

# MAIDSTONE BOROUGH COUNCIL



## CONSTITUTION

**JANUARY 2022**

## VERSION CONTROL

| Version | Date         | By   | Description  |
|---------|--------------|------|--|
| 1       | October 2021 | JRGP | Initial text and structure   |
| 2       | 23 Nov 2021  | JRGP | 1 <sup>st</sup> working draft ahead of D&GP meeting                                  |
| 3       | 15 Dec 2021  | JRGP | 2 <sup>nd</sup> working draft: addresses initial Weightmans & Working Group feedback |
| 4       | 13 Jan 2022  | SG   | 3 <sup>rd</sup> working draft: Further Weightmans markups                            |

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## **PART A - CORE PROVISIONS**

**A1. The Council and the Constitution**

**1. The Council**

- 1.1. The Maidstone Borough Council is constituted by virtue of Section 2 of the Local Government Act 1972 as consisting of the Chairman and the Councillors, being the Mayor and the Members.
- 1.2. The Council shall exercise all its powers and duties in accordance with the law and with this Constitution.

**2. Purpose of this Constitution**

The Council is required by law to have a written constitution setting out how the Council operates, how decisions are made and the rules and procedures that need to be followed. The arrangements making up this Constitution have the purpose of: -

- 2.1. Ensuring that the strategies, policies, ethos & direction of the Council are determined by elected Members;
- 2.2. Facilitating decision-making closest to those elected Members who can be held politically accountable for such decisions by other Members and also by Local Residents [\(as defined in Part A2, provision 1.1\)](#);
- 2.3. Maintaining political accountability during periods of no overall control by any individual Political Group;
- 2.4. Providing elected Members with the information, mechanisms & forums needed to represent Local Residents effectively and to hold those responsible for discharging functions to account; and
- 2.5. Enabling Local Residents opportunities to be heard and to participate directly in the proceedings of the Council, the Committees & the Executive.

**Commented [SG1]:** The issue regarding the definition of "local residents" and the fact that people do not have to reside locally to be able to have a say in how the Council runs if they are affected by its decisions and services still needs to be resolved

**Commented [SG2]:** My view remains that the wording in the current constitution more accurately reflects the purpose of a constitution than the proposed wording

**3. The Structure of this Constitution**

- 3.1. This Constitution, in all six parts, together with annexes, appendices & schedules, and also with the Glossary of Terms, is the Constitution of the Maidstone Borough Council.
- 3.2. The six parts cover different areas and have differing levels of status.
  - 3.2.1. Part A contains the higher-level principles and core provisions of the Constitution.
  - 3.2.2. Part B contains provisions on responsibilities for discharging the functions of the Council and for making decisions.

- 3.2.3. Part C sets out various rules of procedure around how certain proceedings of the Council are regulated and how decisions are made. This also impinges on how the Council enters into certain transactions. These are intended to be binding on all bodies of the Council.
- 3.2.4. Parts D & E set out respectively the Codes and Protocols followed by the Council. These are intended to be binding on the Council's Officers and on its decision-making bodies save that the Council may resolve to make a decision notwithstanding the content of these Codes and Protocols.
- 3.2.5. Part F contains final provisions such as the statutory Scheme of Allowances.

- 3.3. The Parts and provisions of this Constitution should not conflict. Where however provisions in this Part A conflict with any provision in any other Part of this Constitution, the provisions in this Part A shall prevail.

#### 4. Citation

- 4.1. Within any Chapter, a reference to a numbered Provision, Rule or Clause shall refer to the contents of that Chapter of the Constitution unless specified otherwise. Within an Appendix to a Chapter, references to a numbered Paragraph shall likewise refer to the contents of that Chapter.
- 4.2. The contents of this Part A, and also Parts B, D, E & F are correctly referred to as Provisions (e.g. "Provision 4.2"), save for any appendix whose content is correctly referred to as Paragraphs.
- 4.3. The individual chapters of Part C may be referred to by Chapter number (e.g. "Chapter C1") or by their title (e.g. "Council Procedure Rules"). Within these particular chapters, the contents are correctly referred to as Rules (e.g. "Rule 2" or "Council Procedure Rule 2").

#### 5. Interpretation

- 5.1. Every Provision in this Constitution, including every Rule, Clause or Paragraph, must be interpreted in the light of its purpose.
- 5.2. The purpose of any such Provision in this Constitution is to be gathered first and foremost from the words used in that Provision.
- 5.3. Where particular words or phrases are defined within the Local Government Acts, they shall have the same meaning for the purposes of this Constitution unless negated by a particular definition within this Constitution or by the context in which the words or phrase are used.

**Commented [SG3]:** I still think this is unnecessary, will cause significant practical problems and is not the way documents would normally be interpreted.



- 5.4. A number of definitions for particular words or phrases are contained in the Glossary of Terms. These are capitalised throughout this Constitution.
- 5.5. Where the words used provide for any ambiguity or for alternate interpretations of a Provision, that Provision shall be construed in accordance with any particular statement of purpose applying to that provision or to that Part or sub-Part of the Constitution. Where there is no such particular statement of purpose, the general purpose of the arrangements making-up this Constitution set out above in Provision 2 of this Chapter shall apply.

**6. Monitoring and Reviewing this Constitution.**

- 6.1. The Democracy & General Purposes Committee shall monitor and review the operation of the Constitution and associated guidance at least once a year to ensure that the aims and principles of the Constitution are given full effect.
- 6.2. A key role for the Monitoring Officer is to regularly review the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended to better achieve the purposes set out in Provision 2.

**7. Changes to the Constitution**

- 7.1. Subject to Provision 7.2 below, changes to the constitution will only be approved by the Full Council after consideration of the proposal by the Democracy & General Purposes Committee.
- 7.2. The first exceptions to Provision 7.1 is the power of the Monitoring Officer to make amendments to correct typographical errors and to make any purely consequential changes that are required to ensure the text reflects any directly applicable changes in the Local Government Acts and related legislation, or any provision under them. The other exceptions apply to the following Council bodies or Officers in respect of particular Chapters or parts thereof: -

| Section      | Body / Officer  | Subject or Scope  |
|--------------|-----------------|---|
| Chs. B3 & B5 | Leader          | Delegations of Executive Functions to Officers and individual portfolio holders |
| Ch. B5       | Chief Executive | Division of delegated matters amongst Officer roles                             |
| Ch. B6       | Chief Executive | Appointment of new Proper   |

|        |           |                                  |
|--------|-----------|----------------------------------|
|        |           | Officers                         |
| Ch. C6 | Executive | Crime & Disorder Reduction Rules |

**8. Suspension & Derogation**

- 8.1. The Core Provisions contained in this Part A may not be suspended or excepted.
- 8.2. The Provisions in Part B may not be suspended or excepted.
- 8.3. The Rules of Procedure in Part C provide for the circumstances in which particular Rules may be suspended. No other suspension or exception shall be permitted.
- 8.4. The nature of the Codes in Part D and the Protocols in Part E are such that the Council may resolve to make any exception to their terms as the Council may see fit.
- 8.5. No other suspension, exception or derogation shall be permitted other than in accordance with this Provision 8.

**9. Publicity and Information**

- 9.1. The Democracy & General Purposes Committee and the Monitoring Officer shall ensure that the *Guide to the Constitution* (“the Guide”) is produced and maintained alongside the Constitution itself. [The Guide shall serve as the summary and explanation of the Constitution and shall be attached as an Appendix.](#)
- 9.2. The Council shall ensure that a copy of this Constitution and the Guide are readily available to Local Residents, Members and Officers alike. This shall include maintaining copies on the Council’s website.
- 9.3. This shall include offering all newly elected Members a hard copy of the Guide, as well as providing soft copies of both the Guide and the Constitution, and ensuring the same are covered in any induction training.

**Commented [SG4]:** In my view as a result of section 17 of the Interpretation Act 1978 there is still a requirement to have an introduction and summary as part of the constitution itself. My view also remains that it would be better to do that as a practice even if it were not a legal requirement.

**A2. Core Provisions of The Constitution**

**1. THE RESIDENTS**

**1.1. Rights of Local Residents**

"Local Residents" in this Constitution means people who reside work or own or operate a business in of the Borough of Maidstone or who and users of its services or are affected by its decisions or services ("Local Residents") and shall have the following rights in respect of the Council. These are subject to the Rules of Procedure in Part C of this Constitution where they pertain to the proceedings of the Council.

**Commented [SG5]:** See comment above re "local residents"

1.1.1. **Voting.** Local Residents on the electoral roll have the right to vote in elections of the Members, and in any local referendum or poll.

**Commented [SG6]:** This is a somewhat simplistic and inaccurate comment. The modular constitution simply states that: "Citizens have the right to: vote at local elections if they are registered.." which arguably is little better, though part of the problem comes from the lack of definition of "local residents"

1.1.2. **Information.** Local Residents shall have the right to: -

- (a) Attend meetings of the Council, the Committees and the Executive;
- (b) Make such recordings and records of such meetings as they wish;
- (c) Know via the Forward Plan what Key Decisions and Other Material Decisions will be taken by the Executive and when;
- (d) Copies of reports and background papers, and any records of decisions made;
- (e) Inspect the Council's accounts and make their views known to the External Auditor.

**Commented [SG7]:** anyone can attend such meetings it cannot as a matter of law be restricted to "local residents" however defined.

**Commented [SG8]:** See comment above

**Commented [SG9]:**

**Commented [SG10]:** There is no longer a legal requirement to publish a "Forward Plan" of key decisions though advance notice of key decisions is required.

1.1.3. **Participation.** Local Residents shall have the right: -

- (a) At meetings of the Council, the Committees and the Executive,
  - To ask questions and to receive answers,
  - To address the meeting, and
  - To present petitions in accordance with the Petition Scheme;
- (b) Via consultations, that shall always include an online option, to give their views;
- (c) To lobby their local Ward Members.

1.1.4. **Complaints.** Local Residents have the right to make complaints and to have these determined objectively by: -

- (a) the Council itself under its Complaints Scheme and arrangements as to Member conduct;
- (b) where applicable, the Local Government and Social Care Ombudsman.

## 1.2. Responsibilities

~~The rights of individual~~ If Local Residents ~~shall in part be contingent upon that individual not~~ disrupting or participating in the disruption of meetings or engaging in abusive or threatening behaviour or a course of behaviour amounting to harassment of any Member or Officer ~~then this will affect the way in which the Council interacts with those Local Residents in the exercise of those rights~~. In these instances, the Council may take action such as removing individual Local Residents from meetings and/or managing their contact with Officers and/or Members.

**Commented [SG11]:** I still do not think this is lawful. Whilst the Council is entitled to take steps to manage people who believe inappropriately that does not change their "rights" it simply means that the way in which the Council interacts with people in relation to those rights can be modified. The wording in the current constitution on this point is a more accurate reflection of the legal position.

## **2. THE MAYOR**

### **2.1. Election of the Mayor**

- 2.1.1. The Mayor shall be elected by the Council annually in accordance with the Council Procedure Rules in Part C of this Constitution, and the Deputy Mayor shall be appointed in accordance with the same.
- 2.1.2. In preparing for the election of the Mayor and the appointment of the Deputy Mayor, the Council shall have regard to the Protocol on Mayor & Deputy Mayor Pre-Selection contained in Part E of this Constitution.

### **2.2. Efficient Role of the Mayor**

The Mayor and, in his or her absence, the Deputy Mayor shall have the following responsibilities: -

- 2.2.1. To preside at meetings of the Council so that its business can be carried out efficiently and with regard to the rights of elected Members and the interests of Local Residents;
- 2.2.2. To ensure that the Council meeting is a forum for the debate of matters of concern to Local Residents and a place at which Members who are not on the Executive are able to hold the Executive to account;
- 2.2.3. To promote public involvement in the Council's proceedings & activities;
- 2.2.4. To uphold & promote the purposes of this Constitution and to be the conscience of the Council.

### **2.3. Dignified Role of the Mayor**

The Mayor and, in his or her absence, the Deputy Mayor shall also: -

- 2.3.1. Be the First Citizen of the Borough of Maidstone and shall take precedence, save for members of the Royal family and the Lord Lieutenant of Kent when present in the Borough;
- 2.3.2. Promote the Council as a whole and act as a focal point for the community;
- 2.3.3. Attend such civic and ceremonial functions as the Council and he or she determine to be appropriate.

### 3. THE MEMBERS

#### 3.1. Composition & Eligibility

- 3.1.1. **Composition.** The Council shall comprise of a number of Members, otherwise called councillors, with one or more Members 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 ("Scheme of Elections").
- 3.1.2. **Eligibility.** Only registered voters of the Borough or those living or working there will be eligible to hold the office of councillor (or Member).

#### 3.2. Election & Terms of Members

- 3.2.1. The ordinary election of a third (or as near as may be) of all Members will be held on the first Thursday in May in each year until 2023 inclusive, in accordance with the Scheme of Elections.
- 3.2.2. From 2024, whole council elections shall be held on the first Thursday in May of that year and then every four (4) years thereafter.
- 3.2.3. The terms of office of Members will ordinarily be four (4) years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four (4) years later.

#### 3.3. Role of Members

All Members will: -

- 3.3.1. Collectively be the ultimate policy-makers and will carry out a number of strategic & corporate functions;
- 3.3.2. Contribute to the good governance of the Borough;
- 3.3.3. Effectively represent the interests of their Ward and Local Residents;
- 3.3.4. Respond to enquiries & representations, and offer representation & assistance in respect of the Council, to individual Local Residents.

#### 3.4. Rights of Members to Access Information & Meetings

- 3.4.1. An elected Member is entitled by virtue of his or her office to have access to all documents in the Council's possession,

**Commented [SG12]:** This is due to be considered at the meeting of DGP Committee on 16 February. In my view it still does not accurately reflect the law and the committee will need to be given full and detailed legal advice on this point (as will full Council when it ultimately considers the constitution).

including those containing Exempt or Confidential Information, and to attend all meetings of a Member body even where the public have been excluded, where he or she has a need to know.

- 3.4.2. Any officer or body with delegated authority to make a decision under this Constitution determining whether a Member has a need to know certain information shall consider the prima facie existence of that need to know where: -
- (a) The Member sits on the relevant Member body considering a matter to which the information relates, or is likely to sit on that body as a substitute.
  - (b) The Member is considering exercising or is exercising any Rights in Respect to Proceedings summarised in Provision 3.5 below in connection with such a matter; or
  - (c) The information relates directly to matter the Member's role in representing their Ward.

This is subject to there being exceptional circumstances where it would be manifestly unreasonable for the Council to acknowledge a need to know certain information and/or where disclosure of that information to the Member would be contrary to some other enactment.

- 3.4.3. The Access to Information Procedure Rules in Part C seek *inter alia* to apply this principle, subject to the proviso that where there is any conflict in the application of those Rules and the principles in this Provision 3, the principles in this Provision 3 shall prevail.

### **3.5. Rights in Respect to Proceedings**

To assist Members in their work, their rights in respect of the proceedings of the Council shall include: -

- 3.5.1. The right, together with four (4) others, to requisition an Extraordinary Meeting of the Council;
- 3.5.2. The right to move amendments to any Motion by the Leader concerning the Administration's Programme for the Municipal Year;
- 3.5.3. The right to move a Motion on Notice at a meeting of the Council;
- 3.5.4. The right to ask Questions on Notice at meetings of the Council, the Committees and the Executive;

- 3.5.5. The right to have a subject added to the agenda of a meeting of a Committee;
- 3.5.6. The right to refer the determination of a planning application affecting the Member's Ward to the Planning Committee;
- 3.5.7. The right to refer a breach of planning control to the Planning Committee;
- 3.5.8. The right, together with two (2) others, to refer a serious nuisance or a major service failing directly to the Executive;
- 3.5.9. The right, together with two (2) others, to call-in a decision of the Executive for scrutiny;
- 3.5.10. The right to issue a Member Call for Action;
- 3.5.11. The right to refer a dispute about his or her rights under this Constitution to a Panel of the Democracy & General Purposes Committee for determination.

This is a non-exhaustive statement of Member rights, the contents of which are without prejudice to any rights arising under any other Provision within this Constitution or the law.

### **3.6. Conduct**

Members will at all times observe the Members Code of Conduct in Part D of this Constitution and the Protocol on Member/Officer Relations set out in Part E of this Constitution.

### **3.7. Allowances**

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



## **4. DECISIONS**

### **4.1. Principles of decision making**

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

- 4.1.1. reasonableness i.e. not being manifestly unreasonable;
- 4.1.2. due consultation;
- 4.1.3. the taking of professional advice from Officers;
- 4.1.4. the need to explain the reasons for decisions and the options considered;
- 4.1.5. respect for human rights and procedural fairness;
- 4.1.6. a presumption in favour of openness;
- 4.1.7. clarity of aims and desired outcomes; and
- 4.1.8. the Public Sector Equality Duty.

### **4.2. Rules of Procedure**

Subject to the Provisions of this Chapter, all decisions must comply with the Rules of Procedure in Part C of this Constitution.

### **4.3. Types of decision**

Decision types may be classified in a number of ways

#### **4.3.1. The Member-Body Responsible**

- (a) Functions may be reserved for the Full Council as a matter of law or Local Choice. These in turn maybe subdivided into between:
  - (i) those the Full Council must retain by law,
  - (ii) those the Full Council chooses to retain, and
  - (iii) those delegated to Committees and/or to Officers.
- (b) Functions not so reserved are the responsibility of the Executive. These may similarly be delegated by the Executive.

#### **4.3.2. Significance**

- (a) ~~fXX Key Decisions definition~~Key decisions will be those which :
  - (i) result in the Council incurring expenditure, or making savings, of more than £250,000; or

~~(a)~~ *are significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.*

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- (b) Procedural and De Minimis Decisions are those decisions pertaining to procedural matters and those decisions of little or no policy significance where expenditure or loss is less than [£XX].
- (c) Other Material Decisions are those decisions not otherwise falling into (a) or (b).

**Commented [SG13]:** There needs to be clarity about what "other material decisions are and what this means for the decision making process.

4.3.3. **The Administration's Programme:** Whether the matter for decision is contained within the Administration's Programme for the Municipal Year or whether it arises in another way.

4.3.4. **The Nature of the Decision:** ranging from general policy to quasi-judicial in particular cases

#### 4.4. Responsibility for decision making

The remaining Provisions in this Chapter set out the principles by which particular types of decision or decisions relating to particular areas or functions are the responsibility of which Member body of the Council and/or Officer Role.

Part B of this Constitution gives effect to these Core Provisions by setting out the responsibility for decisions and functions in more detail.

#### 4.5. Decision making in Certain Individual Cases

Decisions in individual cases that involve the determination or consideration of the civil rights and obligations or criminal responsibility of any person will follow a proper procedure. Such a procedure shall accord with the requirements of natural justice, procedural fairness and human rights as the context may require.

## **5. THE FULL COUNCIL**

### **5.1. Introduction**

- 5.1.1. Full Council is a formal meeting of the Mayor and Members and may also be referred to as "the Council" where the context allows. Full Council is required by law to take certain important decisions including setting the Council's Budget and Council Tax and approving a number of key plans and strategies, which together form the Policy Framework. Full Council must also by law take decisions on a number of specific matters.
- 5.1.2. Full Council provides a central forum for debate and gives the opportunity for Members and indeed Local Residents to hold those discharging functions to account.

### **5.2. Types of Meeting**

There are three types of Council meeting: -

- 5.2.1. The Annual Meeting
- 5.2.2. Other Ordinary Meetings
- 5.2.3. Extraordinary Meetings

### **5.3. Proceedings at Meetings of the Council**

All meetings of Full Council are subject to the Council Procedure Rules contained in Part C of this Constitution.

### **5.4. Functions of Full Council**

Subject to the detailed specification maintained in Part B of the Constitution, the only a meeting of the Council will make decisions in respect of those matters reserved for it by law or by Local Choice that are not in turn delegated.

### **5.5. Meaning of Policy Framework, etc.**

- 5.5.1. The Policy Framework means the following Plans and Strategies:
- (a) Those required by law to be adopted by the Council. These include:
- (i) Crime and Disorder Reduction Strategy;
- (ii) Licensing Authority Policy Statement including any Cumulative Impact Policies;

- (iii) Local Development Framework - Plans and alterations which together comprise the Development Plan and Development Plan Documents;
    - (iv) Sustainable Community Strategy;
    - (v) Policies made under the Gambling Act (including any resolution relating to casinos);
  - (b) Those which the Council has decided should be adopted by the Council meeting as a matter of Local Choice:
    - (i) The Strategic Plan
- 5.5.2. 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 (including the Capital Strategy) and the setting of virement limits.

## **6. THE COMMITTEES**

### **6.1. Outline of the Council's Committees**

- 6.1.1. The Council shall establish a number of different committees, of variable standing, to assist in the decision-making of the Council and the discharge of its functions.
- 6.1.2. These are: -
  - (a) Policy Advisory Committees;
  - (b) The Overview & Scrutiny Committee;
  - (c) Regulatory Committees;
  - (d) Committees in respect of governance, standards and general purposes;
  - (e) The Employment Committee.
- 6.1.3. These Committees shall be subject to the requirements for political balance and proportionality laid down in Sections 15-17 & Schedule 1, Local Government and Housing Act 1989.
- 6.1.4. Part B of this Constitution contains further provisions where Committees are responsible for the discharge of the Council's functions.
- 6.1.5. Part C of this Constitution contains Rules of Procedure applying to the Committees.
  - (a) The Committee Procedure Rules shall apply to all Committees.
  - (b) The Access to Information Procedure Rules shall apply to all Committees.

### **6.2. Policy Advisory Committees**

- 6.2.1. There shall be up to four Policy Advisory Committees ("PACs") consisting each of nine (9) Members.
- 6.2.2. The purpose of the PACs shall be: -
  - (a) To involve Members who are not on the Executive in the work of the Executive and to promote collegiate working between the Executive and such Members;
  - (b) As a forum for: -
    - (i) Members to raise issues pertaining to the discharge of the Council's functions;

- (ii) Officers and/or the Executive to inform Members and seek feedback via reports for noting and comment;
  - (iii) Budget and Performance Monitoring.
- (c) To provide an appraisal and opinion of proposed decisions, reflecting the balance on the Council, before they are made with a view to reducing the need for calling-in of decisions.
- 6.2.3. The portfolios of the PACs shall be assigned by the Proper Officer according to a set formula and method. This shall be specified in Part B of this Constitution.
- 6.2.4. The Executive shall ~~appoint~~ nominate a Member on each PAC to coordinate its activities with the Executive. The PAC shall appoint one of its members and to act as Committee Chairman.
- 6.2.5. Each PAC shall elect a member who is not on the Executive to act as its vice-chair, with preference in the election process to be given to Members on the PAC belonging to the non-Administration Political Groups.

**Commented [SG14]:** If these are committees of the Council then only either the Council or the committee can appoint the Chairman. It could be that the expectation (set out in the constitution) is that it will appoint the person nominated by the Leader or the Executive.

### 6.3. The Overview & Scrutiny Committee

- 6.3.1. There shall be an Overview & Scrutiny Committee of the Council consisting of thirteen (13) Members who are not on the Executive plus up to two (2) non-Members co-opted in accordance with the Rules of Procedure.
- 6.3.2. The purpose of the Overview & Scrutiny Committee shall be: -
- (a) To review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
  - (b) To make reports and/or recommendations to the Full Council and/or the Executive in connection with the discharge of any functions;
  - (c) To consider any matter affecting the Council, the Borough or Local Residents;
  - (d) To act as the Council's Crime & Disorder Scrutiny Committee for the purposes of Section 19, Police and Justice Act 2006; and
  - (e) To exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive.
- 6.3.3. Part B of this Constitution shall set out a more detailed specification of the functions of the Overview & Scrutiny Committee.

- 6.3.4. The Members on the Overview & Scrutiny Committee shall elect one of their number to chair that Committee and another to act as vice-Chair, with preference in the election process to chair that Committee being given to members from the largest non-Administration Political Group on the Council
- 6.3.5. The role and powers of the Overview & Scrutiny Committee are not affected by whether or not a decision relates to a matter within the Administration's Programme.
- 6.3.6. The Overview & Scrutiny Committee must report annually to the Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

#### **6.4. Regulatory Committees**

- 6.4.1. There shall be a Licensing Committee consisting of thirteen (13) Members.
- 6.4.2. The purpose of the Licensing Committee shall be to exercise the licensing and gambling functions on behalf of the Council including: -
  - (a) the creation and review of the statutory and non-statutory policies;
  - (b) the setting of fees and charges including making recommendations to the Council as required; and
  - (c) via the Licensing sub-Committee, to make decisions about individual licensing matters and appeals where not otherwise delegated to Officers
- 6.4.3. The Members on the Licensing Committee shall elect one of their number to chair that Committee and another to act as vice-Chair.
- 6.4.4. There shall be a Planning Committee consisting of thirteen (13) Members.
- 6.4.5. The functions of the Planning Committee shall be to determine town and country planning and development control matters and associated issues.
- 6.4.6. The Members on the Planning Committee shall elect one of their number to chair that Committee and another to act as vice-Chair.

6.4.7. Part B of this Constitution provides for the functions & responsibilities of these Committees.

## **6.5. Governance, Standards & General Purposes**

6.5.1. There shall be an Audit, Governance & Standards Committee consisting of nine (9) Members.

6.5.2. The purpose of the Audit, Governance & Standards Committee shall include: -

- (a) The promotion and maintenance of high standards of Member and Officer conduct within the Council;
- (b) Adoption and reviewing the Council's Annual Governance Statement;
- (c) Independent assurance of the adequacy of the financial and risk management framework and the associated control environment;
- (d) Independent review of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment; and
- (e) Overseeing the financial reporting process.

6.5.3. There shall be a Democracy & General Purposes Committee consisting of nine (9) Members.

6.5.4. The functions of the Democracy & General Purposes Committee shall include: -

- (a) Acting as the guardian of this Constitution, working with the Monitoring Officer to ensure that it is maintained and adhered to;
- (b) Being responsible for Member training and development and acting as a champion of the role & rights of individual Members;
- (c) Via its Disputes Panel, determining individual Member complaints and grievances as to the rights of Members under this Constitution, albeit without prejudice to the role of those Members presiding at meetings;
- (d) Determining matters relating to elections, electoral registration;
- (e) Other democratic services responsibilities and functions;

6.5.5. Part B of this Constitution provides more detail of the role & responsibilities of these Committees.



**6.6. The Employment Committee**

- 6.6.1. There shall be an Employment Committee consisting of nine (9) Members.
- 6.6.2. The purpose of the Employment Committee shall be *To undertake the following functions:* -
- (a) To develop and approve the Council's human resources strategies, policies and officer terms and conditions of employment subject to the approval of any budget implications by the Cabinet and/or Council as appropriate.
  - (b) To appoint: -
    - (i) a Chief Officers Appointments Panel to consider appointments at chief officer and head of service level;
    - (ii) a Chief Officers Investigation and Disciplinary Panel to consider any disciplinary allegations against chief officers and head of service level (excluding the Chief Executive, Monitoring Officer and Section 151 Officer);
    - (iii) a Chief Officers Disciplinary Appeals Panel to consider appeals against dismissal by any chief officer or heads of service (excluding the Chief Executive, Monitoring Officer and Section 151 Officer) or disciplinary action short of dismissal by any chief officer or head of service (including the Chief Executive, Monitoring Officer and Section 151 Officer); and
    - (iv) a statutory officers investigation and disciplinary panel to consider any disciplinary allegations against the Chief Executive, Monitoring Officer and Section 151 Officer.
  - (c) Dealing with employment and staffing matters unless otherwise delegated.

**6.7. Miscellaneous**

- 6.7.1. Any sub-Committee of any of the aforementioned Committees shall:
- (a) Be drawn mainly from the membership of the parent Committee;
  - (b) Be subject to the rules on political balance cited above;
  - (c) Hold its meetings in public;

- (d) Report the minutes of its proceedings to its parent Committee; and
  - (e) Be subject to the prima facie need to know of Members of its parent Committee, save for the Licensing Committee in respect of any sub-Committee determining an application.
- 6.7.2. Any Working Group of any of the aforementioned Committees shall:
- (a) Be limited in its terms of reference to exploratory work on behalf of its parent Committee;
  - (b) Report the minutes of its proceedings to its parent Committee;
  - (c) Be drawn primarily though not necessarily exclusively from the membership of its parent Committee, and shall aim for inclusivity though not subject to the requirements of political balance cited above.
- 6.7.3. For any other body that is neither constituted by this Constitution nor by a Political Group, involving two (2) or more Members that endures for six (6) months or more, the Proper Officer shall ensure that: -
- (a) The existence of the body is documented;
  - (b) The body is assigned to a Parent body, being a Member body that is formally constituted under this Constitution;
  - (c) It reports the minutes of its proceedings to its Parent body.
- 6.7.4. For the avoidance of doubt, the Executive is not to be treated as a Committee of the Council for the purposes of this Provision 6.

## **7. THE EXECUTIVE**

### **7.1. Role and Form**

- 7.1.1. The Executive shall be responsible for all of the functions of the Council that are not designated by law or this Constitution (where permitted by law) to other Member bodies.
- 7.1.2. The Executive shall consist of the Leader together with at least two (2), but no more than nine (9), Members appointed to the Executive by the Leader.
- 7.1.3. Members appointed the Executive shall be referred to as "Members on the Executive". Individual Members on the Executive assigned portfolios may be referred to as "Lead Member for [portfolio name]".

### **7.2. The Leader**

- 7.2.1. The Leader will be a Member elected to the position of Leader by the Council.
- 7.2.2. The Leader will hold office until:
  - (a) He or she resigns from the office; or
  - (b) He or she is no longer a Member; or
  - (c) The earlier of: -
    - (i) The fourth Annual Meeting following his or her election, or
    - (ii) The Annual Meeting following Whole Council Electionssave that the Leader may be removed from Office at an earlier date by resolution of the Council.

### **7.3. The Deputy Leader**

- 7.3.1. The Leader may designate one of the Members on the Executive as the Deputy Leader.
- 7.3.2. The Deputy Leader may exercise all the functions of the Leader where the position is vacant or where the Leader is absent or is otherwise unable to act.
- 7.3.3. The Leader may, if he thinks fit, remove the Deputy Leader from office at any time.

### **7.4. Other Members on the Executive**

Other Members on the Executive shall hold office until:

- 7.4.1. they resign from office; or
- 7.4.2. they are no longer Members; or
- 7.4.3. they are removed from office by the Leader acting in accordance with the provisions for removal in the Rules of Procedure in Part C.

#### **7.5. The Administration's Programme**

- 7.5.1. By the latter of sixty (60) days from his or her election or the Annual Meeting, the Leader and/or the Executive shall submit to Full Council for consideration & approval the Administration's Programme for the remainder of the Municipal Year.
- 7.5.2. Where Full Council does not approve the Administration's Programme within the time-scales set out in Provision 7.5.1 above, with or without amendments agreed by Full Council, the Executive and the Officers shall use their best endeavours to secure that such a programme, acceptable to the majority of Members, is so approved. In this event, a proposal for the Administration's Programme shall be put to each meeting of Full Council until one is approved.
- 7.5.3. Where the Administration's Programme is approved by Full Council but either sets out proposed changes to the Budget & Policy Framework, or otherwise conflicts with the Budget & Policy Framework, this shall not alter the prevailing Budget & Policy framework unless Council resolves explicitly that the Budget and Policy Framework should be so amended; if no such resolution is made the Executive and the Officers shall undertake the work necessary to bring detailed implementation proposals for such changes to a future meeting of Full Council for approval.
- 7.5.4. Where the Administration's Programme is approved by Full Council and contains particular pledges within the scope of Executive Functions that are not in conflict with the existing Budget & Policy Framework, each of those particular pledges shall then form priority items for consideration by the Executive and not require prior consideration by a Policy Advisory Committee. This shall not prevent the Leader or a competent Member on the Executive choosing to place the matter before a Policy Advisory Committee nevertheless.

## 7.6. Delegations, Decisions and Proceedings of the Executive

- 7.6.1. The Leader shall maintain a Scheme in Part B of this Constitution setting out which individual Members on the Executive, Committees of the Executive, Officers or Joint Arrangements are responsible for the exercise of particular Executive Functions.
- 7.6.2. No Key Decision or Other Material Decision in respect of a matter shall be placed before the Executive or any individual Member on the Executive, and no report prepared for them by Officers, unless: -
- (a) A report on the matter has previously been considered by a meeting of any Policy Advisory Committee;
  - (b) The matter is a reference to the Executive from another Committee, including the Overview & Scrutiny Committee, whose terms of reference allowed the matter to be considered;
  - (c) The matter was the subject of a particular pledge contained within the Administration's Programme approved by the Full Council and does not conflict with the Budget & Policy Framework;
  - (d) The matter was the subject of a Motion before Full Council referred directly to the Executive for consideration;
  - (e) The matter was the subject of a Member Agenda Item Request that has been considered by any Committee and that Committee has resolved to request an Officer's report on the matter be submitted directly to the Executive;
  - (f) The matter concerns a Nuisance or serious service failure and at least three (3) Members have submitted a request it be considered by the Executive;
  - (g) The matter is urgent and the Urgency Arrangements set out in the Executive Procedure Rules in Part C of the Constitution have been engaged.
- 7.6.3. Key Decisions and Other Material Decisions [which are made by members or member bodies](#) shall be made in public, either at a meeting of the Executive or at another meeting convened for the purpose of making the [decision](#). [This will not prevent all or part of matters being considered in private in accordance with the Access to Information Procedure Rules if confidential or exempt information is likely to be discussed but the decision will always be made in public.](#)

**Commented [SG15]:** How will this be dealt with in the context of decisions involving exempt information?

- 7.6.4. Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part C of this Constitution.

## 8. THE OFFICERS

### 8.1. Roles to be Appointed

- 8.1.1. The Council shall engage such staff as it considers necessary to carry out its functions.
- 8.1.2. The following shall be designated as Chief Officers: -
- (a) The Chief Executive (and Head of Paid Service);
  - (b) The Director of Finance & Business Improvement;
  - (c) The Director of Regeneration & Place;
  - (d) *[XX Insert Others]*
- 8.1.3. The following Statutory Officers must be appointed and/or designated: -
- (a) Head of Paid Service;
  - (b) Chief Financial Officer; and
  - (c) The Monitoring Officer
- 8.1.4. The role of Head of Paid Service may be undertaken by the same person, if a qualified accountant, who undertakes the role of Chief Finance Officer. The role of Monitoring Officer however must not be undertaken by a person also undertaking either the role of Head of Paid Service or the role of Chief Finance Officer.

**Commented [SG16]:** I believe that Cumbria CC did obtain an opinion from James Goudie QC that it would be unlawful to have the same person being CFO and HPS, notwithstanding that there was no explicit bar to this.

### 8.2. Appointments

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

### 8.3. Delegations to Officers

- 8.3.1. *[XX Purpose of delegation e.g. efficiency, service maintenance, not Policy]*
- 8.3.2. *[XX Specification in Part B]*

### 8.4. Principles of Officer Support of Member Bodies

In employing and organising Officer support for the different roles within the Council, the Council will follow a number of key principles with a view to delivering efficient and effective services:-

- 8.4.1. all Officers are employed by, and are accountable to, the Council as a whole, and the Council will both expect and respect the political neutrality of Officers in the discharge of their functions;
  - 8.4.2. adequate support from Officers is provided for the discharge of all the functions of the Council and specifically the roles of the Council, the Committees, the Executive and individual Members representing their communities;
  - 8.4.3. day to day managerial and operational decisions are the responsibility of the Council's Directors, Service Heads, and other Officers;
  - 8.4.4. the Council seeks to avoid creating potential conflicts of interests for Officers arising from the separation of the Executive and Scrutiny roles; and
  - 8.4.5. all Officers have access to appropriate training and development to help them support the various functions of the Council and its Members effectively.
- 8.5. The roles, responsibilities and rights of Officers and Members are set out in the Protocol on Officer-Member Relations in Part E of this Constitution.

#### **8.6. Scope of Statutory Officer Roles**

- 8.6.1. The functions of the role of Head of Paid Service shall include reporting to Full Council on the manner in which the discharge of the functions of the Council is co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.
- 8.6.2. The functions of the role of Monitoring Officer include: -
  - (a) Working with the Democracy & General Purposes Committee to maintain the Constitution;
  - (b) Ensuring lawfulness and fairness of decision making;
  - (c) Supporting the Standards Committee;
  - (d) Conducting investigations or instructing others to carry out investigations on his or her behalf;
  - (e) Advising whether Executive decisions are within the Budget and Policy Framework;
  - (f) Providing advice to Members and Officers.
- 8.6.3. The functions of the role of Chief Finance Officer include: -

**Commented [SG17]:** Presumably you do not have political assistants?



- (a) Ensuring lawfulness and financial prudence of decision making
- (b) Administration of financial affairs
- (c) Contributing to corporate management
- (d) Providing advice
- (e) Giving financial information

**8.7. Conduct**

Officers will comply with the Officer's Code of Conduct in Part D of this Constitution and the Protocol on Officer/Member Relations set out in Part E of this Constitution.

**8.8. Structure**

The Head of Paid Service shall 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 an Annex to this Constitution.

**9. JOINT ARRANGEMENTS**

**9.1. Outline of Arrangements**

The Council and the Executive may: -

- 9.1.1. enter into arrangements or agreements with any person or body;
- 9.1.2. co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- 9.1.3. exercise on behalf of that person or body any functions of that person or body.

**9.2. Joint Arrangements**

- 9.2.1. 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.
- 9.2.2. The Executive 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.
- 9.2.3. Except as set out below, the Executive may only appoint members of the Executive to a joint committee and those members need not reflect the political composition of the Council as a whole.
- 9.2.4. The Executive may appoint Members to a joint committee from outside the Executive in the following circumstances:
  - (a) the joint committee has functions for only part of the area of the Borough, ~~and that area is smaller than two fifths of the Borough by area or population~~. In such cases, the Executive may appoint to the joint committee any Member whose Ward is wholly or partly contained within the area;
  - (b) the joint committee is between the County Council and this Borough Council only and relates to functions of the Executive of the county council. In such cases, the Executive of the County Council may appoint to the joint committee any Member for an electoral division which is wholly or partly contained within the area.

**Commented [SG18]:** I am still not sure where the 2/5 area requirement comes from?

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

9.2.5. Details of any Joint Arrangements including any delegations to joint committees are set out in Part B of this Constitution.

**9.3. Access to information**

9.3.1. The Access to Information Rules in Part C of this Constitution apply to any joint arrangements.

**9.4. Delegation to and from other local authorities**

9.4.1. The Council may delegate functions that are not Executive Functions to another local authority or, in certain circumstances, the Executive of another local authority.

9.4.2. The Leader or, in the absence of any direction by the leader to the contrary, the Executive, a member of the executive or a committee of the Executive may delegate Executive Functions to another local authority or the Executive of another local authority in certain circumstances.

9.4.3. The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

**Commented [SG19]:** Is this intended to cover situations where it concerns purely an executive function/functions?

**9.5. Contracting out**

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

**10. FINANCE, CONTRACT AND LEGAL MATTERS**

**10.1. Financial management**

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

**10.2. Contracts**

10.2.1. Every contract made by the Council will comply with the Contract Procedure Rules set out in Part C of this Constitution.

~~10.2.2. Any contract with a value exceeding £[xx] entered into on behalf of the Council in the course of the discharge of an Executive Function shall be made in writing. Such contracts must either be signed by at least two Officers of the Council or made under the common seal of the Council attested by at least one Officer.~~

**Commented [SG20]:** Not sure this part is necessary given that the statement is made that all contracts must comply with the Contract procedure Rules?

**10.3. Legal proceedings**

The Head of Mid Kent Legal Partnership 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 any part of it, or in any case where the Head of Mid Kent Legal Partnership considers that such action is necessary to protect the Council’s interests.

**Commented [SG21]:** I am still not clear whether this is an officer of the authority?

**10.4. Authentication of documents**

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

**10.5. Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Mid Kent Legal Partnership. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Mid Kent Legal Partnership should be sealed. The affixing of the Common Seal will be attested by the Head of Mid Kent Legal Partnership or some other person authorised by him or her.

## **PART B - RESPONSIBILITIES**

**B1. Responsibility for Functions**

**1. INTRODUCTION TO THIS PART**

- 1.1. Core Provision 4 in Chapter A2 of this Constitution outlined the how the Council approaches decision-making and how decisions or functions of the Council might be classified. The principal classification relates to how functions divide between the Council and the Executive. Functions must in law be: -
  - 1.1.1. Council Functions that are either: -
    - (a) Retained by Full Council, or
    - (b) Delegated to Committees;
  - 1.1.2. Executive Functions;
  - 1.1.3. Local Choice Functions where the law states that a function may but need not be exercised by the Executive.
- 1.2. In addition to this apportionment between Member bodies, responsibility for functions may be delegated to Officers for the purposes of operational effectiveness.

**2. EXECUTIVE FUNCTIONS**

Executive Functions are those functions that are not Council Functions and also not Local Choice Functions assigned to the Council. Where functions are not specified in law or this Constitution to be Council functions then they will be presumed to be the responsibility of the Executive.

**3. FUNCTIONS THAT ARE NOT TO BE THE RESPONSIBILITY OF THE EXECUTIVE (WHOLLY COUNCIL FUNCTIONS)**

These are the functions set out in Schedule 1, Functions & Responsibilities Regulations.

**4. RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS**

- 4.1. These are functions set out in Schedule 2, Functions & Responsibilities Regulations, where the Council has agreed the following apportionment:

| FUNCTION                       | MEMBER BODY |
|--------------------------------|-------------|
| Any function under a local Act | Council     |

**Commented [SG22]:** I have reviewed this and it includes all the local choice functions in the Regs which are District functions – many of the local choice functions are County functions.

|  |           |
|--|-----------|
| The determination of an appeal against any decision made by or on behalf of the Council  | Council   |
| The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the Borough   | Council   |
| The appointment of any individual: <ul style="list-style-type: none"> <li>• to any office other than an office in which they are employed by the Council;</li> <li>• to anybody other than the Council;</li> <li>• a joint committee of two or more authorities; or</li> <li>• to any committee or sub-committee of such a body; and the revocation of any such appointment</li> </ul> | Council   |
| Any function relating to contaminated land   | Executive |
| The discharge of any function relating to the control of pollution or the management of air quality  | Executive |
| The service of an abatement notice in respect of a statutory nuisance  | Executive |
| The inspection of the Borough to detect any statutory nuisance   | Executive |
| The investigation of any complaint as to the existence of a statutory nuisance   | Executive |
| The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land   | Executive |
| The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976  | Executive |
| The making of agreements with other authorities for the placing of staff at the disposal of those other authorities.   | Executive |