the following rights:

- a) **Voting and Petitions** – **members of the public** on the electoral roll, any member of the Council, any local government elector of the Winchester District, any resident of the Winchester District, any person who works or studies within the Winchester District for the area have the right to vote and sign a petition to request a referendum for an elected mayoral form of Constitution;
- b) **Information** – **members of the public** have the right to :
  - (i) Attend meetings of Full Council, Cabinet and Committees except where confidential or exempt information is likely to be considered and where the meeting, or part of the meeting, is therefore held in private;
  - (ii) Establish from the Forward Plan what key executive decisions will be taken, by whom and when;
  - (iii) 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);
  - (iv) Inspect the Council's accounts and make representations to the Council's external auditors.
  - (v) **Access information in accordance with the provisions of the Freedom of Information Act and Data Protection Law.**
  - (vi) **Obtain a copy of the Constitution.**
- c) **Participation** – **members of the public** have the right to participate in a number of public meetings of the Council which includes:
  - (i) to present petitions and ask questions at Full Council meetings in accordance with the relevant schemes;
  - (ii) Cabinet and Committee meetings where public participation is

- held immediately after the start of meeting;
- (iii) at the invitation of the Chairperson to address that meeting; and
- (iv) the statutory procedures for public representations that apply at Planning and Licensing Committee meetings.

d) **Complaints** – **members of the public** 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; and
- (iii) The Monitoring Officer about a breach of the Councillors Code of Conduct.

### 3.2 **Obligations of **Members of the Public****

**Members of the public** must not be violent, abusive, or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers. In addition, when attending meetings members of the public will be expected to comply with the procedures of that meeting and accept the decision of the Chairperson of that meeting or they may be asked to leave the meeting.

### 3.3 **Reporting on meetings**

Subject to the Council's requirements, **members of the public** have the right to report on any meetings of the Council that are open to the public. This can be by filming, audio-recording, taking photographs and using social media or any other appropriate method of reporting subject to it being conducted in a manner which does not disrupt the meeting.

Members of the public rights to information and to participate and report are explained in more detail in the Access to Information Procedure Rules in this Constitution.

## **Article 4 – Full Council**

### **4.1 Meaning**

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

### **4.2 Responsibility for Functions**

The Constitution sets out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

Full Council is responsible for:

### **4.3 Policy and Budget Framework**

The policy framework includes the following:

- a) The Council Plan;
- b) Plans and strategies which together comprise the Winchester City Council Local Plan;
- c) A plan or strategy for the control of the Council's borrowing, investments or capital expenditure or for determining the Council'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 Full Council as a matter for a 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.

### **4.4 Budget**

The Council will also 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. 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.

#### 4.5 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.

#### 4.6 Functions of Full Council

Only Full 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 and Budget 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 Full Council approval;
- d) Making decisions about any matter in the discharge of an executive function which is covered by the policy and 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 subject to the urgency procedure contained in the Access to Information Procedure Rules in this Constitution.
- 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 Section 15 Local Government and Housing Act 1989;
- 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 Full Council;
- i) Receiving reports at least annually, by way of update on the work of representatives to Outside Bodies where powers are conferred to them by the Council, to include but not exhaustive, Partnership for South Hampshire and South Downs National Park Authority.

- j) Adopting a Members Allowances Scheme under Article 2;
- k) Changing the name of the council, confirming the title of High Steward, Honorary Alderman or Freedom of the City and other honorary titles;
- l) Approving the appointment or dismissal of the Head of Paid Service;
  
- m) Making, amending, revoking, re-enacting or adopting byelaws, and promoting or opposing the making of local legislation or personal Bills;
- n) 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;
- o) 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;
- p) 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;
- q) 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;
- r) 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;
- s) Adopting the local authority's code of conduct and any local protocols on member conduct;
- t) The powers to establish, confer functions on, and request the 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.
- u) 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; and

- v) 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

#### 4.7 **Full Council Meetings**

There are three types of Full Council meeting:

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

and they will be conducted in accordance with the Council Meeting Procedure Rules in this Constitution.

## Article 5 – Chairing Full Council

### 5.1 The Role and Functions of the Mayor

The Mayor will be elected by Full Council annually and will chair all meetings of Full Council. In the absence of the Mayor, the Deputy Mayor (also elected annually) will chair the applicable Full 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 Full Council so that its business can be carried out efficiently, **effectively** and with regard to the rights of Councillors and the interests of the community;
- c) To ensure that Full Council meetings are a forum for the debate of matters of concern to the local community and a place at which Councillors 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 Policy and Budget 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 their absence, the Deputy Mayor, will attend such civic and ceremonial functions as the Council and they shall decide, and undertake those functions in a non-political manner, appropriate to the customs and practice of this ancient office.

This page is intentionally left blank

## **Article 6 – The Cabinet (Executive)**

### **6.1 Role**

The Cabinet (the title given in this Constitution to the body otherwise known as the Executive is appointed to carry out those functions which are not the responsibility, by law or under this constitution, of Full Council).

The role of the Cabinet therefore is to:

- a) Make key decisions;
- b) Formulate the annual Policy and Budget Framework plans for submission to Council in accordance with the budget and policy framework procedure in Part Four of the Constitution;
- c) Implement the approved policy and budget framework;
- d) Determine recommendations and other matters referred to it by Committees, Sub-Committees or Full Council; and
- 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.
- f) **Appoint Councillors as representatives to Outside Bodies.**

### **6.2 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.

### **6.3 The Leader**

The Chairperson of Cabinet will be a member elected to the position of Leader by the Council for a four year term unless they:

- a) resign;
- b) are no longer a Councillor; or
- c) are removed from office by an ordinary resolution on notice of Full Council in accordance with the Council Procedure Rules.

The deputy Leader will act as the Leader in the Leader's absence.

#### 6.4 Other Cabinet Members

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

- a) they resign;
- b) are no longer a councillor; or
- c) the Leader removes them from office.

#### 6.5 Proceedings of Cabinet

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

The Leader or Cabinet may appoint committees of the Cabinet or Committees as set out in the Cabinet Procedure Rules.

The Leader or Cabinet may appoint cross-party informal working groups as set out in the Cabinet Procedure Rules.

#### 6.6 Responsibility for the Functions

The Leader may exercise Executive Functions themselves 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) Cabinet Committees;
- c) An individual Cabinet Member;
- d) A Joint Committee;
- e) Another Local Authority; or
- f) An officer

The Monitoring Officer will maintain a list in 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. Voting members of the Cabinet Committees can only include members of Cabinet.

## Article 7 – Overview and Scrutiny Committees

### 7.1 General Role

The Council will appoint overview and scrutiny committees to discharge the functions conferred by section 21 of the 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 people. The Committees should also be prepared to challenge and question decisions and make constructive criticism.

The Council has allocated its overview and scrutiny responsibilities across a total of three Overview and Scrutiny Committees;

- a) A Scrutiny Committee which holds the Cabinet to account, has a strategic outlook and solely holds the power of Call-In **having access to the key decision forward plan.**
- b) Two policy-focused Committees, which undertake forward looking, policy development work and pre-decision scrutiny, relevant to their specific areas. These are the Economy and Housing Policy Committee and the Health and Environment Policy Committee.

**The Monitoring Officer will have the discretion to decide which Committee is appropriate for the discharge of Overview and Scrutiny responsibilities having regard to Council priorities with a view to facilitating pre-decision scrutiny. Where there are overlapping jurisdictions, where matters fall in the remit of more than one Overview and Scrutiny Committee, the Monitoring Officer will use that discretion in consultation with the Committee Chairpersons.**

The Overview and Scrutiny Committee procedure rules sets out the rules for the operation of these Committees and the detailed definitive Terms of Reference.

### 7.2 Terms of Reference

- a) The Scrutiny Committee

The broad terms of reference are as follows:

- i) To review and scrutinise any decisions made or to be made or actions to be taken in connection with the discharge of the Council's functions, including holding the Cabinet to account by reviewing and scrutinising executive decisions.
- ii) Reviewing and scrutinising the performance of the Council in relation to its policy objectives and performance targets

- iii) Exercise the right to Call-In for reconsideration of decisions made but not yet implemented by the Leader, the Cabinet and Cabinet Members and Officers.

In general the two Policy Committees facilitate the pre-decision scrutiny by:

- a) Assisting, if appropriate, the Council, Leader and Cabinet in the development of its policy and budget framework by in depth analysis of the policy issues within the priority areas allocated to them in the Council Plan.
- b) Conducting research if required, as well as community and other consultation if required, 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 that are being renewed, updated or refreshed to assess if and how they have made a difference.
- c) Questioning 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 relevant priority of the Council Plan in each Committee's remit.

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

- a) Economy and Housing Policy Committee

To maintain a strategic overview of the progress towards the achievement of the relevant priorities in the Council Plan namely:

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

- b) Health and Environment Policy Committee

To maintain a strategic overview of the progress towards the achievement of the relevant priorities in the Council Plan namely:

- i) Improving the quality of the District's environment
- ii) Improving the health and happiness of the community

## **Article 8 – Regulatory and Non-Executive Decision-Making Committees**

### **8.1 Regulatory and other Non-Executive Decision-Making Committees**

Regulations made under the Local Government Act 2000 specify that certain functions shall not be the responsibility of the Executive (Cabinet), and for which and/or the exercise of which Full Council must by law reserve for itself or has chosen to do so. These are contained in Article 4.

The Council will appoint Committees to discharge these functions. The Council's main regulatory Committees are set out below.

### **8.2 The Planning 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.

### **8.3 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.

Within its Terms of Reference are the appointments of:

- a) A Licensing Sub-Committee which will have delegated responsibility to responsibilities include dealing with applications under the Licensing Act 2003, hackney carriage/private hire licences; and
- b) applications and appeals, and any other licensing matters referred to it

### **8.4 The Audit and Governance Committee**

This Committee will be responsible for Audit and Corporate Governance including the promotion and maintenance of high standards of conduct by members and co-opted members of the authority

Within its Terms of Reference Sub Committees can be appointed::

- a) A Standards Sub-Committee which will have delegated responsibility to consider investigation reports, in respect of Code of Conduct complaints, that are referred to it by the Monitoring Officer and conduct hearings into allegations that a Member or co-opted Member of the Council or Town/Parish Council has breached the relevant code of conduct.

- b) A Human Resources Sub-Committee can be appointed when required which will be responsible for the Council's Human Resources function where there is a specific requirement for this to be undertaken by a Committee which shall include disciplinary matters relating to relevant officers.

#### 8.5 **Housing (Appeals) Committee**

To hear and determine the following matters where they do not fall, or are not decided, within the scheme of delegation to officers :-

- a) Specific cases in respect of either public or private sector housing referred by the Strategic Director with responsibility for housing or where a specific request for consideration has been made by a Member of the Council; or
- b) Where housing applicants wish to appeal against the decision to pend their application for a period of one year; or
- c) To determine appeals in respect of discretionary housing payments.

#### 8.6 **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**

### **9.1 Appointment**

Full Council will appoint an Audit and Governance Committee which will be politically balanced.

Within its Terms of Reference Sub Committees can be appointed:

- a) A Standards Sub-Committee which will have delegated responsibility to consider investigation reports and any matters referred to them by the Monitoring Officer, in respect of Code of Conduct complaints, that are referred to it by the Monitoring Officer and conduct hearings into allegations that a Member or co-opted Member of the Council or Town/Parish Council has breached the relevant code of conduct
- b) A Human Resources Sub-Committee which will be responsible for the Council's Human Resources function where there is a specific requirement for this to be undertaken by a Committee which shall include disciplinary matters relating to relevant officers.

### **9.2 Composition**

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

If a meeting of a Sub-Committee is needed to be convened, members will be appointed from the main Committee.

### **9.3 Terms of Reference**

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

### **9.4 Audit**

- 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 to 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 all conduct and governance requirements that include the CIPFA (Chartered Institute of Public Finance and Accountancy) guidance.
- j) To review, monitor and consider reports from the Section 151 Officer on Treasury management, functions and activities.

#### 9.5 Governance functions

- a) Promote and maintain high standards of conduct by Councillors and any co-opted members.
- b) To operate the overall scheme in respect of the local determination of Code of Conduct complaints against Council and Parish/Town Members (this role is largely delegated by the Constitution to a Standards Hearings Sub-Committee and the Monitoring Officer as set out in greater detail in the Constitution).
- c) Approve, and review relevant codes of conduct, protocols and other arrangements that relate to the governance of the Council.
- d) Promote and ensure training of Councillors and co-opted members in the relevant governance aspects.
- e) Grant dispensations, where referred by the Monitoring Officer and in accordance with the Localism Act 2011 or other legislation.
- f) To monitor the use of dispensations.
- g) To appoint a Sub-Committee which will have delegated responsibility to consider investigation reports, in respect of Code of Conduct complaints, that are referred to it by the Monitoring Officer and conduct hearings into allegations that a Member or co-opted Member of the Council or Town/Parish Council has breached the relevant code of conduct.

- h) To overview the Council's whistle blowing policy.
- i) To review, monitor and consider reports from the Monitoring Officer.

#### 9.6 **Human Resource Functions**

To receive and consider reports relating to workforce policies and related performance.

Where there is a specific requirement a Sub Committee can be appointed which shall deal with disciplinary matters relating to relevant officers.

This page is intentionally left blank

## Article 10 – Area Committees and Forums

### 10.1 Area Committees and Forums

The Council may appoint area Committees 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 Chairperson of relevant parish meetings when considering whether and how to establish Area Committees. The Council has not currently established any area committees in the parished areas of the district.

In the unparished part of the district, the Council has established the Winchester Town Forum, which covers the unparished parts of the five District Wards in Winchester: St Barnabas, St Bartholomew, St Michael, St Paul and St Luke. The Forum is responsible for setting the precept subject to the Council's budget and policy framework and that of the S35 Town Account Revenue Budget and acting as a consultative and advisory body to the Council in a comparable way to parish and town councils in the rest of the district, except on regulatory matters where Town and Parish Councils are statutory consultees and ward Councillors are consulted in their own right. All 14 Councillors who represent the five wards listed are members of the Forum, full details are found at Part 3, 3.iv).

The Council may establish a Forum to include a Major Development Area Forum which can advise and make recommendations on relevant issues and where Stakeholders and members of the public can raise any general matters of interest and / or matters relating to the Forum.

The following paragraphs apply to any Area Committee, Major Development Area Forum the Council may establish and paragraphs 10.02, 10.04 and 10.6 to the Winchester Town Forum.

### 10.2 Conflicts of Interest

#### a) Membership and Overview or Scrutiny Committees

If an Overview and Scrutiny Committee is scrutinising specific decisions or actions taken in relation to the business of the Town forum, an area Committee, a Forum or Major Development Area Forum of which the Councillor concerned is a member, then the Councillor must consider whether they can speak or vote at the Overview and Scrutiny meeting, having regard to the Overview and Scrutiny Procedure Rules and the Council's Code of Conduct in the Constitution.

#### b) Membership of Planning Committee and Joint West of Waterlooville Major Development Area Planning Committee

If the Planning Committee or Joint West of Waterlooville Major Development Area Planning Committee are determining specific applications discussed in relation to the business of the Town Forum, an area Committee, a Forum or Major Development Area Forum of which the Councillor concerned is a member, then the Councillor must consider whether they can speak or vote at the Planning Committee meeting, having regard to the relevant Planning Committees' procedure rules and the Council's Code of Conduct in the Constitution.

c) **Membership of Licensing and Regulation Committee**

If the Licensing and Regulation Committee is determining specific applications discussed in relation to the business of the Town Forum, an area Committee, a Forum or Major Development Area Forum of which the Councillor concerned is a member, then the Councillor must consider whether they can speak or vote at the Licensing and Regulation Committee meeting, having regard to the Licensing and Regulation Committee procedure rules and the Council's Code of Conduct in the Constitution.

d) **General Policy Reviews**

Where the Overview or Scrutiny Committee, Planning Committee, Joint West of Waterlooville Major Development Area Planning Committee and the Licensing and Regulation Committee is reviewing policy generally, the councillor need not withdraw unless as a member they have been directly involved in the determination of the policy concerned.

### **10.3 Area Committees and Forums - Dissolution**

The purpose of Area Committees and a Major Development Area Forum is to support development of a community. Area Committee and a Major Development Area Forum will continue until it is considered that adequate and appropriate governance is in place, taking into account the views of local ward councillors in the affected area. At least 6 months' notice will be given of the intention of the Council to disband the Area Committee and Major Development Area Forum.

### **10.4 Area Committees and Forums – Access to Information**

Area Committees and Forums will comply with the Access to Information Rules in 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.

#### **10.5 Cabinet Members on Area Committees and Forums**

A member of the Cabinet may serve on an area Committee and/or Major Development Area Forum if otherwise eligible to do so as a Councillor.

This page is intentionally left blank

## **Article 11 – Joint Arrangements**

### **11.1 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.

### **11.2 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 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 this Constitution.

### **11.3 Access to Information**

The Access to Information Rules in this Constitution apply **to these joint arrangements.**

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 Councillors 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.

#### **11.4 Delegation to and from other Local Authorities**

Full 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.

#### **11.5 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

### 12.1 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 as set out.

### 12.2 Head of Paid Service, Monitoring Officer and Section 151 Officer

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

The Chief Executive is designated the Head of Paid Service.

Full Council, with regard to the advice of the Head of Paid Service, will designate suitably experienced and qualified members of staff to undertake the following two statutory posts:

- a) Section 151 Officer (under Section 151 of the Local Government Act 1972); and
- b) Monitoring Officer (under Section 5 of the Local Government and Housing Act 1989)

Such posts will have the functions described below. The duties of the Section 151 Officer and Monitoring Officer can be carried out by any deputies appointed by them or the Chief Executive.

### 12.3 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 maintained and set out on the Councils website.

### 12.4 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 suitably qualified accountant.

## 12.5 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 Full Council (or to Cabinet in relation to an executive function) if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c) Supporting the 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.
- e) **The Monitoring Officer will make relevant reports or recommendations in respect of the Code of Conduct to the Audit and Governance Committee's Sub-Committee relating to Standards.**
- f) 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.
- g) Advising whether Cabinet decisions are within the policy and budget framework, the Monitoring Officer, **in consultation with the S151 Officer in respect of the Budget,** will advise whether decisions of the Cabinet are in accordance with the framework.
- h) 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.
- i)** Providing advice, the Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration,

financial impropriety, probity, policy and budget framework issues to all Councillors. Where in respect of financial impropriety and budget, this will be in consultation with the Section 151 Officer.

- j) Restrictions on post, the Monitoring Officer may not also hold the post of Section 151 Officer or the Head of Paid Service.

## 12.6 Functions of the Section 151 Officer

The functions of the Section 151 Officer are as follows:

- a) Ensuring lawfulness and financial prudence in decision making, – after consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to Full Council, or to Cabinet in relation to an executive function, and the Council's external audit if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.
- b) Administration of financial affairs, the Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.
- c) Contributing to corporate management and the Executive Leadership Board, 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. Where in respect of policy matters, this will be in consultation with the Monitoring Officer.
- e) Give financial information - the Councils Section 151 Officer will provide its financial information to the media, members of the public and the community.

## 12.7 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.

## 12.8 **Conduct**

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

## 12.9 **Employment**

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

## Article 13 – Decision Making

### 13.1 Responsibility for Decision Making

The Council will issue and keep up to date a record of which 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.

### 13.2 Principles of Decision Making

Decisions of the Council will be made in accordance with the following 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 (the principles and procedures that govern the adjudication of disputes between persons or organisations, chief among which are that the adjudication should be unbiased and given in good faith.);
- f) With clarity of aims and desired outcomes;
- g) In consideration of any alternative options; and
- h) Giving reasons for the decision and the proper recording of those reasons.

### 13.3 Types of Decisions

Decisions reserved to Full Council –

Decisions relating to the functions listed in this Constitution will be made by Full Council and not delegated.

#### a) 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:

- i) 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; or

(For Winchester City Council, the financial limit above which a decision is regarded as significant is £250,000 and above. For the avoidance of doubt, it is any capital item or scheme/contract of £250,000 and above or anything with an annual revenue expenditure of £250,000 and above)

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

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

#### b) 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.

#### c) 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:

- i) Revenue expenditure or making savings (including the receipt or loss of income) between £100,000 and £250,000 per year;
  - ii) 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.
  - iii) 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.
  - iv) 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).
- d) An Administrative Decision:
- i) Is within an approved budget; and
  - ii) Is not in conflict with the Budget and Policy Framework or other approved policies approved by Full Council, and
  - iii) Does not raise new issues of policy

#### 13.4 **Decision making by Full Council**

A meeting of Full Council will follow the **Council Meeting Procedure** Rules set out in this Constitution when considering any matter.

#### 13.5 **Decision making by the Cabinet**

Cabinet will follow the **Cabinet Procedure Rules** set out in this Constitution when considering any matter.

#### 13.6 **Decision making by Overview and Scrutiny Committees**

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

#### 13.7 **Decision making by other Committees and Sub Committees**

Other Council Committees and Sub-Committees will follow the **Council Meeting Procedure Rules** set out in this Constitution as they apply to them.

#### 13.8 **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, **examples are the Licensing and Planning Committees..**

#### 13.9 **The Party Whip**

The Party Whip means any instructions given by or on behalf of a political group to any Councillor who is a member of that group as to how that Councillor shall speak or vote on **any committee**, 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.

**In particular**, there shall be no Party Whip applied at meetings of:

- a) The Planning Committee;

- b) The Overview and Scrutiny Committees and any of its Sub-committees/**working groups or panels;**
- c) The Audit and Governance Committees, and any of its Sub-Committees;
- d) The Licensing and Regulation Committee, and any of its Sub Committees;
- e) Any other Committee, **Sub-Committee, working group or panel** where the committee meets to determine applications, hearings, appointments or acts in any quasi-judicial matter.

## **Article 14 – Finance, Contracts and Legal Matters**

### **14.1 Financial Management**

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

### **14.2 Contracts**

Every contract made by the Council will comply with the Contract Procedure Rules and the Financial Procedure Rules as set out in this Constitution.

### **14.3 Legal Proceedings**

The Service Lead - Legal or a suitably qualified Corporate Head of Service, or Strategic Director is authorised to institute, defend or participate in or settle 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.

### **14.4 Authentication of Documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed, to include electronic signature where legislation provides, by the Service Lead - Legal or a suitably qualified Corporate Head of Service, or Strategic Director 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.

### **14.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Service Lead - Legal. 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 where the total value of the agreement is over £25,000 and/or in the opinion of the Service Lead - Legal should be sealed. The affixing of the Common Seal will be attested by the Service Lead - Legal or some other person authorised by them.

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**

### **15.1 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, and report to Members as appropriate.

### **15.2 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 them 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.

### **15.3 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 save that there is set out below an exception to this requirement.

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:

- a) required to be made to comply with any legislative provisions; or
- b) make minor amendments to comply with changes to staffing structures, job descriptions or changes in terminology; or
- c) **required to remove any inconsistency or ambiguity.**

Implementation of such amendments will be decided by the Monitoring Officer in consultation with the Chief Executive and shall come into force with immediate effect. Such amendments shall be reported to Full Council on an annual basis.

### **15.4 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 if drawing up proposals. If any proposed new form of Executive involves an elected Mayor the Council must hold a referendum.

This page is intentionally left blank

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

### **16.1 Suspension of the Constitution**

- a) **Limit to Suspension**  
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.
  
- b) **Procedure for Suspension**  
A motion to suspend any of the Council Procedure 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.
  
- c) **Rules capable of Suspension**  
  
The Council Procedure Rules, except those that are not subject to suspension as set out in the Rules, may be suspended in accordance with Article 16.02.

### **16.2 Interpretation**

The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of Full 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.

### **16.3 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 them of that individual's acceptance of office on the Member first being elected to the Council.

This page is intentionally left blank