

FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 2 - ARTICLES OF THE CONSTITUTION

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ARTICLE 1 - THE CONSTITUTION

1.1 Powers of the Council

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

1.2 The Constitution

The articles and the various parts are the Constitution of the District Council of Folkestone and Hythe.

1.3 Purposes of the Constitution

The purposes of the Constitution are 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 Council decision-making;
- c) Help councillors represent their constituents more effectively;
- d) Enable decisions to be taken efficiently, effectively and fairly;
- e) Create a powerful and effective means of holding decision-makers to public account;
- f) Ensure that councillors will not 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;
- i) Provide certain and clear procedures;
- j) Set out the role of councillors;
- k) Ensure that decisions are made and proceedings conducted lawfully and in accordance with the highest ethical standards;
- l) Ensure that citizens are not discriminated against by virtue of their sex, race (including colour, nationality, ethnic and national origin), disability, religion, belief, or lack of religion/belief, age, or sexual orientation, being or becoming a transsexual person, being married or in a civil partnership, or being pregnant or having a child.

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 closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution, as set out in Articles 14 and 15.

ARTICLE 2 – COUNCILLORS

2.1 Composition and Eligibility

2.1.1 Composition

The Council will comprise 30 members, otherwise called councillors. One or more councillors will be elected by the voters of each ward, in accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by the Secretary of State. The Secretary of State may alter the number of councillors, after considering a scheme drawn up by the Local Government Boundary Commission for England.

2.1.2 Eligibility

A person shall be qualified to be elected, as a member of the Council, if he or she is at least 18 years old, meets citizenship requirements and:

- a) He or she is a local government elector for the area of the authority;
- b) During the whole of the twelve months preceding election day, he or she has occupied, as owner or tenant, any land or other premises in the area of the Authority; or
- c) His or her principal, or only place of work, during that twelve months, has been in the area of the Authority; or
- d) During the whole of the twelve months preceding the election, he or she has resided in the area of the Authority.

2.2 Elections and term of office

The regular election of councillors will be held on the first Thursday in May, every four years, beginning in 2015. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

2.3 Roles and functions of councillors

2.3.1 Key roles:

- a) To act collectively as the ultimate policy-makers and carry out strategic and corporate management functions, including contributing to the formation and examination of the Council's policies, Budget, strategies and service delivery;
- b) To contribute to the good governance of the District and encourage community participation and citizen involvement in decision-making;
- c) To represent, effectively, the interests of their ward and of individual constituents; to champion the causes which best relate to the interests

and sustainability of the community and campaign for the improvement of the quality of life of the community, acting in the overall public interest;

- d) To respond to constituents' enquiries and representations, fairly and impartially;
- e) To participate, constructively, in the governance of the Council;
- f) To maintain the highest standards of conduct and ethics; and
- g) To be available to represent the Council on other bodies.

2.3.2 Rights and duties

- a) Councillors will have rights of access to such documents, information, land and buildings, of the Council, as are necessary for the proper discharge of their functions and in accordance with the law. These rights are set out in more detail in the Protocol on Councillor and Employee Relations in Part 9 of this Constitution.
- b) Councillors will not release confidential or exempt information, to the public, without the consent of the Council; or divulge information, given in confidence, to anyone other than a councillor or officer entitled to know it, except where such disclosure is:
 - Reasonable;
 - In the public interest;
 - Made in good faith; and
 - Does not breach any other reasonable requirements of the Authority.

The advice of the Monitoring Officer should be sought prior to any disclosure of exempt or confidential information.

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

2.4 Conduct

Councillors will, at all times, observe the councillors' Code of Conduct (set out in Part 9 of this Constitution) and any local protocols agreed by the Authority.

2.5 Allowances

Councillors will be entitled to receive allowances, in accordance with the Members' Allowances' Scheme, set out in Part 9 of this Constitution.

ARTICLE 3 - CITIZENS AND THE COUNCIL

3.1 Citizens' rights

Citizens have the following rights (their rights to information, and to participate, are explained in more detail in the Access to Information Rules in Parts 4, 6 and 7 of this Constitution):

3.1.1 Voting and petitions

Citizens, on the electoral roll for the District, have the right to vote at elections and to sign a petition to request a referendum for an elected mayor or committee system. Citizens can also present petitions, in accordance with the petitions scheme in Part 4 of this Constitution.

3.1.2 Information

Citizens have the right to:

- a) Observe meetings of the Council and its committees, except where confidential or exempt information is likely to be disclosed and the meeting decides to hold that discussion in private;
- b) Observe meetings of the Cabinet, when key decisions are being considered, except where confidential or exempt information is likely to be disclosed and the meeting decides to hold that session in private;
- c) Find out, from the notice of key decisions, what such decisions will be taken by the Cabinet and when;
- d) See reports and background papers, and any records of decisions made by the Council and the Cabinet; and
- e) Inspect the Council's accounts and make their views known to the external auditor.
- f) Be informed, in writing, whether the Council holds any information, as requested, under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. (If the information is held by the Council, citizens have the right to have that information communicated to them, except where the information is the subject of an exemption under the legislation.)

3.1.3 Participation

The Council is committed to helping people contribute to how decisions are made about local services and will; therefore, support a wide range of consultations to hear citizens' views. The Council also aims to develop more ways of working with local people and communities, particularly hard to reach groups. In addition, individual citizens have the following rights under this Constitution:

- a) The right to participate in any question times or public sessions, arranged by the Council or Cabinet, to consult with, or answer questions from, citizens;
- b) The right to contribute to reviews and investigations by the Overview and Scrutiny Committee;
- c) The right to participate in the proceedings of the Planning and Licensing Committee, where planning applications are being considered, and at committees where licensing and registration issues are being determined, as set out in Part 5 of this Constitution;
- d) The right to present petitions in accordance with the petition scheme in Part 4.

3.1.4 Representations and complaints

Citizens wishing to complain have the right to:

- a) Make representations to their ward councillors, in the first instance, or to any other councillor, or to members of the Cabinet;
- b) Make a formal complaint about a council service, to the Council itself, under its complaints' procedure.
- c) Complain to the Ombudsman after using the Council's own complaints' procedure;
- d) Complain to the Information Commissioner, if they think the Council has wrongfully withheld information or breached the Data Protection Act, the Freedom of Information Act or the Environmental Information Regulations;
- e) Complain to the Council about a possible breach of the councillors' Code of Conduct.

3.2 Citizens' responsibilities

3.2.1 There are a number of ways that citizens can contribute to a flourishing democratic local authority and civic culture, which this Constitution is intended to support:

- a) Assisting the Council with the compilation of the electoral register (including meeting their obligations to provide information about themselves and members of their household) and respecting any requirements for proper use of this information;
- b) Exercising their right to vote in local, regional, national and European elections and referenda;
- c) Respecting and valuing the diversity of communities and their views;

- d) Behaving in socially and morally responsible ways, towards those in authority and towards each other;
- e) Meeting their obligations in relation to the Council, such as paying their council tax.

3.2.2 Citizens must not be violent, abusive or threatening to councillors or officers, and must not wilfully harm property owned by the Council, councillors or officers. The Council, the Cabinet and committees have the right to exclude, from a meeting, anyone whose behaviour is disruptive and disorderly, and to prevent those likely to disrupt the meeting from entering the meeting.

ARTICLE 4 – THE FULL COUNCIL

4.1 Meanings

4.1.1 Policy Framework

4.1.1(a) The Policy Framework is the following set of plans and strategies that the Council must approve by law, or has decided should be reserved to the full Council for approval (the Policy Framework is also shown in Part 4):

- Local Transport Plan;
- Core documents of the Local Plan;
- Community Safety Partnership Plan;
- Statement of Licensing Policy under the Licensing Act 2003 (for Council decision, acting as the Licensing Authority);
- Statement of Gambling Licensing Policy under the Gambling Act 2005 (for Council decision, acting as the Licensing Authority);
- The Medium Term Financial Strategy;
- Any plan or strategy for the control of the Council's borrowing, investments or capital expenditure;
- Corporate Plan;
- The Housing Investment Programme;
- Customer Access Strategy
- Regulation of Investigatory Powers Act 2000 – Policy
- Homelessness Prevention Strategy
- Investment Strategy
- Housing Operations Policies (specifically: Tenant Policy, Housing Management Policy, Housing Community Safety Policy, Home Ownership Policy, Shared Ownership Policy and Right to Buy Policy).
- Equality and Diversity Policy
- Tenant Engagement Strategy
- Kent Joint Municipal Waste Management Strategy Refresh.
- Places and Policies Local Plan (PPLP) - Gypsy and Traveller allocation site

- Dungeness Sustainable Access and Recreational Management Strategy (SARMS)
- Children, Young People and Vulnerable Adults Safeguarding Policy
- The Play Area Strategy
- Housing Revenue Account Business Plan Update
- Capital Strategy
- Corporate Complaints Policy.
- Housing Compliance Policies (specifically: Asbestos; Electrical Safety; Fire Safety; Gas and heating Safety; Lift Safety; Water Safety).
- Housing Compensation Policy.
- Contaminated Land Strategy.
- Housing Asset Management Strategy.
- Risk Management Policy.
- Street naming and numbering policy.
- Such other plans and strategies that the Council decides should be reserved to full Council.

4.1.1(b) Changing or revoking any of these is also a function of the full Council, unless the change just gives effect to a ministerial direction. The Cabinet cannot take a decision contrary to the Policy Framework, except under any urgency powers contained in this Constitution. The full Council can only make such decisions.

4.1.1(c) Cabinet shall submit an annual report to Council, detailing the policies that have been approved in the previous year, which are not those mentioned in article 4.1.1(a), and Council shall have the option of including any of the policies in the Policy Framework.

4.1.2 Budget

The Budget includes the allocation of financial resources to different services and projects; proposed contingency funds; setting the council tax; decisions relating to the control of the Council's borrowing requirement; the setting of rents for tenants of its housing stock; the control of its capital expenditure; a review of the appropriateness of the Council's reserves and the setting of virement limits.

4.1.3 Housing land transfer

Housing land transfer means the approval, or adoption, of applications (whether in draft form or not) to the Secretary of State, for approval of a programme of disposal of 500 or more properties, to a person, under the Leasehold Reform, Housing and Urban Development Act 1993, or to dispose of land, used for residential purposes, where approval is required under sections 32 or 43 of the Housing Act 1985.

4.2 Functions of the full Council

Only the Council will exercise the following functions:

- a) Changing governance arrangements and adopting, and changing, the Constitution;
- b) Approving or adopting the Policy Framework, the Budget and any application, to the Secretary of State, in respect of any housing land transfer;
- c) Subject to the urgency procedure contained in the Cabinet Access to Information Procedure Rules, making decisions about the discharge of a Cabinet function, where the decision-maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- d) Electing the Leader;
- e) Electing the Chairman and Vice Chairman of the Council;
- f) Agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- g) Appointing representatives to outside bodies, unless the appointment is a Cabinet function or has been delegated by the Council;
- h) Agreeing recommendations arising from scrutiny reviews of non-Cabinet functions;
- i) Considering recommendations, arising from scrutiny reviews, not accepted by the Cabinet and referred by the chairman of the relevant committee;
- j) Adopting a Members' Allowances' Scheme;
- k) Changing the name of the District or of a parish;
- l) Conferring the title of Honorary Alderman or admitting to honorary freedom;
- m) Petitioning for a charter to confer borough status;
- n) Confirming the appointment or dismissal of the Head of Paid Service;

- o) Promoting or opposing the making of local legislation or personal bills;
- p) All local choice functions which the Council decides should be undertaken by itself, rather than the Cabinet, and which have not been delegated by the Council;
- q) Entering into, or confirming existing, or extending joint arrangements with other local authorities, under the provisions of the Local Government Act 1972 and the Local Government and Public Involvement in Health Act 2007;
- r) Making any decisions in respect of non-Cabinet functions, which have not been expressly delegated elsewhere;
- s) Adopting the members' Code of Conduct;
- t) Subject to the powers of the Head of Paid Service to make interim designations of the Monitoring Officer and Section 151 Officer; confirming the designation of the Monitoring Officer, Section 151 Officer, Electoral Registration Officer and Returning Officer;
- u) Making, amending, revoking and re-enacting byelaws and promoting or opposing the making of local legislation or personal Bills;
- v) In relation to non-executive functions, deciding whether or not to accept the delegation of a function by another local authority;
- w) In relation to non-executive functions, the function of authorising a person to exercise a function to which Section 70 of the Deregulation and Contracting Out Act 1994 applies, and revoking any such authorisation;
- x) Passing of a resolution not to issue casino premises licences, under the Gambling Act 2005, and any revocation of such resolution;
- y) Functions relating to community governance, unless delegated to officers;
- z) Approving or revising the Petition Scheme;
- aa) Approving the Council's Pay Policy Statement, under section 39 of the Localism Act 2011.

4.3 Council meetings

There are three types of Council meetings:

- a) The Annual Meeting;
- b) Ordinary meetings;
- c) Extraordinary meetings.

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

ARTICLE 5 – CHAIRING THE COUNCIL

5.1 Role and function of the Chairman

The Chairman of Council will have the following roles and functions:

5.1.1 Ceremonial role

The Chairman is the first citizen of the District. He or she represents the citizens of the District, and the councillors, at civic and ceremonial occasions. The Chairman will perform all the duties of the civic head of the Council and will attend such civic and ceremonial functions as the Council and s/he determines appropriate. S/he will also sign documents, on behalf of the Council, which require the signature of the civic head of the Council.

5.1.2 Chairing the Council meeting.

5.1.2(a) The Council will elect the Chairman and the Vice-chairman, annually. In the absence of the Chairman, the Vice-chairman will assume the roles, functions and responsibilities of the Chairman.

5.1.2(b) The Chairman will have the following responsibilities:

- i. To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- ii. To chair 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;
- iii. To promote and safeguard the independence of the office of Chairman of the Council;
- iv. To comply with the law and procedure rules, as they apply to Council meetings, having regard to the advice of the statutory officers;
- v. 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 members of the Cabinet or do not hold committee chairs, are able to hold the Cabinet and committee chairs to account;
- vi. To promote public involvement in the Council's activities;
- vii. To be the conscience of the Council; and
- viii. To cancel meetings, in exceptional circumstances, in consultation with the Head of Paid Service and the Monitoring Officer.

5.1.2(c) Following advice from the Monitoring Officer (or his/her representative), the Chairman's ruling, on any matter of order or procedure, will be final. If the Chairman thinks it is necessary to do so, he or she may interrupt business,

change the order of business or suspend, or adjourn, the meeting for a period of time he or she considers appropriate.

ARTICLE 6 - OVERVIEW AND SCRUTINY COMMITTEE

6.1 Terms of Reference and composition

6.1.1 The Overview and Scrutiny Committee is responsible for holding the Cabinet to account and for scrutinising Cabinet decisions before, or after, they have been implemented. The Overview and Scrutiny Committee is also responsible for making recommendations on future policy options and for reviewing the general policy and service delivery of the Council.

6.1.2 The Council will appoint overview and scrutiny committees to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations, under section 32 of the Local Government Act 2000 (in relation to health scrutiny) and the Local Government and Public Involvement in Health Act 2007, including the councillor 'call for action' and local improvement targets. The committee will be responsible for setting its own work programme, will consult widely in formulating the programme and will take into account the wishes of members of the committee who are not part of the largest political group.

6.1.3 The Council has appointed one overview and scrutiny committee:

OVERVIEW AND SCRUTINY COMMITTEE AND FINANCE AND PERFORMANCE SCRUTINY SUB-COMMITTEE

6.1.4 Terms of Reference

- a) To contribute to the development, and review, of the Council's community plan, including the review of performance against targets.
- b) To examine how the Council engages with the community, including reviewing and monitoring the effectiveness of the Council's communication and consultation strategy, and other strategies that have an impact on relationships with the public.
- c) To consider how the Council develops relationships with its partners and review the effectiveness of those partnerships in contributing to the Council's vision and objectives.
- d) To scrutinise the work and decisions of the partnerships that the Council is involved in.
- e) To prepare responses to consultation, for consideration by the executive, on any matter that affects community services in the District, including education and health.
- f) To act as the Council's Crime and Disorder Committee and to meet for that purpose at least once a year.
- g) To co-opt members and determine whether they are entitled to vote on any matter, in accordance with the Crime and Disorder (Overview and Scrutiny) Regulations 2009.

- h) To review and scrutinise the executive's decisions, including prior scrutiny of proposed executive decisions, and decisions made by committees and officers.
- i) To contribute to the development of the Budget and other financial strategies, and review the performance of the executive against the Budget and other financial targets.
- j) To contribute to, and review, the development of the Council's corporate management policies, including risk management and corporate governance policies and strategies, and to review the performance against targets, and review the effectiveness of the policies and strategies over time.
- k) To contribute to, and review, the Council's performance plan and performance management system.
- l) To exercise the right, set out in the 'Call-in' Rules of Procedure, contained in Part 6 and 7 of this Constitution, to call-in for review, and recommend for re-consideration, any decisions made by the executive but not implemented.

6.1.5 Composition

Must be politically balanced. No member of the executive may be a member of the Overview and Scrutiny Committee.

6.2 General role

Within its terms of reference, the Overview and Scrutiny Committee will:

- a) Hold the Cabinet to account, through investigations and questioning;
- b) Exercise an overview of the key decision notice;
- c) Receive and deal with 'call to action' notices from councillors, under the provisions of the Local Government and Public Involvement in Health Act 2007;
- d) Review and/or scrutinise decisions made, or actions taken, in connection with the discharge of any of the Council's functions;
- e) Make reports and/or recommendations to the full Council and/or the Cabinet, and/or any joint committee, in connection with the discharge of any functions;
- f) Consider any matter affecting the District or its inhabitants;
- g) Exercise the right to call-in, for reconsideration of decisions made, but not yet implemented, by the Cabinet and/or committees, in accordance with the Call-in Rules of Procedure in Part 7 of the Constitution; and

- h) Receive reports and recommendations of any commissioned review panels.

6.3 Specific functions

6.3.1 Policy development and review

The Overview and Scrutiny Committee may, as appropriate to its terms of reference:

- a) Assist the Council and the Cabinet in the development of its Budget and Policy Framework by in-depth analysis of policy issues, by conducting research, conducting community and other consultation and bringing forward possible options;
- b) Consider and implement ways to encourage and enhance community participation in the development of policy options and the scrutiny of council performance;
- c) Question members of the Cabinet and/or committees and chief officers, and representatives of organisations or companies providing services on behalf of the Council, about their views on issues and proposals affecting the District; and
- d) Liaise with other external organisations operating in the District, whether national, regional or local, to ensure that collaborative working enhances the interests of local people.

6.3.2 Scrutiny

The Overview and Scrutiny Committee may:

- a) Review and scrutinise decisions made by, and the performance of, the Cabinet and/or committees and council officers, both in relation to individual decisions and over time;
- b) Review and scrutinise the performance of the Council, in relation to its policy objectives, performance targets and/or particular service areas;
- c) Question members of the Cabinet and/or committees, councillors and chief officers, other local public bodies and partner authorities, and representatives of organisations or companies providing services on behalf of the Council, about their decisions and performance, whether generally, in comparison with service plans and targets, over a period of time, or in relation to particular decisions, initiatives or projects; (including, where acting as the Crime and Disorder Committee, reports and recommendations relating to the discharge of crime and disorder functions and local crime and disorder matters, and copying such reports to responsible authorities or co-operating bodies and persons);
- d) Make recommendations to the Cabinet and/or appropriate committee, and/or Council, arising from the outcome of the scrutiny process

(including, where acting as the Crime and Disorder Committee, reports and recommendations relating to the discharge of crime and disorder functions and local crime and disorder matters, and copying such reports to responsible authorities or co-operating bodies and persons);

- e) Review and scrutinise the performance of other public bodies in the District and invite reports from them by requesting them to address the Overview and Scrutiny Committee, and local people, about their activities and performance; and
- f) Question and gather evidence from any person (with his/her consent).

6.3.3 Finance

The Overview and Scrutiny Committee:

- a) Will exercise overall responsibility for any finances made available to it;
- b) May each year be given a budget, in order to carry out its functions;
- c) Will account to the Council, on how it has used its budget, in its annual report.

6.3.4 Annual report

6.3.4(a) The Overview and Scrutiny Committee must report, annually, to full Council on its work and make recommendations for future work programmes and amended working methods, if appropriate.

6.3.4(b) The annual report shall contain a statement on how it intends to consult and involve the citizens, in the year ahead, and commenting on the effectiveness of citizen participation in the previous year.

6.3.5 Officers

The Overview and Scrutiny Committee may exercise overall responsibility for the work programme of the officers employed to support its work.

6.3.6 Proceedings of the Overview and Scrutiny Committee

The Overview and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 7 of this Constitution.

6.4 FINANCE AND PERFORMANCE SCRUTINY SUB-COMMITTEE

6.4.1 Terms of Reference

1. To scrutinise the Council's performance against KPIs and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
 - the proposed performance targets for the coming year;
 - the in-year performance management data; and

- the annual performance report.
2. To scrutinise the Council's financial monitoring data against budget and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
- the annual Budget Strategy; and
 - the quarterly budget monitoring data for GF Revenue & Capital and HRA Rev & Capital.

6.4.2 Composition

Must be politically balanced. Comprised of five Members, drawn from the main Overview and Scrutiny Committee. The Chairman will be appointed by Overview and Scrutiny Committee at their first meeting of the municipal year, until the next annual meeting of the Council.

ARTICLE 7 – THE CABINET

7.1 Role

The Cabinet is responsible for proposing the Policy Framework, and the Budget, to full Council, and for discharging its functions, in accordance with the agreed framework. The Cabinet 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.

7.2 Form and composition

The Cabinet will consist of the Leader of the Council, together with at least two, but not more than nine councillors, appointed to the Cabinet by the Leader.

7.3 Delegation of executive functions to the Head of Paid Service

If neither the Leader, nor the Deputy Leader or Cabinet, can act, the executive functions devolve to the Head of Paid Service, for a month, or until the next meeting of the Council at which a new Leader is elected, whichever is the shorter. If the Council meeting fails to elect a new Leader, then the powers of the Head of Paid Service will continue for another month, on the same terms.

7.4 Proceedings of the Cabinet

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules, set out in Part 6 of this Constitution.

7.5 Responsibility for functions

The Leader will maintain a list, in Part 6 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 Cabinet functions.

7.6 Leader

7.6.1 The Leader will be a councillor elected to the position of Leader by the Council.

7.6.2 The Leader's term of office will end on the day when the Council holds its first Annual Meeting after the Leader's normal day of retirement as a councillor, unless:

- a) He/she resigns from the office;
- b) He/she is no longer a councillor; or
- c) He/she is removed by resolution of Council, provided that no such resolution may be moved unless notice of it is delivered to the Head of

the Paid Service, under Rule 13 of the Council Procedure Rules, in Part 4 of this Constitution.

7.7 Deputy Leader

7.7.1 The Leader will appoint one of the members of the Cabinet to act as Deputy Leader. The Leader must give written notice of such appointment to both the person who he/she is appointing as Deputy Leader and the Head of Paid Service.

7.7.2 The appointment of the Deputy Leader will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report the appointment to Council, at the earliest opportunity.

7.7.3 The Deputy Leader will hold office until the end of the Leader's term of office unless:

- a) He/she resigns from the office; or
- b) He/she is no longer a councillor; or
- c) He/she is no longer a member of the executive; or
- d) He/she is removed by the Leader, who must give written notice of such removal to both the Deputy Leader and to the Head of Paid Service. The removal of the Deputy Leader will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report any such removal to the Council, at the earliest opportunity.

7.7.4 Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his/her place. The Leader must give written notice of such appointment to both the person he/she is appointing as Deputy Leader and to the Head of Paid Service.

7.7.5 The appointment of the Deputy Leader will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report the appointment to Council, at the earliest opportunity.

7.7.6 If for any reason:

- a) The Leader is unable to act; or
- b) The office of Leader is vacant;

the Deputy Leader will act in his/her place.

- c) The Deputy Leader is unable to act, or the office of Deputy Leader is vacant;

the Cabinet must act in the Leader's place, or arrange for a Cabinet member to act in his/her place.

7.8 Other Cabinet members

- 7.8.1** In addition to the Deputy Leader, the Leader will appoint between one and eight further Cabinet members to hold such portfolios as the Leader shall determine.
- 7.8.2** When appointing a Cabinet member, the Leader must give written notice of the appointment, and of the portfolio, to both the person who he/she is appointing as an executive member and to the Head of Paid Service.
- 7.8.3** The appointment of the Cabinet member will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report the appointment of a Cabinet member and his / her portfolio, to Council, at the earliest opportunity.
- 7.8.4** A Cabinet member will hold office until the end of the Leader's term of office, unless:
- a) He/she resigns from the office; or
 - b) He/she is no longer a councillor; or
 - c) He/she is removed by the Leader, who must give written notice of such removal to both the Cabinet member and to the Head of Paid Service. The removal of a Cabinet member will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report any such removal to Council, at the earliest opportunity.

ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

- 8.1** A number of functions, such as, planning control, licensing, health and safety regulation, electoral matters, local act powers and pensions are not Cabinet functions. These matters are excluded from the Cabinet by law, regulations or the provisions of this Constitution, as set out in Parts 3 and 5 of this Constitution.
- 8.2** The Council will appoint committees with responsibility for the discharge of those non-Cabinet functions that are not reserved to full Council, or any other body, or individual. These committees are set out in Part 5 of this Constitution.
- 8.3** The committees will be established at the Annual Meeting of the Council.
- 8.4** Proceedings of the committees, and any sub-committees, will take place in accordance with the Committee Procedure Rules, in Part 5 of this Constitution.

ARTICLE 9 – AREA COMMITTEES AND FORUMS

9.1 Area committees and/or forums

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

9.1.2 The Council will consult with, and involve, relevant parish and town councils, and the chairmen of relevant parish meetings, when considering whether, and how, to establish area committees and/or forums.

9.2 Form, composition and function

9.2.1 Composition – As area committees/forums are advisory only, there is no requirement to apply the rules relating to political balance on committees.

9.2.2 Terms of Reference - To reflect their consultative role, any area body appointed will have an advisory capacity. They may submit reports on matters of concern, locally, to the Cabinet, or the Overview and Scrutiny Committee, or the Council, on, for example, an annual or half-yearly basis.

9.3 Access to Information

Area committees/forums will comply with the Access to Information Procedure Rules, in Part 5 of this Constitution.

9.4 Cabinet Members on area committees/forums

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

ARTICLE 10 - JOINT ARRANGEMENTS

10.1 Arrangements to promote well-being

In order to promote the economic, social or environmental well-being of the District, the Leader may:

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

10.2 Joint arrangements

10.2.1 The Council may establish joint arrangements, with one or more local authorities and/or their Cabinets, to exercise functions, which are not Cabinet functions, in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.

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

10.2.3 Except as set out below, the Leader may only appoint Cabinet members to a joint committee.

10.2.4 The Leader may appoint councillors, to a joint committee, from outside the Cabinet, in the following circumstances:

- a) The joint committee has functions for only part of the District, and that area is smaller than two-fifths of the Council, by area or population. In such cases, the Leader may appoint, to the joint committee, any councillor who is a member for a ward which is wholly or partly contained within the relevant part of the District;
- b) The joint committee is between the Kent County Council and the Council alone, and relates to functions of the Cabinet of the County Council. In such cases, the Cabinet of the County Council may appoint, to the joint committee, any councillor who is a member for an electoral division which is wholly, or partly, contained within the District.

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

10.2.5 Details of any joint arrangements will be found in Part 12 of this Constitution.

10.3 Access to information

- 10.3.1** The Access to Information Rules, in Part 5 of this Constitution, apply to joint committees.
- 10.3.2** If all the members of a joint committee are members of the Cabinet, in each of the participating authorities, then its access to information regime is the same as that applied to the Cabinet.
- 10.3.3** If the joint committee contains councillors who are not on the Cabinet of any participating authority, then the access to information rules, in Part 5A of the Local Government Act 1972, will apply.

10.4 Delegation to and from other local authorities

- 10.4.1** The Council may delegate non-Cabinet functions, and the Cabinet may delegate Cabinet functions, to another local authority or, in certain circumstances, the Cabinet of another local authority.
- 10.4.2** The decision whether or not to accept such a delegation, from another local authority, shall be reserved to the Council.

10.5 Delegation to and from other organisations

- 10.5.1** The Council may delegate non-Cabinet functions, and the Cabinet may delegate Cabinet functions, to other organisations or boards, where legislation allows.
- 10.5.2** The decision whether or not to accept such a delegation, from another organisation or board, shall be reserved to the Council.

10.6 Contracting out

The Council (for functions which are not Cabinet functions) and the Cabinet (for functions which are Cabinet 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 Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent, under usual contracting principles, provided there is no delegation of the Council's discretionary decision-making.

ARTICLE 11 - OFFICERS

11.1 Management structure

11.1.1 General

The full Council may engage such staff (referred to as officers), as it considers necessary to carry out its functions.

11.1.2 Chief officers

11.1.2(a) The Council has designated the following, as chief officers, for the purposes of this Constitution (different statutory definitions apply for other purposes, for example, in the Officer Employment Procedure Rules in Part 8 of this Constitution):

The Chief Executive

Director – Corporate Services

Director – Housing and Operations

Director – Place

11.1.2(b) The names of the chief officers, assistant directors and other officers, who report to the chief officers, are set out in Appendix 3 of the Constitution.

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

11.1.3(a) The Council will designate the following posts ('the statutory officers'):

- Head of Paid Service
- Monitoring Officer
- Chief Finance Officer

11.1.3(b) These officers are individually and collectively responsible for promoting good governance, within the authority, and ensuring proper arrangements are in place so that the authority carries out its business in compliance with law and best practice. Such posts will have functions described in paragraphs 11.2 to 11.4, below. The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer, if a qualified accountant. The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service. The Chief Finance Officer cannot also be the Monitoring Officer.

11.1.4 Structure

The Head of Paid Service will determine and publicise a description of the overall structure of the Council, showing the management structure and deployment of officers. This is set out at Appendix 3 of this Constitution.

The Scheme of Delegation to Officers is set out in Part 8 of this Constitution.

11.2 Functions of the Head of Paid Service

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 coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

11.3 Functions of the Monitoring Officer

11.3.1 Maintaining and interpreting the Constitution

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for reference by councillors, staff and the public. The Monitoring Officer will advise the Chairman of the Council on interpretation of the Constitution, arising at meetings of the Council. Between council meetings, the Monitoring Officer will be responsible for adjudicating interpretation of the Constitution.

11.3.2 Ensuring lawfulness and fairness of decision-making

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council, or to the Cabinet, in relation to a Cabinet function, if s/he 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.

11.3.3 Contributing to corporate management

The Monitoring Officer will contribute to the corporate management of the Council.

11.3.4 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.

11.3.5 Receiving reports

The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.

11.3.6 Conducting investigations

The Monitoring Officer will conduct investigations, or arrange for investigations to be conducted, into complaints concerning alleged breaches of the councillor's Code of Conduct, and make reports or recommendations, in respect of them, to the Audit and Governance Committee.

11.3.7 Proper Officer for access to information

The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions, and relevant officer reports and background papers, are made publicly available, as soon as possible.

11.3.8 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. (Note that the Head of Paid Service and the Chief Finance Officer also have this role).

11.3.9 Providing advice

The Monitoring Officer will provide advice, to all councillors, on the scope of powers and authority to take decisions; maladministration; financial impropriety; probity; and Budget and Policy Framework issues.

11.4 Functions of the Chief Finance Officer

11.4.1 Ensuring lawfulness and financial prudence of decision-making

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council, and the Council's external auditor, 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 unlawfully enter an item of account.

11.4.2 Administration of financial affairs

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

11.4.3 Contributing to corporate management

The Chief Finance Officer will contribute to the corporate management of the Council.

11.4.4 Providing advice

The Chief Finance Officer will provide advice, to all councillors, on the

scope of powers and authority to take decisions; maladministration; financial impropriety; probity; and budget and policy framework issues; and will support and advise councillors and officers in their respective roles.

11.4.5 Give financial information

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

11.4.6 Internal audit

The Chief Finance Officer shall be responsible for ensuring that an effective system of internal audit is maintained.

11.4.7 Advising whether Cabinet decisions are within the Budget and Policy Framework

The Chief Finance Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework. (Note that the Head of Paid Service and the Monitoring Officer also have this role).

11.5 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

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

11.6 Functions of chief officers

11.6.1 Provide advice

Chief officers will provide advice on the professional and technical functions, within their areas of responsibility, to all councillors, to the Council and its committees and to the Cabinet, and will support and advise councillors in their respective roles.

11.6.2 Contribute to corporate management

Every chief officer will contribute to the corporate management of the Council; in particular, through the provision of professional advice.

11.6.3 Operational activities

Chief Officers are responsible for ensuring that the operational activities of the Council, in respect of the functions for which they are responsible, are carried out efficiently and effectively and in accordance with the Policy Framework, the Budget and this Constitution.

11.6.4 Management of resources

Chief officers will manage resources entrusted to them, including the staff that directly reports to them.

11.6.5 Assistance to statutory officers

Chief officers will assist the Head of Paid Service, the Monitoring Officer, and the Chief Finance Officer, in their respective functions.

11.7 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Councillor and Employee Relations, set out in Part 8 of this Constitution.

11.8 Employment

The selection and dismissal of officers will comply with the Officer Employment Procedure Rules, set out in Part 8 of this Constitution.

ARTICLE 12 - DECISION-MAKING

12.1 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 Parts 3-11 of this Constitution.

12.2 Principles of decision-making

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

- a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- b) Due consultation and the taking of professional advice from officers;
- c) Respect for human rights (see below for further details);
- d) A presumption in favour of openness;
- e) Clarity of aims and desired outcomes; and
- f) Reasonableness and basing decisions only on relevant information.

Furthermore, the Council will explain what options were considered and give reasons for the decision.

12.3 Types of decision

12.3.1 Decisions reserved to full Council.

The full Council will make decisions relating to the functions listed in Article 4.

12.3.2 Key decisions

12.3.2(a) A key decision is any decision:

- i. Relating to the approval of, or variation to, the Council's Budget or Policy Framework, which is reserved in the Council's Constitution for determination by full Council, on a recommendation from Cabinet; or
- ii. Which involves the incurring of expenditure, or the making of savings, by the Council, which are anticipated to be in excess of £300,000, with the exception of items previously included in the relevant approved budget; or

- iii. Where the Council is entering into a contractual obligation with a value in excess of £500,000; or
- iv. For the acquisition or disposal of land or property with a value of over £500,000; or
- v. Which is likely to be significant in terms of its effects on communities, living or working in an area comprising two or more wards, in the Council's area.

12.3.2(b) A decision will not be a key decision if it relates to expenditure, income or savings that:

- i. Has been approved previously by full Council; or
- ii. Has been approved previously, following compliance with the key decision procedure or;
- iii. Is in accordance with the current treasury management and investment policy of the Council.

12.3.2(c) A decision-taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules, and the Access to Information Procedure Rules, set out in Part 6 of this Constitution.

12.4 Decision-making by the full Council

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

12.5 Decision-making by the Cabinet

The Cabinet will follow the Cabinet Procedures Rules, set out in Part 6 of this Constitution, and Article 12.8, if appropriate, when considering any matter.

12.6 Decision-making by the Overview and Scrutiny Committee

Subject to Article 6, the Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules, set out in Part 7 of this Constitution, when considering any matter.

12.7 Decision-making by other committees and sub-committees established by the Council

Subject to Article 8, and Article 12.8 below, other Council committees and sub-committees will follow the Committee Procedure Rules, set out in Part 5 of this Constitution.

12.8 **Decision-making by council bodies acting as tribunals**

12.8.1 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 Article 6 of the European Convention on Human Rights (the right to a fair hearing).

12.8.2 The Committee Procedure Rules are set out in part 5 of this Constitution and will be followed by committees or sub-committees, when determining applications and other matters relating to licensing, subject to special procedures, relating to the quasi-judicial processes of particular committees, found in Part 9 of the Constitution, and the procedures regarding the determination of planning applications, also found in Part 9.

12.9 **Decisions by officers**

Decisions by officers are subject to Articles 12.2, 12.3 and 12.8.

ARTICLE 13 - FINANCE, CONTRACTS AND LEGAL MATTERS

13.1 Financial management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules, set out in Part 10 of this Constitution.

13.2 Contracts

Every contract made by the Council will comply with the Contract Standing Orders, set out in Part 10 of this Constitution.

13.3 Legal proceedings

The Assistant Director - Governance, Law and Regulatory Services is authorised to institute, defend, settle 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 the Assistant Director - Governance, Law and Regulatory Services considers that such action is necessary to protect the Council's interests.

13.4 Authentication of documents

13.4.1 Where any document is necessary to any legal procedure, or proceedings, on behalf of the Council, it will be signed by the Assistant Director - Governance, Law and Regulatory Services or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

13.4.2 Any contract shall comply with the Council's Contract Standing Orders, as outlined in Part 10 of this Constitution.

13.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Assistant Director - Governance, Law and Regulatory 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 Assistant Director - Governance, Law and Regulatory Services should be sealed. The Assistant Director - Governance, Law and Regulatory Services will attest the affixing of the Common Seal, or some other person authorised by him/her.

ARTICLE 14 - REVIEW AND REVISION OF THE CONSTITUTION

14.1 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.

14.2 Protocol for monitoring and review of 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 better to achieve the purposes set out in Article 1. In undertaking this task, the Monitoring Officer may:

- a) Observe meetings of different parts of the councillor and officer structure;
- b) Undertake an audit trail of a sample of decisions;
- c) Record and analyse issues raised with him/her by councillors, officers, the public and other relevant stakeholders; and
- d) Compare practices in the Council with those in other comparable authorities or national examples of best practice.

14.3 Changes to the Constitution

14.3.1 Approval

Other than the power, of the Monitoring Officer, of amendment, set out in Article 14.4 below, changes to the Constitution will only be approved by the full Council, after consideration of the proposal by the Audit and Governance Committee, and after consultation with the Cabinet and other appropriate bodies.

14.3.2 Change in form of governance

The Council must take reasonable steps to consult with local electors, and other interested persons, in the District, when drawing up proposals to change to another form of executive.

14.4 Amendments to the Constitution

The Monitoring Officer will amend the Constitution, from time to time, so that it reflects any statutory changes; any factual and minor changes and incidental and consequential changes. These changes will not require prior approval of the full Council but will be notified to all councillors, as soon as is practicable.

14.5 Review of the Constitution

- 14.5.1** The Monitoring Officer will commission a review of the entire Constitution, at intervals, to be determined by the Audit and Governance Committee.
- 14.5.2** The Monitoring Officer will arrange for broad consultation to be carried out, as part of the review process, and will seek views from (but not limited to) the Cabinet, the Overview and Scrutiny Committee, the Audit and Governance Committee, the Head of Paid Service and Chief Finance Officer.
- 14.5.3** Following consultation, draft changes will be subject to further broad consultation before being presented to the Audit and Governance Committee, for consideration, and the Council, for approval.

ARTICLE 15 - SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

15.1 Suspension of the Constitution

15.1.1 Limit to suspension of articles

The articles of this Constitution may not be suspended.

15.1.2 Procedure to suspend

A motion to suspend any rules will not be moved, without notice, unless at least one half of the whole number of councillors is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution, set out in Article 1.

15.1.3 Rules capable of suspension

The procedure rules may be suspended, in accordance with the provisions contained in those rules.

15.2 Interpretation

The ruling of the Chairman of the Council, after consulting with the Monitoring Officer as to the construction or application of this Constitution, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution, contained in Article 1.

15.3 Publication

15.3.1 The Monitoring Officer will give a printed or electronic copy of this Constitution to each councillor, upon delivery to him/her of that individual's Declaration of Acceptance of Office, on the councillor first being elected to the Council.

15.3.2 The Monitoring Officer will ensure that copies are available for inspection at Council offices, libraries, on the Council's website and other appropriate locations, and can be purchased by members of the local press, and the public, on payment of a reasonable fee.

15.3.3 The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the District and is updated, as necessary.

15.3.4 The Monitoring Officer will ensure that all parties, in receipt of a copy of the Constitution, will receive notification of any amendments to the Constitution.

SCHEDULE TO THE ARTICLES

Description of executive arrangements

The following parts of this Constitution constitute the executive arrangements:

- a) Article 6 (Overview and Scrutiny Committee) and Overview and Scrutiny Procedure Rules in Part 7;
- b) Article 7 (The Cabinet) and the Cabinet Procedure Rules in Part 6;
- c) Article 9 (Area Committees and Forums);
- d) Article 10 (Joint arrangements);
- e) Article 12 (Decision-making) and the Access to Information Procedure Rules in Part 6;
- f) Part 3 (which sets out, collectively, the responsibility for functions).