



## CONSTITUTION OF THE CITY COUNCIL

### PART 2 – ARTICLES OF THE CONSTITUTION

#### Article 1 – The Constitution

##### 1.01 Powers of the Council

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

##### 1.02 The Constitution

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

##### 1.03 Purpose of the Constitution

The purpose of the Constitution is to:-

- a) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- b) support the active involvement of citizens in the process of local authority decision-making;
- c) help Councillors represent their constituents more effectively;
- d) enable decisions to be taken efficiently and effectively;
- e) create a powerful and effective means of holding decision-makers to public account;
- f) ensure that no Member will scrutinise a decision in which they were directly involved;
- g) ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
- h) provide a means of improving the delivery of services to the community.

1.04 Interpretation and Review of the Constitution

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

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

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

### **2.01 Composition and Eligibility**

The Council will comprise 57 Members (otherwise called Councillors). One or more Councillors will be elected by the voters of each Ward in accordance with the scheme drawn up by the Local Government Commission and approved by the Secretary of State.

Only registered voters of the District or those living or working there will be eligible to hold the office of Councillor.

### **2.02 Election and Terms of Councillors**

The ordinary election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May in each year beginning in 2003, except that in 2005 and every 4th year after then, there will be no regular election. For Councillors elected from 2003 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.

### **2.03 Roles and Functions of all Councillors**

All Councillors will undertake the following key roles:-

- a) collectively be the ultimate policy makers and carry out a number of strategic and corporate management functions;
- b) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
- c) effectively represent the interests of their ward and individual constituents;
- d) respond to constituents' enquiries and representations, fairly and impartially;
- e) participate in the government and management of the Council;
- f) maintain the high standards of codes and ethics.

### **2.04 Rights and Duties of Councillors**

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 without the consent of the Council, or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.

For these purposes “confidential” and “exempt” information are defined in the Access to information Rules in Part 4 of this Constitution.

2.05 Access to Documents or Information

Councillors shall not request to inspect any document or have access to any information relating to any matter in which he/she has a disclosable pecuniary interest or a personal and prejudicial interest, unless they are permitted by the Code of Conduct to participate in the matter.

2.06 Access to Land or Buildings

No Councillor shall have any claim by virtue of his/her position:-

- a) to enter any land or buildings occupied by the Council to which the public do not have access or to which members of the Council do not regularly have access except with the permission of the Head of Team responsible for the service of the Council for which the land or buildings are occupied.
- b) to exercise any power of the Council to enter or inspect other land or buildings, except where specifically authorised to do so by the Council.
- c) to exercise any other powers of the Council.

2.07 Conduct

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

2.08 Allowances

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

## Article 3 – Citizens and the Council

### 3.01 Citizens Rights

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

- a) Voting and Petitions – citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected Mayor form of Constitution;
- b) Information – citizens have the right to :-
  - (i) attend meetings of the Council and its Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) attend meetings of the Cabinet except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (iii) find out from the Forward Plan what key decisions will be taken by the Cabinet and when;
  - (iv) see reports and background papers, and any record of decisions made by the Council and the Cabinet (except in relation to confidential or exempt business);
  - (v) inspect the Council's accounts and make their views known to the external auditor.
- c) Participation – citizens have the right to present petitions at full Council, Cabinet or one of the Overview and Scrutiny Committees and address the meeting. There is also a public participation process which operates immediately after the start of Cabinet and committee meetings. At the invitation of the Chairman, citizens may also address any meeting of Cabinet, a Committee (including a scrutiny committee) or sub committee. Special procedures for public representations apply at the Planning and Licensing & Regulation Committees.
- d) Complaints – citizens have the right to complain to :-
  - (i) the Council itself under its complaints scheme;
  - (ii) the Ombudsman, either directly or preferably after using the Council's own complaints scheme;
  - (iii) the Standards Committee or the Monitoring Officer about a breach of the Councillors Code of Conduct.

3.02 Citizens Responsibilities

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

## Article 4 – The Full Council

### 4.01 Meanings

Policy Framework – the policy framework means the following plans and strategies:-

- a) The Community Plan (or if in separate documents the Sustainable Community Strategy and the Council's' own Corporate Strategy);
- b) (i) The Development Plan and any proposals in connection with the preparation of an altered or replacement Development Plan, prior to public consultation under regulations 10 and 22 of the Town and Country Planning (Development Plans) (England) Regulations 1999;  
(ii) Local development documents which are development plan documents (under the Planning Compulsory Purchase Act 2004).
- c) A plan or strategy for the control of the Authority's borrowing, investments or capital expenditure or for determining the Authority's minimum revenue provision;
- d) Housing Investment Programme;
- e) The Best Value Performance Plan;
- f) The Community Safety Strategy/Crime and Disorder Reduction Strategy;
- g) The Licensing Authority Policy Statement;
- h) Any plan or strategy (whether statutory or not) which has been identified by resolution of Council as a matter for full Council decision, or where Cabinet has referred a plan or strategy for full Council decision.
- i) Variations to any of the above mentioned plans;

### 4.02 Budget

The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council tax base, setting the Council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

#### 4.03 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.

#### 4.04 Functions of the Full Council

Only the Council will exercise the following functions :-

- a) adopting and changing those parts of the Constitution outlined in Article 15 as requiring full Council approval.
- b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land transfer;
- c) matters which the Financial Procedure Rules in Part 4 of this Constitution require Council approval, ie. carry forward proposals above £1,500,000 for capital schemes or £500,000 for revenue proposals, or supplementary estimates or virements which exceed £250,000;
- d) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget framework where the decision-maker is minded to make it in a manner which will be contrary to the policy framework or contrary to/not wholly in accordance with the budget framework;
- e) appointing the Leader;
- f) agreeing and/or amending the terms of reference for non-executive Committees, deciding on their composition and making appointments to them;
- g) appointing representatives to outside bodies unless the appointment is an executive function or it has been delegated by the Council;
- h) adopting a Members Allowances Scheme under Article 2;
- i) changing the name of the area, confirming the title of Honorary Alderman or Freedom of the City;
- j) confirming the appointment of the Head of Paid Service;



- k) making, amending, revoking, re-enacting or adopting byelaws, and promoting or opposing the making of local legislation or personal Bills;
- l) 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.
- m) 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.
- n) 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; and
  - iii) passing a resolution to make a change in governance arrangements under section 9KC of that Act;
- o) The functions under the Local Government Act 2000 of:-
  - i) including provision in executive arrangements for the Council to remove the executive leader by resolution under section 9IA(1) of that Act; and
  - ii) passing a resolution to remove the executive leader under 9IA(2) of that Act.
- p) The function of making an order giving effect to recommendations made in a community governance review under section 86 (reorganisation of community governance) of the Local Government and Public Involvement in Health Act 2007.
- q) The duty to make a change in governance arrangements under paragraph 3 or 8 of Schedule 4 to the Local Government and Public Involvement in Health Act 2007.
- r) adopting the local authority's code of conduct and any local protocols on Member conduct;

- s) consideration of matters regarded by the Cabinet or a decision-making Committee to be of importance or of significance in relation to the affairs of the Council and any other matter at the discretion of the Chairman of such a body, as identified during the meeting;
- t) consideration of matters which no less than one quarter of the Members of the Cabinet or Committee who are present and who have voted on the initial matter require to be so referred in accordance with Council Procedure Rule 24.

(Note – In relation to s) and t) above, if the matter is an executive function and within the approved budget and policy framework, then the role of Council is to make recommendations to Cabinet)

- u) the powers to establish, confer functions on, and request a dissolution of, a joint committee to be, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004, a local planning authority, under Sections 29, 30 and 31 of that Act.
- v) 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;
- w) all other matters which, by law, must be reserved to Council.
- x) all other matters which, by this Constitution, are reserved to Council.

The Council may also:-

- a) represent the views of the community on matters of significance
- b) take decisions on matters which are not the responsibility of Cabinet

#### 4.05 Council Meetings

There are three types of Council meeting :-

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

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

4.06 Responsibility for Functions

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

## **Article 5 – Chairing the Council**

### **5.01 Chairing the Council Meeting**

The Mayor will be elected by the Council annually and will chair all meetings of Council.

In the absence of the Mayor, the Deputy Mayor (also elected annually) will chair the Council meeting.

When chairing the Council meeting, the Mayor (or Deputy Mayor) will have the following responsibilities:-

- a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution where necessary;
- b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and a place at which Members who are not on the Cabinet are able to hold the Cabinet to account;
- d) to promote public involvement in the Council's activities;
- e) to be the conscience of the Council;

### **5.02 Ceremonial Role**

The Mayor, and in his/her absence, the Deputy Mayor, will attend such civic and ceremonial functions as the Council and he/she shall decide, and undertake those functions in a non-political manner, appropriate to the customs and practice of this ancient office.

## Article 6 – Overview and Scrutiny Committees

### 6.01 Terms of Reference

The Council will appoint the Overview and Scrutiny Committees set out in the left hand column of the table below to discharge the functions conferred by Section 21 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table.

<u>Committee</u>	<u>Scope</u>
The Overview and Scrutiny Committee	To maintain an overview of the discharge of the Council's executive functions and the right to scrutinise any executive decision made by the Cabinet or by Council Officers, or to review the Council's policy-making or decision-making processes.
None currently appointed.	The Overview and Scrutiny Procedure Rules (Part 4 of the Constitution) give The Overview and Scrutiny Committee authority to appoint such Sub-Committees as it thinks fit.

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

### 6.02 General Role

Within their terms of reference, overview and scrutiny Committees may:-

- a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- b) make reports and/or recommendations to Council and/or Cabinet and/or any policy, joint or area committee in connection with the discharge of any function;
- c) consider any matter affecting the area or its inhabitants;
- d) in the case of The Overview and Scrutiny Committee, exercise the right to call in, for reconsideration, certain decisions made but not implemented by Cabinet and/or any Cabinet or area committees.

- e) to consider an referrals under the Councillor Call for Action provisions in the Overview and Scrutiny Procedure Rules.

### 6.03 Specific Functions

With regard to policy development and review, overview and scrutiny committees, may within their terms of reference :-

- a) assist the Council and Cabinet in the development of its budget and policy framework by in-depth analysis of the policy issues;
- b) conduct research, community and other consultation in the analysis of policy issues and possible options;
- c) consider and implement mechanisms to encourage and enhance community participation and the development of policy options;
- d) question Members of Cabinet and committees and Chief Officers about their views on issues and proposals affecting the area;
- e) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

With regard to policy development and review, any overview and scrutiny committee or sub-committee may undertake the above tasks if specifically requested to do so by Council, Cabinet or The Overview and Scrutiny Committee.

With regard to scrutiny, overview and scrutiny committees may, within their terms of reference :-

- a) review and scrutinise the decisions made by and performance of Cabinet and/or policy 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 and Chief Officers 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;
- d) make recommendation to Cabinet and/or appropriate Committees and/or Council arising from the outcome of the scrutiny process;

- e) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the appropriate committee and local people about their activities and performance;
- f) question and gather evidence from any person (with their consent).

#### 6.04 Finance

Overview and scrutiny committees may exercise overall responsibility for the finances made available to them.

Annual report – Overview and scrutiny committees must report at least annually to Council on their workings and make representation for future work programmes and amended working methods if appropriate.

Officers – Overview and scrutiny committees may exercise overall responsibility for the work programme of the officers employed to support their work;

Overview and scrutiny committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

## **Article 7 – The Executive (Cabinet)**

### **7.01 Role**

The Executive (referred to throughout this Constitution as the Leader or Cabinet) will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution. The Leader can undertake all of the executive functions personally or delegate to Cabinet, individual Councillors on Cabinet (Portfolio Holders) officers, or under joint arrangements.

### **7.02 Form and Composition**

Cabinet will consist of the Leader together with not more than nine other Councillors appointed by the Leader.

### **7.03 The Leader**

The Chairman will be a Councillor elected to the position of Leader by the Council. The Leader will hold office for a four year term until :-

- a) he/she resigns from the office; or
- b) he/she is suspended from acting as a Councillor for failure to comply with the Code of Conduct under S28(11) of the Localism Act 2011 (although he/she may resume office at the end of the period of suspension) or
- c) he/she is no longer a Councillor; or
- d) the Council may remove the Leader from office at an earlier date.

### **7.04 Other Cabinet Members**

Other Members of the Cabinet shall hold office for a term up to 4 years until :-

- a) they resign from office; or
- b) they are suspended from acting as Councillors for failure to comply with the Code of Conduct under S28(11) of the Localism Act 2011 (although they may resume office at the end of the period of suspension); or
- c) they are no longer Councillors; or
- d) the Leader removes them from office, either individually or collectively.



7.05 Proceedings of Cabinet

Proceedings of Cabinet shall take place in accordance with the executive procedure rules set out in Part 4 of this Constitution.

7.06 Responsibility for the Functions

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

Committees of Cabinet can only include members of Cabinet.

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

### 8.01 Regulatory and other Non-Executive Decision making Committees

The Council will appoint the Committees set out in ‘Responsibility for Council Functions’ in Section 4 of Part 3 of this Constitution, to discharge the function described in that Section.

Any Planning sub-committees will be appointed by the Planning Committee.

## **Article 9 – The Standards Committee**

### 9.01 The Standards Committee

The Council will establish a Standards Committee.

### 9.02 Membership

The Standards Committee will be composed of at least:-

- a) Three Councillors (other than the Leader). Not more than one member of Cabinet can be on the Standards Committee. The political balance requirements apply.
- b) One member of a Parish Council in the Council's area as a co-opted member (the parish representative).

One person who is not a Councillor or an officer of the Council or any other body having a Standards Committee (referred to as the independent person) will also be available to advise the Committee.

### 9.03 Voting at Meetings

Councillors will be entitled to vote at meetings. The co-opted parish representatives do not have a vote. The independent persons also do not have a vote.

### 9.04 Quorum

A meeting of the Committee shall not be quorate unless at least three members and one independent person are present. If the independent person is prevented from participation by the Code of Conduct, then the meeting will still be quorate, unless required to be available under S28(7)(b)(i) Localism Act 2011.

At least one parish member must be present when matters relating to parish councils or their members are being considered.

### 9.05 Chairing the Committee

The Standards Committee shall be chaired by a Councillor.

### 9.06 Roll and Function

The Standards Committee will have the following roles and functions:-

- a) Promoting and maintaining high standards of conduct by Councillors and co-opted members.
- b) Assisting Councillors and co-opted members to observe the Members Code of Conduct.

- c) Advising the Council on the adoption or revision of the Members Code of Conduct.
- d) Monitoring the operation of the Members Code of Conduct.
- e) Advising, training or arranging to train Councillors and co-opted members on matters relating to the Members Code of Conduct.
- f) Dealing with any reports from the Monitoring Officer regarding a complaint about an individual case.
- g) To review and determine the Council's arrangements for handling complaints under the Code of Conduct for the purposes of S28 Localism Act 2011.
- h) The exercise of a-g above in relation to the Parish Councils wholly or mainly in its area and the members of those Parish Councils.
- i) Granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Members Code of Conduct.
- j) The development, introduction, promotion and training in relation to all other ancillary codes of conduct (referred to in the Constitution as local Protocols) which the Council may wish to introduce from time to time.
- k) Considering and determining any complaint made about a Member with regard to an alleged breach of the provisions of any local Protocol adopted by the Council.

The Standards Sub-Committee will have the following roles and functions:-

- a) Dealing with any reports from the Monitoring Officer regarding a complaint about an individual case.
- b) Considering and determining any complaint made about a Member with regard to an alleged breach of the provisions of any local Protocol adopted by the Council.

## **Article 10 – Area Committees and Forums**

### **10.01 Area Committees and Forums – Position Statement**

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

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

As at 1 April 2014, the Council has not established any area committees in the parished part of the District, but has established a Winchester Town Forum, which covers the six (unparished) District Wards in Winchester Town. All 18 Members who represent the Town Wards are members of the Forum.

The Forum has been established as an area committee with an advisory role and some decision-making powers.

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

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

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

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

### **10.03 Area Committees – Access to Information**

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

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

### **10.04 Cabinet Members on Area Committees**

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

## **Article 11 – Joint Arrangements**

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

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

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

### **11.02 Joint Arrangements**

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

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

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

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

The political balance requirements do not apply to such appointments.

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

### **11.03 Access to Information**

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

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

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

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

#### 11.04 Delegation to and from other Local Authorities

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

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

#### 11.05 Contracting Out

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

## Article 12 – Officers

### 12.01 Management Structure

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

The Council will engage persons for the following posts, who will be designated as Chief Officers and comprise the Corporate Management Team:-

<b>Post</b>	<b>Functions and Areas of Responsibility</b>
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers) for the Authority.</p> <p>Provision of professional advice to all parties in the decision-making process.</p> <p>Together with the Monitoring Officer responsibility for a system of record keeping for all the Council's decisions.</p> <p>Organisational Development, Policy, Communications, Health and Wellbeing and Democratic Services.</p>
Chief Operating Officer	<p>To assist the Chief Executive in the overall corporate management of the Council and to have responsibility for the following Teams:</p> <p>Legal and Democratic Services; Estates and Business Management.</p> <p>To also assist the the Chief Finance Officer in relation to the Teams in that Group.</p> <p>Together with the Chief Executive responsibility for a system of record keeping for all the Council's decisions.</p> <p>Monitoring Officer.</p> <p>Electoral Registration Officer.</p> <p>Returning Officer for local elections; Acting Returning for Parliamentary</p>



	elections; Local Returning Officer for European Parliamentary elections; Local Counting Officer for referenda and Local Returning Officer for Police and Crime Commissioner elections.
Corporate Director	To assist the Chief Executive in the overall corporate management of the Council and to have responsibility for the following Teams:  Major Projects; Economy & Communities; Neighbourhoods & Environment; Built Environment; and Housing.
Chief Finance Officer	To assist the Chief Executive in the overall corporate management of the Council and to have responsibility for the following Teams:  IMT Services; Revenues & Benefits; and Financial Services.

The full Council may arrange for the delegation of the appointment of the above posts (other than to the Cabinet) and except in the case of the Head of the Paid Service, where the final decision will be taken by full Council.

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

The Council will designate the following posts as shown below:-

<b>Post</b>	<b>Designation</b>
Chief Executive	Head of Paid Service
Chief Operating Officer	Monitoring Officer
Chief Finance Officer	Section 151 Officer

Such posts will have the functions described below.

#### 12.03 Structure

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out in Part 7 of the Constitution.

#### 12.04 Functions of the Head of Paid Service

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

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

#### 12.05 Functions of the Monitoring Officer

The functions of the Monitoring Officer are as follows:-

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

- f) Advising whether Cabinet decisions are within the budget and policy framework – the Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- g) Contributing to corporate management – the Monitoring Officer will contribute to the corporate management of the Council, in particular through the provision of professional legal advice.
- h) Providing advice – the Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- i) Restrictions on post – the Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

#### 12.06 Functions of the Section 151 Officer

The functions of the Section 151 Officer are as follows:-

- a) Ensuring lawfulness and financial prudence at decision making – after consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the full Council, or to the Cabinet in relation to an executive function, and the Council’s external audit if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.
- b) Administration of financial affairs – the Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.
- c) Contributing to corporate management – the Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- d) Providing advice – the Section 151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.
- e) Give financial information - the Section 151 Officer will provide financial information to the media, members of the public and the community.

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

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

12.08 Conduct

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

12.09 Employment

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

## **Article 13 – Decision Making**

### **13.01 Responsibility for Decision Making**

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

### **13.02 Principles of Decision Making**

Decisions of the Council will be made in accordance with the principles set out below.

### **13.03 Types of Decisions**

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

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

- a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates;

(For Winchester City Council, the financial limit above which a decision is regarded as significant is £200,000)

or

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

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

### **13.04 Decision made by the full Council**

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

13.05 Decision making by the Cabinet

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

13.06 Decision making by Overview and Scrutiny Committees

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

13.07 Decision making by other Committees and Sub Committees

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

13.08 Decision making by Council bodies acting as tribunals

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

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

### **14.01 Financial Management**

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

### **14.02 Contracts**

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

### **14.03 Legal Proceedings**

The Chief Operating Officer and/or Head of Legal Services are authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Chief Operating Officer and/or the Head of Legal Services considers that such action is necessary to protect the Council's interests.

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

### **14.04 Authentication of Documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Chief Operating Officer or Head of Legal Services or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

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

### **14.05 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal 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 Chief Operating Officer or Head of Legal Services should be sealed. The affixing of the Common Seal will be attested by the Chief Operating Officer, or the

Head of Legal Services or some other person authorised by the Chief Operating Officer.

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



## Article 15 – Review and Revision of the Constitution

### 15.01 Duty to Monitor and Review the Constitution

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

### 15.02 Protocol for Monitoring and Reviewing the Constitution by Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended, in order 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 member and officer structure.
- b) undertake an audit trail of a sample of decisions.
- c) record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders.
- d) compare practices in this Authority with those in other comparable authorities, or national examples of best practice.

### 15.03 Changes to the Constitution

Changes to the Constitution will be controlled as follows:-

<b>Approval Mechanism</b>	<b>Part of the Constitution</b>
1. Full Council	Part 2 – Articles of the Constitution Part 4 – Rules of Procedure Part 5 – Codes and Protocols Part 6 – Members Allowances Scheme
2. The Monitoring Officer to update text in accordance with current Council, Cabinet and committee decisions	Part 1 – Summary and Explanation Part 7 – Management Structure Part 8 – Local Guidance Notes

<b>Approval Mechanism</b>	<b>Part of the Constitution</b>
3. Full Council, Cabinet or the relevant committee or sub committee in accordance with the provisions in the Local Government Acts 1972 and 2000 on delegation of functions, as qualified by Part 4 – Rules of Procedure – of this Constitution	Part 3 – Responsibilities for Functions
4. The Monitoring Officer to undertake minor consequential editing to the text to take account of other changes approved by Council, Cabinet or a Committee.	All parts of the Constitution
5. The Monitoring Officer to undertake minor consequential editing to the text to take account of legislative changes provided that it does not involve material changes to principles previously approved by Council, Cabinet or a Committee.	All parts of the Constitution

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

The Council must take reasonable steps to consult the local electors and other interested parties in the area when drawing up proposals.

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

### **16.01 Suspension of the Constitution**

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

A motion to suspend any Rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1. The motion shall not be carried unless approved by at least one half of the members present and voting.

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

- a) Council Procedure Rules except as set out in Procedural Rule 2.

### **16.02 Interpretation**

The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### **16.03 Publication**

The Chief Operating Officer will give a printed copy of this Constitution to each member of the authority upon delivery to him of that individual's declaration of acceptance of office on the member first being elected to the Council.

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

The Chief Operating Officer will ensure that the summary of the Constitution contained in Part 1 is made widely available within the area and is updated as necessary.

## **Schedule 1 – Description of the Executive Arrangements**

The following parts of this Constitution constitute the executive arrangements:-

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