



The Articles of

The Constitution of

Gravesham Borough Council

Adopted by the Council on 23 April 2002

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The Proper Officer, as defined in Annex 1.12 of the Constitution, The Service Manager (Communities) is responsible for ensuring that the Articles of the Constitution are kept up to date

DRAFT

(Tracked Changes)

The Articles of the Constitution

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The Articles of the Constitution

Article 1 - The Constitution

1.1 Powers of the Council

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

1.2 The Constitution

This Constitution and all its annexes is the Constitution of Gravesham Borough Council.

1.3 Purposes of the Constitution

The purposes of the Constitution ~~are~~ is to:

~~(1)~~ (1) — provide a framework within which the Council can deliver its agreed policy programme

~~(4)~~ (2) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;

~~(32)~~ support the active involvement of citizens in the process of local authority decision-making;

~~(43)~~ help Councillors represent their constituents effectively;

~~(54)~~ enable decisions to be taken efficiently and effectively in line with the Council's agreed priorities;

~~(65)~~ create a powerful and effective means of holding decision-makers to public account and e;

~~(6)~~ — ensure that no-one will review or scrutinise a decision in which they were directly involved;

~~(87)~~ ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;

~~(98)~~ provide a means of improving the delivery of services to the community; and

~~(109)~~ ensure that the Council's governance arrangements deliver efficient, transparent and accountable decision-making.

1.4 Interpretation of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated in Article 1.3 above.

1.5 Review of the Constitution

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

Article 2 - Members of the Council

2.1 Composition and Eligibility

(1) Composition

The Council will comprise ~~44-39~~ Councillors (also called Members). One or more Councillors will be elected by the voters of each Ward in accordance with the current scheme drawn up by the Local Government Boundary Commission for England and confirmed by a legal order.

(2) Eligibility

There are certain qualifying and disqualifying criteria for people who stand for election as a Councillor. These are set out in the Local Government Act 1972 and the Local Government and Housing Act 1989.

~~Only registered voters of the Borough or those living or working in the Borough (or such other persons as may be qualified under legislation) will be eligible to hold the office of Councillor. (The detailed rules for qualification are set out in Section 79 of the Local Government Act 1972).~~

2.2 Election and Terms of Office for Councillors

(1) Election of the whole Council every four years

The regular election of Councillors will be held every four years on the first Thursday in May, beginning in 2003.

(2) Terms of Office for Councillors

The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election as set out in S243 of the Local Government Act 1972.

2.3 Roles and Functions of all Councillors

(1) Governance

All Councillors will:-

- (a) collectively be the ultimate policy-makers for the Council and carry out a number of strategic ~~and corporate management~~ functions;
- (b) contribute to the good governance of the Borough and the Council, and actively encourage community participation and citizen involvement in decision-making;
- (c) be involved in decision-making and participate in the governance and management of the Council where appropriate;
- (d) effectively represent their communities, including the interests of their Ward and of individual constituents whilst also balancing the different interests identified within their Ward and representing their Ward as a whole;

- (e) respond to constituents' enquiries and representations, fairly and impartially and assist constituents in resolving particular concerns or grievances;
- (f) be available to represent the Council on other bodies (for example partnerships and Outside Bodies) if appointed to such posts by the Council or the Cabinet; and
- (g) maintain the highest standards of conduct and ethics in order to give expression to the Seven Principles of Public Life and the Member Code of Conduct set out in Annexe 3.1 to this Constitution.

(2) **Community Representation**

- (a) all Councillors represent their constituents and play an important role in consulting and representing their communities on policy matters, such as the Corporate Plan and other Strategy documents, Reviews of Services, and matters of concern and interest to their communities generally;
- (b) through the scrutiny process and through Cabinet Committees, Councillors can "feed-in" the views of the community they represent to policy development, decision-making and the setting of objectives.

(3) **Rights and Duties of All Councillors**

- (a) eCouncillors will, subject to statute and the Council's Constitution, 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;
- (b) eCouncillors will not make public 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;
- (c) for these purposes "confidential" and "exempt" information are defined in the Access to Information Rules set out in Annex 2.2 to this Constitution.

2.4 Conduct

Councillors will at all times observe the Members' Code of Conduct, the Member/Public Protocol and the Member/Officer Protocol set out in Annexes 3.1, 3.3 and 3.4 to this Constitution.

2.5 Remuneration and Allowances

(1) Independent Remuneration Panel

The Council will establish and maintain an Independent Remuneration Panel in accordance with the Protocol for Appointments to the Independent Remuneration Panel set out in Annex 3.7 to this Constitution to provide the Council with advice on its Members' Allowances Scheme, the amounts to be

paid and the pensionability of allowances where relevant, together with any other matters that may be required by law.

(2) **Members' Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Annex 4 to this Constitution.

Article 3 – Citizens and the Council

3.1 Citizens' Rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules as set out in Annex 2.2 to this Constitution.

(1) Voting and Petitions

Citizens who are on the electoral roll for the Borough have the right to vote and to sign a petition, requesting a referendum for an elected Mayor form of constitution. Residents and those who work or study within the Borough also have the right to sign petitions. Petitions to the Council can also be submitted on any issues within the Council's responsibilities in accordance with the Council's Petition Scheme (Annex 3.11).

(2) Information

Citizens have the right to:-

- (a) attend meetings of the Council and its Committees, including Cabinet, Boards and sub-committees, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private. In these instances a 28-day notice will be issued;
- ~~(b) attend meetings of the Cabinet when "Key Decisions" are being considered, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;~~
- (c) find out from the Council's website what "Key Decision(s)" will be taken by the Cabinet, or by any bodies or individuals to whom the Cabinet may have delegated the exercise of any of its functions, and when it is expected those decisions will be taken;
- (d) see reports and background papers (excluding confidential/exempt information) and any records of decisions made by the Council, Cabinet, Committees, Boards and sub-Committees; and
- (e) inspect the Council's accounts and make their views known to the external auditor.
- (f) make a request for information under the Freedom of Information Act 2000.
- (g) submit a Subject Access Request (SAR) to request a copy of what data the council holds about an individual.

(3) Participation

Citizens have the right to ask a meeting of Council a question. Citizens do not have an automatic right to ask a question at other committee meetings, but may be invited to do so by the committee or by the committee Chair, such as to contribute to investigations by a Scrutiny Committee. Citizens have the right to participate in ask the a meeting of Council a's question time and (on

~~invitation by the committee or by the committee Chair) to contribute to investigations by a Scrutiny Committee.~~

Public speaking is allowed at meetings of the Planning Committee.

Citizens also have the right to apply to be an Independent Person or Member of the Independent Remuneration Panel where vacancies are advertised.

(4) **Complaints**

Citizens have the right to complain to:-

- (a) the Council itself under its Complaints Procedure;
- (b) the Local Government and Social Care Ombudsman or Housing Ombudsman, after using the Council's Complaints Procedure;
- (c) the Standards Committee about an alleged breach of the Member Code of Conduct set out in Annex 3.1 to this Constitution. These complaints should be addressed to the Monitoring Officer, Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU.

3.2 Citizens' Conduct

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

Article 4 - The Council

4.1 Meanings

The terms listed below have the following meanings throughout this Constitution.

(1) Policy Framework

The 'Policy Framework' means the following Plans and Strategies to be adopted by the Council:

- a) Corporate Plan (or equivalent document);
- b) Equalities Policy (or equivalent document);
- c) Local Plan and all related plans and alterations;
- d) Pay Policy Statement;
- e) Housing Strategy (including the Housing Investment Programme and Housing Business Plan);
- f) Community Safety Strategy.

In addition, the Council meeting can adopt any other formal plans or strategies which the Council may decide, or which legislation requires, should form part of the Policy Framework. This includes but is not exclusive to:

- a) Working in Partnership Framework;
- ~~b)~~ Code of Corporate Governance;
- ~~b)c)~~ Climate Change Strategy;
- ~~e)d)~~ Licensing Policies as required under the Gambling Act 2005.

(2) Budget

The budget is the approved allocation of financial resources to services, projects and contingency funds. It also includes, for the purpose of this Constitution, the processes of approving the Council tax base, the budget, the Council tax level itself and the borrowing requirement, the setting of controls on capital expenditure and any limits on budget virements.

Full Council is responsible for approving the Medium Term Financial Strategy, Treasury Management Strategy and Capital Strategy.

~~The budget is a statement of Council policy in financial terms and includes the overall allocation of financial resources, capital and revenue and the setting of the Council Tax base.~~

(3) Housing Land Transfer

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

4.2 Functions of the Council

Only the Council will exercise the following functions:-

(1) **Constitutional and Procedural Matters, etc.**

- (a) to adopt and change the Articles of this Constitution;
- (b) to change the name of the area;
- (c) to make, amend or revoke the Procedural Rules set out in Annex 2 to this Constitution;
- (d) to make, amend or revoke the Codes of Conduct and Protocols set out in Annex 3 to this Constitution;
- (e) to confer the Freedom of the Borough or the title of Honorary Alderman.

(2) **Setting the Policy Framework and Related Matters**

- (a) to approve the Council's Policy Framework, except that in-year amendments to Plans or Strategies forming part of the Policy Framework and Budget will be delegated to the Cabinet by the Council;
- (b) to determine each year the Council's revenue and capital budget and Council Tax levy, except that determining the rents of Council dwellings and related properties and the charges to be made for the Council's services, is delegated to the Cabinet;
- (c) subject to the Urgency Procedure contained in the Access to Information Procedure Rules detailed in Annex 2.2 to this Constitution, to make decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget where the Cabinet is minded to make it in a manner which would be:-
 - (i) contrary to the Policy Framework; or
 - (ii) contrary to (or not wholly in accordance with) the Budget.
- (d) to adopt, amend or revoke the Members' Allowances Scheme under Annex 4 of this Constitution, including the levels and pensionability of Councillors' allowances;
- (e) to make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation or personal Bills;
- (f) to authorise applications to the Secretary of State for housing land transfers of housing stock.

(3) **Appointments and Delegations, etc.**

- (a) to appoint (and remove) the Leader of the Executive;

- (b) to determine the terms of reference, composition and membership of other Committees, Boards and Panels that report directly to the Council, and appointments to them;
- (c) to adopt and approve amendments to the powers and terms of reference of joint and area committees and to make appointments to them;
- (d) to appoint representatives to Outside Bodies, except where the appointment has been delegated by the Council;
- (e) to make or confirm the appointment of the Council's Statutory Officers required under Article 12.5 of this Constitution;
- (f) subject to the requirements of the law and the Officer Employment Procedural Rules set out in Annex 2.8 to dismiss the Head of Paid Service or other Statutory Officers.

(4) Regulatory and Electoral Matters

- (a) to deal with findings of maladministration (on receipt of a report from the relevant Scrutiny Committee or the Monitoring Officer following a report by the Local Government Ombudsman);
- (b) to determine the action to be taken on reports by the Monitoring Officer or the Chief Finance Officer (including Section 112 and Section 114 reports);
- (c) to consider reports concerning the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer pursuant to the procedures set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;
- (d) to determine matters relating to local elections unless the function has been delegated by the Council;
- (e) to review matters relating to electoral and administrative arrangements and to determine the Council's response to any consultations or proposals by the Electoral Commission relating to the Borough.

(5) Other Matters

- (a) to determine any matters referred to the Council for decision by a Committee, Board or Panel that reports directly to the Council;
- (b) to resolve any dispute between any of the subsidiary bodies of the Council if required;
- (c) to deal with all 'local choice functions' set out in Annex 1.14 to this Constitution which the Council decides should be undertaken by itself rather than by the Cabinet or a committee or Board;
- (d) to deal with any other matter which must, by law, be reserved for determination by the Council.

4.3 Council Meetings

There are ~~four~~three types of Council meetings:-

- (1) The Annual Meeting;
- (2) Ordinary Meetings;
- (3) Extraordinary Meetings;
- ~~(4) The State of the Borough Debate;~~

and they will be conducted in accordance with the Council Procedure Rules detailed in Annex 2.1 to this Constitution.

4.4 Responsibility for Functions

The Council will review and maintain Annex 1 to this Constitution, setting out the responsibilities for the non-executive functions of the Council, its Committees, Sub-Committees, Boards and Panels and delegations of those functions.

The Leader of the Executive will review and maintain Annex 1 to this Constitution setting out the responsibilities for the executive functions and delegations of those functions.

Article 5 – Chairing the Council

5.1 Mayor - Making

The title of 'Mayor' is derived from the Council's status as a Borough and this office is filled annually by a Councillor who is elected by the Council at its Annual Meeting at the start of each municipal year.

Mayor-making is regarded as an important civic and ceremonial event. The election of the Mayor is not decided by the Borough's electorate but by a majority of the Councillors present and voting at the Annual Meeting of the Council in May of each year.

A Deputy Mayor is elected by the Council from among the Councillors.

The Mayor is addressed as 'The Worshipful the Mayor of Gravesham'. The Deputy Mayor is addressed as 'The Deputy Mayor'.

5.2 Role and functions of the Mayor

The Mayor is the First Citizen of the Borough of Gravesham.

The Mayor, and in his/her absence the Deputy Mayor, have the following roles and functions:-

- (1) to uphold and promote the purposes of this Constitution and to interpret the Constitution on advice from the Monitoring Officer where necessary;
- (2) 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;
- (3) to ensure that meetings of the Council are forums for the debate of matters of concern to the local community and the place at which Members who are not in the Cabinet, nor hold office of Committee/Board Chair, are able to hold Cabinet Members and Committee/Board Chairs to account;
- (4) together with all Members of the Council, to promote public involvement in the Council's activities;
- (5) to be the conscience of the Council;
- (6) to attend such civic and ceremonial functions as the Council, the Mayor and the Leader of the Executive determines are appropriate.
- (7) Such other duties that may fall to the Mayor to exercise by virtue of statute or this Constitution

The Mayor and Deputy Mayor cannot be appointed to the Cabinet.

Article 6 – Scrutiny

6.1 Purposes of Scrutiny

To achieve enhanced accountability and transparency of the decision-making process, effective overview and scrutiny is essential. The main functions of the Overview and Scrutiny Committee are:

- meet in public to discuss and make recommendations on the development of policy;
- provide effective challenge by holding the Leader and Cabinet to account for their actions and decisions;
- provide community focus in considering matters of local concern through representation of the views of their constituents and other organisations to the Cabinet and to the Council; and
- examine the operation and impact of the Council's policies, to provide a useful means of improving the development of policies and delivery of services.

~~Scrutiny is a key element of the Council's executive arrangements and is the main way by which executive decision makers are held to public account for the discharge of the functions for which they are responsible.~~

~~The scrutiny process is also a key mechanism for enabling Councillors to represent the views of their constituents and other organisations to the Cabinet and to the Council and, by examining the operation and impact of the Council's policies, are a useful means of improving the development of policies and delivery of services.~~

6.2 Specific Functions

Within allocated budgets Overview and Scrutiny Committees may:

- assist the Council and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues;
- question members of the Cabinet and/or Committees and employees about their views on issues and proposals affecting the area;
- review and scrutinise the decisions, initiatives and projects and performance of the Cabinet and/or Committees and Council employees in relation to individual decisions, initiatives and projects;
- review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- question members of the Cabinet and/or Committees and employees 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;

- make recommendations to the Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;

6.3 Appointment and ~~Membership~~ Terms of Reference

The Council will, at its Annual Meeting, appoint at least one Scrutiny Committee to discharge the scrutiny functions required by legislation.

No committee appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment.

Any Scrutiny Committee appointed by the Council must reflect the political balance of the Council.

Members of the Cabinet may not be Members of a Scrutiny Committee.

The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.

In deciding the membership of a Scrutiny Committee, the Council shall take into account the particular skills and expertise required to ensure that thorough and informed scrutiny and reviews take place.

A scrutiny committee may co-opt people to act as non-voting members in accordance with the Scrutiny Procedure Rules.

6.34 ~~Membership~~

~~Any Scrutiny Committee appointed by the Council must reflect the political balance of the Council.~~

~~Members of the Cabinet may not be Members of a Scrutiny Committee.~~

~~The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.~~

~~In deciding the membership of a Scrutiny Committee, the Council shall take into account the particular skills and expertise required to ensure that thorough and informed scrutiny and reviews take place.~~

~~A scrutiny committee may co-opt people to act as non-voting members in accordance with the Scrutiny Procedure Rules.~~

6.4 Sub-Committees

A Scrutiny Committee may delegate any of its functions to a sub-committee of itself, the membership of which must be drawn solely from the Members (including substitutes) of the appointing Scrutiny Committee.

No more than three sub-committees of any one Scrutiny Committee may be in existence at any one time.

Any sub-committee appointed by a Scrutiny Committee must reflect the political balance of the Council unless the Committee determines otherwise with no votes being cast against by any Committee Member present and voting.

6.5 Meetings and Procedure

A Scrutiny Committee must meet in public except where confidential and/or exempt matters are being discussed.

Meetings must be conducted in accordance with the Scrutiny Procedure Rules set out in Annex 2.5 to this Constitution.

6.6 Scope of external Scrutiny

Within its Terms of Reference a Scrutiny Committee may examine matters which are not the direct responsibility of the Council where these are relevant to the remit of the Committee (or sub-committee).

A Scrutiny Committee may also make reports or recommendations to the Cabinet and/or to the Council in relation to matters which are not the responsibility of the Council but which nevertheless affect the Borough or its inhabitants.

6.7 Witnesses and Consultees

A Scrutiny Committee may, within the limitations set in the Scrutiny Procedure Rules in Annex 2.5 to this Constitution, require Members of the Cabinet, or any other Member of the Council or any Director or Chief Officer of the Council to appear before the Committee and answer questions.

Officers are employed by the Council to work for and serve the Council as a whole. Scrutiny Committees will respect the political neutrality of Officers.

The scrutiny process benefits from input from all those with a legitimate interest, including the local community and other local public, private and voluntary organisations. Particular attention should be paid to obtaining views from “hard to reach” groups such as minority ethnic communities and people with disabilities. Where appropriate, representatives of legitimate community groups should be asked to contribute to the review of issues particularly affecting them, for example residents’ and tenants’ associations.

A Scrutiny Committee may, therefore, also invite any other person to appear before it, subject to that person’s consent.

6.8 Limitations

A Scrutiny Committee can only discharge the following functions and no other functions of the Council:-

- (1) to carry out the scrutiny functions required by legislation, The Scrutiny Procedure Rules and the committee's Terms of Reference;
- (2) to make reports or recommendations to the Cabinet or the Council on those matters;
- (3) to make reports or recommendations to the Cabinet or the Council in respect of matters which affect the Council's area or its inhabitants.

This is to ensure there is a clear separation between the discharge of functions and the review and oversight of those functions.

6.9 Finance and Staffing

A Scrutiny Committee shall exercise overall responsibility for the expenditure of any budget made available to it and for the use of any officer time allocated to it by the Council.

Article 7 - Leader and Cabinet Executive

7.1 Role and Functions

The Council has adopted a form of executive arrangements known as ~~a new style~~ "Leader and Cabinet Executive". The various parts of this Constitution that together comprise the Council's executive arrangements are set out in Annex 1.18 to this Constitution.

The Cabinet Executive (meaning the Leader and such other Members of the Council as the Leader may appoint) will exercise all of the Council's functions which are not the responsibility, whether by law or under this Constitution, of any other part of the Council.

The Leader may take decisions on every matter that is not assigned to anyone else by this Constitution. The Leader may however, make arrangements to delegate some matters to the Cabinet, a Cabinet Committee, individual Cabinet members, or to employees.

7.2 Form and Composition

(1) The Cabinet Executive will comprise:-

1.1 The Leader who will be a Councillor elected by the Council at the Annual Meeting of the full Council following on from the ordinary election of all Councillors;

1.2 no more than ten Cabinet Members, including the Leader and the Deputy Leader.

1.3 .Neither the Mayor nor Deputy Mayor of the Council may be appointed to the Cabinet.

There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.

7.3 Leader of the Executive

(1) The Leader will be a Councillor elected by the Council at the Annual Meeting of the Full Council following on from the ordinary election of all Councillors.
The term of office of the Leader starts on the day of his/her election as Leader and ends on the day of the next post election Annual Meeting (under whole Council elections) unless, before that day, he/she:-

1.1 is removed from office or resigns;

1.2 ceases to be a Councillor; ~~or~~

1.4 ~~4.3~~ is disqualified from being a Councillor; ~~or~~

~~4.2~~1.5 - the Council passes a resolution to remove the Leader.

- (2) ~~The Leader will be a Councillor of the Borough of Gravesham and will be elected by the Council to serve for a term of four years or until the Annual Meeting following the next ordinary Council elections.~~
- (3) ~~During his/her term of office the Leader will continue to hold office as a Councillor and accordingly, any enactment which provides for earlier retirement as a Councillor will not apply.~~
- (4) ~~In the event of there being a vacancy in the office of Leader the Council shall elect a new Leader at its next ordinary meeting.~~
- (45) The Council will have the power to remove the Leader from office before the end of his/her four year term by way of resolution. At any meeting of the Full Council a Councillor may propose that "the Council has no confidence in the Leader". If carried by a simple majority of those Councillors present and voting, the Leader will be removed from office.
- (65) If the Council passes a resolution to remove the Leader, a new Leader will be elected:-
- 5.1 at the same meeting at which the Leader is removed from office; or
- 5.2 at a subsequent meeting.

7.4 Deputy Leader

- (1) ~~The Leader will appoint a Deputy Leader from among the Cabinet Members. The Deputy Leader, unless he resigns as Deputy Leader, is removed by the Leader, or ceases to be a Member of the Council, will hold office until the end of the term of office of the Leader.~~
- (2) ~~The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.~~
- (3) ~~If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.~~

7.54 Appointment of the Cabinet and scheme of delegation

- (1) The Leader will decide the size of his/her Cabinet (subject to a maximum of ten, including the Leader and Deputy Leader) and will appoint Cabinet Members from among the serving Councillors. ~~The Leader and Cabinet members may not be members of an Overview and Scrutiny Committee. The Leader may replace or remove Cabinet Members at any time.~~
- (2) ~~Cabinet members appointed by the Leader shall hold office until:~~
- ~~(a) they resign; or~~
- ~~(b) they are no longer Councillors; or~~

~~(c) they are removed from office by the Leader who must deliver written notice of any removal to the Chief Executive and to the Cabinet member concerned. The removal will take effect immediately after receipt of the notice by the proper officer.~~

- (2) All executive functions of the Council will be vested in the Leader. The Leader may exercise those functions himself/herself, or may delegate specified executive functions to be exercised by the Cabinet collectively, a Cabinet Committee, an individual Cabinet Member or an Officer. The Leader may revoke such delegations at any time.
- (3) Delegation of executive function(s) to be exercised by a Cabinet Member or by a Ward Councillor in accordance with Section 236 of the Local Government and Public Involvement in Health Act 2007; will be at the discretion of the Leader.
- (4) The Leader will report to Council on all appointments and changes to the Cabinet (Executive) and delegation of executive functions of the Council.

~~Neither the Mayor nor Deputy Mayor may be elected as Leader of the Executive or be appointed to the Cabinet.~~

The Leader of the Executive may not be appointed to ~~any Scrutiny Committee or to the Standards Committee~~ and o. Other Members of the Cabinet may not be Chair of the Standards Committee ~~and may not be appointed to any Scrutiny Committee.~~

Not more than two Members of the Cabinet (or the nearest whole number equivalent to 20 per cent of the total membership of the Planning Committee, whichever is the lesser figure) may be appointed to the Planning Committee or such other committee or sub-committee as may be appointed to determine matters relating to the grant of licences and statutory consents or enforcement action against persons. No Member of the Cabinet so appointed shall be the Chair or Vice-Chair of the Planning Committee nor of any other committee or sub-committee discharging similar functions.

The nearest whole number equivalent to 50 per cent of the total membership of the Appointments Board will be selected by the Leader of the Executive for appointment to the Appointments Board (or such other committee as may be appointed to determine matters relating to the appointment of officers).

Not less than three Members of the Appointments Board who have been selected by the Leader of the Executive (or the nearest whole number equivalent to 50 per cent of the total membership of an Appointments Panel constituted from the membership of the Appointments Board, whichever is the lesser figure) will be appointed to an Appointments Panel or any other body authorised to make an appointment to the Council's staff.

~~There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.~~

7.5 Deputy Leader

- ~~(1) The Leader will appoint a Deputy Leader from among the Cabinet Members. The Leader may replace the Deputy Leader at any time, but otherwise the Deputy Leader will remain in post for the duration of the Leader's term of office.~~
- ~~(2) The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.~~
- ~~(3) If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.~~

7.6 Proceedings of the Cabinet

Proceedings of the Leader and Cabinet Executive shall take place in accordance with the Executive Procedure Rules set out in Annex 2.4 to this Constitution.

7.7 Delegation of Powers

The ~~Service Manager (Communities)~~Head of Communities shall maintain a list setting out clearly which Members of the Cabinet, sub-committees of the Cabinet, officers of the Council, area committees or joint arrangements with other local authorities carry current responsibilities for the discharge of functions delegated by the Cabinet, together with the current allocation of portfolios amongst Cabinet Members. This list, as amended from time to time, shall be incorporated within Annex 1 to this Constitution and shall be made publicly available.

7.8 Cabinet Committees

The Leader may appoint Cabinet Committees to advise ~~it~~the Cabinet about carrying out its functions. Such Committees, and appointments of individuals to them, may exist for a fixed or unspecified period, but in any event will cease upon a change in the political control of the Council or at the Annual Meeting of the Council immediately following a general election of the entire Council.

When establishing a Cabinet Committee, the Leader shall also state the Committee's Terms of Reference and composition, which shall be made publicly available. Appointments and terminations of appointments of individuals to existing committees shall similarly be made public.

Such Committees may be made up of any mixture of Councillors. Council officers may attend meetings of such Committees to provide information.

Cabinet Committees need not comply with the legislation on political proportionality, but they should reflect a broad cross-section of both the Council and the wider community. Committees should be constituted having regard to the particular knowledge and skills of those appointed.

Any written reports made by a Cabinet Committee to the Cabinet shall be made publicly available, except where they contain confidential and/or exempt information.

7.9 Ethics and Probity

Members of the Cabinet will be treated no differently from other Councillors in that they will be subject to the Member Code of Conduct set out in Annex 3.1 to this Constitution, and to investigation should any allegations of breaches of the Code be received.

Members of the Cabinet will be required to declare and register their interests and, if appropriate, to seek local dispensations from the Standards Committee.

7.10 Officer Support

Officers are employed by the Council to work for and serve the Council as a whole. The Cabinet will respect the political neutrality of Officers.

Article 8 – Planning Committee and other Committees

8.1 Appointment of Committees by the Council

The Council will appoint a Planning Committee to deal with the Council's development control, licensing and other quasi-judicial functions, together with such other committees, boards and panels as it considers appropriate to discharge its functions, with the exception of any such functions which are reserved to the full Council under Article 4 of this Constitution.

In addition, the council will appoint the Committees, boards and panels as set out in Annex 1.2 to this Constitution to undertake the responsibilities set out in that annex.

~~Details of all such committees, boards and panels, their membership and terms of reference, as amended from time to time, shall be set out in Annex 1.2 to this Constitution.~~

No committee, board or panel appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment. In respect of any committee, board or panel appointed under this Article, the Council may at any time:-

- (1) dissolve or alter its membership; and/or
- (2) withdraw, extend or modify its terms of reference and powers; and/or
- (3) refer to it any matter not reserved to the full Council.

8.2 Meetings of Committees

Meetings of all committees, boards and panels appointed to discharge the Council's functions will be held in public, except where confidential and/or exempt matters are being discussed.

8.3 Membership of Committees

The Council shall determine the size and membership of the Committees and appoint Members in accordance with the rules on political proportionality contained in the Local Government and Housing Act 1989 where this applies.

Article 9 – The Standards Committee

Explanatory Comment

~~Standards Committees have an important role in strengthening and maintaining the high standards of conduct required of Members and officers.~~

9.1 Standards Committee

The Council has established a Standards Committee, ~~which plays an important role in strengthening and maintaining the high standards of conduct required of Members and officers.~~

9.2 Composition

- (a) Membership. The Standards Committee is composed of nine Members.
- (b) Political Balance. The Standards Committee will be politically balanced.
- (c) Quorum. The Quorum of the Councillor Conduct Committee shall be three Councillors.
- (d) Chairing the Committee. A Member of the Executive may not chair the Committee. ~~The Mayor/Deputy mayor must not chair the Committee.~~

9.3 Role and function

For the Standards Committee Terms of Reference see Annex 1.2 of the Constitution.

The Committee ~~will receive~~deals with allegations that a Councillor or voting or non-voting co-opted member of the Council ~~of~~ the ~~six~~6 Parish Councils has breached the relevant Members Code of Conduct and can ~~decide~~ whether or not an investigation is to be carried out in relation to those complaints. The Committee has given delegated authority to the Monitoring Officer to carry out an initial screening of complaints received. The complaint will only be referred to Standards Committee where the following criteria do not apply:

- No Councillor has been identified
- No potential breach of the code has been identified
- Insufficient detail to make a determination
- The complaint is more than 6 months old and no cogent explanation for the delay in reporting
- The complaint relates to matters that are not within the CCC's remit.
- The complaint is considered trivial, malicious or vexatious.

If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person.

_____ The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.

_____ The Committee may on hearing all relevant parties and in accordance with an agreed procedure, decide whether a breach of the relevant Councillor Code of Conduct has occurred and if so what action should be taken.

_____ The Committee shall state reasons for its decision.

Article 10 – Area Committees and Forums

10.1 Form and Composition

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

The Council will consult with relevant Parish Councils when considering whether and how to establish area committees. The objective will be to establish a partnership approach to strengthen the focus of action and to help give local communities a real input into decisions which affect them.

Area committees or forums can take many forms and undertake a variety of roles. For example, they may be made up of Councillors, representatives from other public, private and voluntary sector bodies in the area and ~~members of the public~~, or they may be made up of Councillors only.

Area committees can be purely advisory and consultative bodies or they can have specific functions and budgets delegated to them by the Council.

Area Forums must be advisory and/or consultative bodies only.

10.2 Appointment of Area Committees & Forums

Where the Council decides to appoint an Area Committee or Forum, it shall detail the Committee or Forum's Terms of Reference and composition (as amended from time to time) in Annex 1.8 to this Constitution.

The composition of Area Committees and Forums must in all cases reflect the law on co-optees and political balance commensurate with their Terms of Reference. In general, however, Area Committees need not reflect the political balance of the Council as a whole if all of the voting Members on the committee represent Wards within its area and that area does not exceed two fifths of the total for the Council by reference to population or area.

Area Committees may also include voting co-optees if the Committee is appointed exclusively to discharge functions relating to:-

- (1) Corporate Property Management;
- (2) Housing Management (of 1,500 dwellings or one quarter of the Council's stock, whichever is the less);
- (3) Promotion of tourism;
- (4) Festival Management;
- (5) Joint County/District Functions discharged by a joint committee.

10.3 Delegation of Functions to Area Committees

The Council may only delegate to Area Committees those functions which are not the functions of the Executive and which are not reserved by law to the Council itself.

Subject to the provisions of Article 7.07 of this Constitution, the Executive may delegate functions to an Area Committee. In deciding to delegate functions for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

If both executive and non-executive functions are delegated to the same Area Committee, the agendas for, and reports submitted to, the meeting must make it clear whether the decisions required relate to Executive functions or not.

Where the Council decides to appoint an Area Committee, Annex 1.8 to this Constitution must clearly state:-

- (1) which of the Area Committee's powers and functions are the responsibility of the Executive (and therefore exercisable under the supervision of the Executive) and which are not;
- (2) the budgets and limits on authority accompanying a delegation by the Council or the Executive.

Both the Council and the Executive will continue to have powers to discharge the functions which they have delegated to an Area Committee. This ensures that there is sufficient flexibility so that if the Council or the Cabinet need to exercise the powers (for example in consequence of the exercise of another power) then they have the ability to do so.

Functions which are the responsibility of the Executive and which are delegated to an Area Committee must be exercised in accordance with the Council's Policy Framework and Budget and any written guidance provided by the Executive in relation to those functions.

Regardless of any other provisions of this Constitution, however, an Area Committee may not take a decision which significantly affects all of the Council's area, or a part of the Council's area in respect of which that Committee does not have functions, though it may make recommendations to the Executive to do so.

10.4 Conflicts of Interest: Membership of Area and Scrutiny Committees

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

- (1) if the relevant Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of an Area Committee of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless an exemption or dispensation to do so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution;

- (2) where the relevant Scrutiny Committee is reviewing policy affecting the whole or a large part of the Borough generally, the Member must declare his/her interest orally before the relevant agenda item is reached, but need not withdraw from the decision making process.

10.5 Area Committees: Access to Information

Area Committees will comply with the Access to Information Rules detailed in Annex 2.2 to this Constitution.

Agendas and notices for Area Committee meetings which deal both with functions of the Executive and functions which are not the responsibility of the Executive must identify clearly which items are which.

10.6 Executive 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

11.1 Arrangements to Promote Well-being

In order to promote the economic, social or environmental well-being of its area, the Cabinet may:-

- (1) enter into arrangements or agreements with any person or body;
- (2) co-operate with, or facilitate or co-ordinate the activities of, any person or body;
- (3) exercise on behalf of that person or body any functions of that person or body.

11.2 Joint Arrangements

The Council may enter into arrangements with one or more other local authorities and/or their Executives to discharge jointly functions which are not functions of the Executive. Those arrangements may include establishing a joint committee either to advise the local authorities on matters of joint interest or to discharge functions on their behalf.

The Executive may establish joint arrangements with one or more other local authorities (including Parish Councils) to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.

Except as set out below, the Executive may only appoint Members of the Cabinet to a joint committee and those appointments need not reflect the political composition of the Council as a whole.

The Executive may appoint Members from outside the Cabinet to a joint committee where the joint committee has functions for only part of the area of the Council and that area is smaller than two-fifths of the Council by area or population. In such cases, the Executive may appoint to the joint committee any Councillor who is a Councillor for a Ward which is wholly or partly contained within the area of the joint committee. The political balance requirements do not apply to such appointments.

When entering into any such joint arrangements the Executive may agree:-

- (1) the number of Members of a joint committee to be appointed from each of the participating local authorities; and
- (2) arrangements for the delegation by joint committees to sub-committees of themselves or to Officers.

In deciding whether to enter into any such joint arrangements in respect of functions for which it is responsible, the Executive must satisfy itself that those arrangements will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

The terms of reference and other relevant details of all joint arrangements, as amended from time to time (including the membership of, and any delegations to, joint committees) shall be set out in Annex 1.15 to this Constitution.

11.3 Access to Information

If a joint committee is composed solely of Members who are also Cabinet Members in their own authority, then the access to information regime in the Cabinet Procedure Rules set out in Annex 2.4 to this Constitution apply to the joint committee's business.

However, if any Member of a joint committee is not a Cabinet Member in their own authority, then the Access to Information Rules in Part VA of the Local Government Act 1972, and set out in Annex 2.2 to this Constitution, apply.

11.4 Delegation to and from other Local Authorities

The Council may delegate non-executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority (including Parish Councils).

The Executive may delegate executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority.

The circumstances that determine whether or not a function may be delegated to the Cabinet of another local authority are as follows:-

- (1) The function concerned must be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
 - (a) is the responsibility of the Cabinet in both authorities;
 - (b) is the responsibility of the Cabinet in the delegating authority, but the function is not a function of the authority to which it is being delegated;
 - (c) is not the responsibility of the Cabinet in the delegating authority, but is the responsibility of the Cabinet in the authority to which it is being delegated;
- (2) The function concerned cannot be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
 - (a) is not the responsibility of the Cabinet in the delegating authority, and the function is not a function of the authority to which it is being delegated;
 - (b) is not the responsibility of the Cabinet in both the delegating authority and the authority to which it is being delegated.
- (3) It is for the two authorities to choose whether or not the Cabinet in the authority to which it is being delegated should be responsible for the function in circumstances where the function concerned is the responsibility of the

Cabinet in the delegating authority, but not in the authority to which it is being delegated.

In all cases, however, the decision as to whether or not to accept such a delegation from another local authority is reserved to the Council.

The Council and/or the Executive (as appropriate) continue to have the power to discharge the functions which are the subject of joint committee arrangements. Functions which are the responsibility of the Executive and which are to be discharged under joint arrangements must be exercised in accordance with the Policy Framework and Budget set by the Council.

In deciding to delegate a function for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

11.5 Contracting Out

Provided there is no delegation of the Council's statutory decision-making functions, the Executive may contract out to another body or organisation those of its functions which may in law be exercised by an officer of the Council and which are either:-

- (1) subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or
- (2) under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles.

In deciding to contract out a function for which it is responsible, the Executive must satisfy itself that contracting out that function will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

11.6 Scrutiny of Joint Arrangements

A Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions in respect of the matter concerned is able to hold the Executive to account both for a decision to delegate or contract out a particular function and for the actual discharge of the function.

11.7 Conflicts of Interests – Membership of Joint and Scrutiny Committees

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

If the relevant Scrutiny Committee is examining specific matters in relation to the business of a joint committee or joint arrangement of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless a local dispensation to do so is given by the Standards Committee in

accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution.

Where the relevant Scrutiny Committee is reviewing policy generally and where the specific business of a joint committee or joint arrangement of which the Councillor concerned is a Member is not a central or significant feature of that review, then the Member must declare his/her interest orally before the relevant agenda item is reached, but may speak and vote.

Article 12 – Officers of the Council

12.1 Terminology

The term ‘officers’ means all employees and staff (managerial, professional, technical, administrative, clerical and manual) engaged by the Council to carry out its functions.

12.2 General Principles

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:-

- (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;
- (2) adequate support from officers is provided for the discharge of all the Council’s functions and specifically the roles of the Council, the Cabinet, Scrutiny Committees, other Committees, Boards, Panels and individual Members representing their communities, etc.;
- (3) day to day managerial and operational decisions remain the responsibility of the Council’s Directors, Assistant Directors, ~~Service Managers~~Heads of Service and other officers;
- (4) the Council seeks to avoid creating potential conflicts of interests for officers arising from the separation of the Cabinet and Scrutiny roles; and
- (5) all officers have access to appropriate training and development to help them support the various functions of the Council and its Members effectively.

The roles, responsibilities and rights of officers and Members are set out in the Member/Officer Protocol set out in Annex 3.4 to this Constitution.

12.3 Appointment of Officers Generally

The Council will employ such officers as it considers necessary to carry out its functions efficiently and effectively.

Appointments of officers cannot be the responsibility of the Executive.

Appointment of officers other than Directors and Chief Officers is the responsibility of the Head of Paid Service or his/her nominee(s).

12.4 Appointment of Directors and Chief Officers

The Council will employ persons for the posts, functions and areas of responsibility specified in Annex 1.11 to this Constitution (as amended from time to time), who will be designated as Directors and Chief Officers (as appropriate).

Appointments to posts of Directors and Chief Officers will be made by an Appointments Panel constituted from within the membership of an Appointments Board appointed by the full Council.

The composition of the Appointments Board, and any Panel constituted from within its membership, shall comply with Article 7.4 of this Constitution.

The political proportionality rules shall apply to the Appointments Board and to any Appointment Panel constituted from within its membership.

12.5 Statutory Officers

The Council will designate the posts specified in Articles 12.7 to 12.9 below (as amended from time to time) to discharge the functions set out in those Articles.

12.6 Management 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 Annex 5 to this Constitution.

12.7 Functions of the Head of Paid Service

The Head of Paid Service, when s/he consider appropriate, will report to the Council or to the Executive ~~(as appropriate)~~ on the manner in which the discharge of the Council's functions is co-ordinated, the numbers and grades of officers required for the discharge of functions and the organisation of officers.

The Head of Paid Service may not be designated as the Council's Monitoring Officer but may hold the post of Chief Finance Officer if s/he is a qualified accountant.

12.8 Functions of the Monitoring Officer

The Monitoring Officer performs a key function in ensuring lawfulness and integrity in the operation of the Council's decision-making process including investigation and reporting on issues that embrace all aspects of the Council's functions.

In order for the Monitoring Officer to carry out his/her statutory duties and powers, the Council will need to ensure that s/he has access as necessary to meetings and papers and that Members consult with him/her regularly.

The statutory duties and powers of the Monitoring Officer are as follows:-

- (1) **Maintaining the Constitution:** to ensure an up-to-date version of the Constitution is maintained and that it is widely available for consultation by Members, Officers and the public;
- (2) **Ensuring Lawfulness and Integrity of Decision Making:** after consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the Council, or to the Cabinet in relation to an executive function, if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered;

- (3) **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;
- (4) **Access to Information:** the Monitoring Officer is the Proper Officer for this purpose and will make sure that effective arrangements exist to ensure that Cabinet decisions, together with the reasons for those decisions and relevant reports and background papers are made publicly available as soon as possible;
- (5) **Advising whether decisions are within the Policy Framework:-** the Monitoring Officer will advise whether the decisions of the Cabinet and Key Decisions by officers are in accordance with the Council's Policy Framework;
- (6) **Providing Advice:** -the Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, impropriety, probity and Policy Framework issues to all Councillors;
- (7) **Restrictions on Posts:** the Monitoring Officer cannot be the Chief Finance Officer (Section 151 Officer) or the Head of Paid Service.
- (8) **Exemptions from political restrictions: The Monitoring Officer will consider and determine any requests for dispensations from Gravesham Members and voting co-opted Members in cases where the timing of a request would make it impractical to convene a meeting of the Standards Committee**

The duties of the Monitoring Officer must be carried out personally but may be carried out by a deputy nominated by him/her to act in the event of absence or illness. It is the function of the Monitoring Officer to appoint a deputy, not the Council.

12.9 Functions of the Chief Finance Officer (Section 151 Officer)

The Council recognises the importance of the Chief Finance Officer's key role in providing advice on vires issues (i.e. whether or not the Council has the power to do something), maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Members of the Council.

In particular, the Chief Finance Officer has a statutory responsibility for:-

- (1) **Ensuring Lawfulness and Financial Prudence of Decision Making:** after consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council, or to the Cabinet in relation to executive functions, and the Council's external auditor, if s/he 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;
- (2) **Administration of Financial Affairs:** the Chief Finance Officer has responsibility for the administration of the financial affairs of the Council;
- (3) **Contributing to Corporate Management:** the Chief Finance Officer contributes to the Corporate Management of the Council, in particular through the provision of professional financial advice;

- (4) **Providing Advice:** the Chief Finance Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Councillors and will support and advise Councillors and officers in their respective roles;
- (5) **Provision of Financial Information:** the Chief Finance Officer provides financial information to Councillors and the public.

The duties of the Chief Finance Officer (apart from the administration of the financial affairs of the Council) must be carried out personally, but can be carried out by a deputy nominated by him/her in cases of absence or illness. It is the function of the Chief Finance Officer to appoint a deputy, not the Council.

12.10 Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer

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

12.11 Conduct

Officers are subject to the Officer Code of Conduct set out in Annex 3.2 to this Constitution, which is included in their terms and conditions of employment. Officers must comply with the Officer Code of Conduct.

12.12 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules detailed in Annex 2.8 to this Constitution.

Article 13 – Decision making

Explanatory note

The Council is required to keep an up to date record of which part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Annex 1 of this Constitution.

13.1 Responsibility for decision making

A purpose of the Executive structure is to expedite decision making. Accordingly the intention of the Council is that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness. References to the Executive include the Leader, Cabinet or any portfolio holder or officer exercising powers individually.

The Leader, or in circumstances set out in the Constitution, the Deputy Leader, will determine the level at which decisions are made, but such decisions will only be effective when notified to and recorded by the Proper Officer unless otherwise provided for within this Constitution.

The separation of powers between the Council and the Executive is fundamental to the operation of modernised local government.

The Local Authorities (Functions and Responsibilities) Regulations 2000 as amended set out what decisions the Council must make itself and these are detailed in Article 4.2.

Annex 1.1 sets out those functions which are reserved to Full Council.

13.2 Principles of decision making

All decisions of the Council, its Committees, the Executive and those under delegated powers shall have regard to the following principles of good practice:-

- consideration of all options available;
- having regard to due consultation;
- consideration of professional advice from officers;
- clarity of aims and desired outcomes;
- the action proposed must be proportionate to the desired outcome;
- having respect and regard for human rights;
- presumption for openness;
- only relevant matters taken into account;
- due weight to all material considerations;
- proper procedures will be followed.

13.3 Types of decision

- (a) Decisions reserved to Full Council – decisions relating to the matters listed in Article 4.2 will be made by Full Council and not delegated.
- (b) Decisions made by Committees appointed by the Council – power to make such decisions is delegated by the Council in accordance with the terms of reference contained in Annex 1.2 of this Constitution (Section 101, Local Government Act 1972).

(c) Decisions of the Executive will comprise:-

- (i) key decisions; and
- (ii) other decisions.

“Key decisions” relate to an Executive decision, which is likely:-

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

or

- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Council’s area.

A key decision may only be made in accordance with the requirements of Annex 2.2.

In accordance with Section 9Q of the Local Government Act 2000, in determining the meaning of “significant” the Council shall determine thresholds above which items are significant and will ensure these limits are published. Such thresholds are to be found in Annex 1.17. Any decisions involving expenditure or saving above the published threshold for the service or function concerned will be a key decision. A key decision may not necessarily involve significant expenditure or savings but may however be significant in terms of its effect on communities in two or more wards within the Council’s area.

A decision taker may only make a key decision in accordance with the requirements set out in Annex 2.2.

13.4 Decision making by the Full Council

Subject to Article 13.8, when considering any matter, the Council meeting will follow the Council Procedure Rules set out in Annex 2.1 of this Constitution.

13.5 Decision making by the Executive

Subject to Article 13.8, when making an Executive decision the Executive or officer (if appropriate) exercising delegated powers will follow the requirements set out in Annex 2.2.

13.6 Decision making by the ~~Overview and the~~ Scrutiny and Audit Committees

When considering any matter the ~~Overview and the~~ Scrutiny and Audit Committees will follow the ~~overview and~~ scrutiny procedures rule set out in Annex 2.5.

13.7 Decision making by other Committees established by the Council

Subject to Article 13.8, other Council Committees or Boards will follow those parts of the Council Procedure Rules set out in Annex 2.1 of this Constitution as apply to them.

13.8 Decision making by Council bodies acting as tribunals

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

Article 14 – Finance, Contracts and Legal Matters

14.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Annex 2.6 to this Constitution.

14.2 Contracts

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Annex 2.7 to this Constitution.

14.3 Legal Proceedings

In accordance with the Scheme of Delegation to Officers as set out in Annex 1.13 to this Constitution (as amended from time to time) officers of the Council are authorised to institute, to defend or participate in any legal proceedings in any case where such action(s) is necessary to give effect to decisions of the Council or in any case where it is considered that such action is necessary to protect the Council's interests.

14.4 Authentication of Documents

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

~~Any contract with a value exceeding £25,000 entered into on behalf of the local authority 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 authority or made under the common seal of the Council attested by at least one officer.~~

14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.

~~The Common Seal of the Council will be affixed to documents which are required to be sealed in compliance with the Council's Financial /Contract Procedure Rules. It will also be affixed to documents which require it due to their nature or the nature of the proceedings or transaction to which they relates. The Common Seal will be affixed to those documents which, in the opinion of the, Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer or some other person authorised by him/her.~~

A decision of the Council or of the Cabinet or of any subsidiary body or individual authorised by the Council or by the Cabinet to act on their behalf will be sufficient authority for sealing any document necessary to give effect to the decision.

Article 15 – Review and Revision of the Constitution

15.1 Duty to Monitor and Review the Constitution

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

The Monitoring Officer will also carry out a general or partial review (as appropriate) of the Constitution in the following circumstances:-

- (1) at the direction of a court or of the Secretary of State;
- (2) on the recommendation of the Local Government Ombudsman, the Council's external auditors or one of the Council's Statutory Officers appointed in accordance with Article 12.05 of this Constitution;
- (3) by a decision of the Council;
- (4) in the event that no general review of the Constitution has taken place within the preceding 10 years then, unless the Council decides otherwise, a general review shall be carried out.

On completion of a review, the Monitoring Officer will submit his/her ~~recommendations to the Council's Standards Committee, who will then consider the report and recommend proposals to the Council. The Monitoring Officer will submit a further~~ report to the Council if s/he considers it appropriate. The Monitoring Officer has delegated authority to make minor changes to the Constitution, with significant changes presented to Full Council [as per paragraph 15.3].

15.2 Monitoring & Review of the Constitution by the Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Council's Constitution and to make recommendations to the Council for ways in which it could be amended in order better to achieve the purposes set out in Article 1 of the Constitution.

In undertaking this task the Monitoring Officer may:-

- (1) observe meetings of different parts of the Member structure;
- (2) undertake an audit trail of a sample of decisions;
- (3) record and analyse issues raised with him/her by Members, officers, the public and other bodies or persons with a legitimate interest; and
- (4) compare practices in the Council with those in other comparable authorities, or national examples of best practice.

15.3 Procedures for Changes to the Constitution

- (1) **Changes to the Articles, Procedural Rules and Protocols, etc.**

Changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2; the Codes of Practice and Protocols set out in Annexes 3; and the

Members' Allowances Scheme set out in Annex 4 can only be made by the full Council, which may not delegate this function.

Such proposals for changes may only be considered by the Council on receipt of a written report by :-

~~(a) — the Standards Committee; and/or~~

~~(b) — the Monitoring Officer.~~

(2) Proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3; and/or to the Members' Allowances Scheme set out in Annex 4 may be considered and determined forthwith by the Council. The Proper Officer shall be authorised to make minor textual changes to the Articles and Annexes to the Constitution where this is necessary as a consequence of:-

(a) a decision properly made by the full Council to amend any part of them (for example cross-references, paragraph numbering, nomenclature, etc.);

(b) legislation or a court order.

(3) **Changes to Other Parts of the Constitution**

To ensure transparency and accountability in the Council's decision-making processes, the Proper Officer shall ensure that the following parts of the Constitution are at all times kept up to date and accurately reflect the relevant decisions of the Council, its committees and sub-committees and of the Cabinet:-

(a) Summary and Explanation: giving a summary and brief explanation of the main provisions of the Constitution;

(b) Annex 1: setting out the responsibilities for functions and the delegations of those responsibilities;

(c) Annex 5: setting out the current organisational structure of the Council.

(4) **Change in the Form of Governance Arrangements**

The Council may change its existing form of governance. A resolution is required to make such a change, A document setting out the new arrangements must be available for inspection and public notice must be given in local newspapers, The Council may be required to hold a referendum.

(5) **Consultation on Other Constitutional Changes**

Where a proposal to change this Constitution does not involve a change in the form of governance arrangements (whether from a Leader and Cabinet form to an elected Mayoral form, or vice-versa), there will not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them.

Article 16 - Suspension, Interpretation & Publication of the Constitution

16.1 Suspension of the Constitution

(1) Limits to Suspension

The Articles of this Constitution may not be suspended.

Certain elements of the Procedure Rules set out in Annexes 2 to this Constitution may be suspended. Those Procedure Rules may be suspended by the Council to the extent detailed in the table set out in sub-paragraph (3) of this Article 16.1 below and permitted by the law.

(2) Procedure to Suspend

A motion to suspend any Rules at a meeting of the Council 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 which it is intended to achieve, taking account of the purposes of the Constitution set out in Article 1.

(3) Rules Capable of Suspension

The following Procedure Rules may be suspended to the extent indicated below:

Rules that may be Suspended	Limitations on Suspension
Annex 2.1 - Council Procedure Rules: all except paragraphs 20.5 (Right to Require an Individual Vote to be Recorded) and 21.2 (No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting)	Suspension may only be exercised by the full Council for the consideration of specified business at a single meeting only.
Annex 2.6 – Financial Procedure Rules	Suspension may only be exercised by the full Council to the extent permitted by law. The reasons for suspension shall be stated in each case.
Annex 2.7 - Contract Procedure Rules	Suspension may only be exercised by the full Council or the Cabinet in respect of a single contract or category of contract to the extent permitted by law. The reasons for suspension shall be stated in each case.

16.2 Interpretation

The ruling of the Mayor as to the construction or application of this Constitution, or as to any proceedings of the Council, will not be challenged at any meeting of the Council.

Such interpretation will have regard to the purposes of the Constitution contained in Article 1.

16.3 Publication

The ~~Service Manager~~Head of ~~(Communities)~~ will:-

- (1) provide a copy of this Constitution to each Member of the Council upon delivery to him/her of that individual's declaration of acceptance of office when the Member is first elected to the Council;
- (2) ensure that copies of this Constitution are available for inspection at the Council's offices, at libraries and other appropriate locations and can be purchased by the local press and members of the public on payment of a reasonable fee;
- (3) ensure that the Summary and Explanation of this Constitution is made widely available within the Borough and is updated as necessary.

Gravesham
Borough Council



The Articles of
The Constitution of
Gravesham Borough Council

Adopted by the Council on 23 April 2002

Updated and re-issued October 2023

**The Proper Officer, as defined in Annex 1.12 of the Constitution, is responsible
for ensuring that the Articles of the Constitution are kept up to date**

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(Clean Version)

The Articles of the Constitution

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The Articles

1. Article 1 - The Constitution

1.1. Powers of the Council

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

1.2. The Constitution

This Constitution and all its annexes is the Constitution of Gravesham Borough Council.

1.3. Purposes of the Constitution

The purpose of the Constitution is to:

- 1) provide a framework within which the Council can deliver its agreed policy programme
- 2) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- 3) support the active involvement of citizens in the process of local authority decision-making;
- 4) help Councillors represent their constituents effectively;
- 5) enable decisions to be taken efficiently and effectively in line with the Council's agreed priorities;
- 6) create a powerful and effective means of holding decision-makers to public account and ensure that no-one will review or scrutinise a decision in which they were directly involved;
- 7) ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;
- 8) provide a means of improving the delivery of services to the community; and
- 9) ensure that the Council's governance arrangements deliver efficient, transparent and accountable decision-making.

1.4. Interpretation of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated in Article 1.3 above.

1.5. Review of the Constitution

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

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2. Article 2 - Members of the Council

2.1. Composition and Eligibility

1) Composition

The Council will comprise 39 Councillors (also called Members). One or more Councillors will be elected by the voters of each Ward in accordance with the current scheme drawn up by the Local Government Boundary Commission for England and confirmed by a legal order.

2) Eligibility

There are certain qualifying and disqualifying criteria for people who stand for election as a Councillor. These are set out in the Local Government Act 1972 and the Local Government and Housing Act 1989.

2.2. Election and Terms of Office for Councillors

1) Election of the whole Council every four years

The regular election of Councillors will be held every four years on the first Thursday in May, beginning in 2003.

2) Terms of Office for Councillors

The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election as set out in S243 of the Local Government Act 1972

2.3. Roles and Functions of all Councillors

1) Governance

All Councillors will:-

- a) collectively be the ultimate policy-makers for the Council and carry out a number of strategic functions;
- b) contribute to the good governance of the Borough and the Council, and actively encourage community participation and citizen involvement in decision-making;
- c) be involved in decision-making and participate in the governance and management of the Council where appropriate;
- d) effectively represent their communities, including the interests of their Ward and of individual constituents whilst also balancing the different interests identified within their Ward and representing their Ward as a whole;
- e) respond to constituents' enquiries and representations, fairly and impartially and assist constituents in resolving particular concerns or grievances;

- f) be available to represent the Council on other bodies (for example partnerships and Outside Bodies) if appointed to such posts by the Council or the Cabinet; and
- g) maintain the highest standards of conduct and ethics in order to give expression to the Seven Principles of Public Life and the Member Code of Conduct set out in Annexe 3.1 to this Constitution.

2) **Community Representation**

- a) all Councillors represent their constituents and play an important role in consulting and representing their communities on policy matters, such as the Corporate Plan and other Strategy documents, Reviews of Services, and matters of concern and interest to their communities generally;
- b) through the scrutiny process and through Cabinet Committees, Councillors can “feed-in” the views of the community they represent to policy development, decision-making and the setting of objectives.

3) **Rights and Duties of All Councillors**

- a) Councillors will, subject to statute and the Council’s Constitution, 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;
- b) Councillors will not make public 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;
- c) for these purposes “confidential” and “exempt” information are defined in the Access to Information Rules set out in Annex 2.2 to this Constitution.

2.4. Conduct

Councillors will at all times observe the Members’ Code of Conduct, the Member/Public Protocol and the Member/Officer Protocol set out in Annexes 3.1, 3.3 and 3.4 to this Constitution.

2.5. Remuneration and Allowances

1) **Independent Remuneration Panel**

The Council will establish and maintain an Independent Remuneration Panel in accordance with the Protocol for Appointments to the Independent Remuneration Panel set out in Annex 3.7 to this Constitution to provide the Council with advice on its Members’ Allowances Scheme, the amounts to be paid and the pensionability of allowances where relevant, together with any other matters that may be required by law.

2) **Members’ Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Annex 4 to this Constitution.

3. Article 3 – Citizens and the Council

3.1. Citizens' Rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules as set out in Annex 2.2 to this Constitution.

1) Voting and Petitions

Citizens who are on the electoral roll for the Borough have the right to vote and to sign a petition, requesting a referendum for an elected Mayor form of constitution. Residents and those who work or study within the Borough also have the right to sign petitions. Petitions to the Council can also be submitted on any issues within the Council's responsibilities in accordance with the Council's Petition Scheme (Annex 3.11).

2) Information

Citizens have the right to:-

- a) attend meetings of the Council and its Committees, including Cabinet, Boards and sub-committees, except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private. In these instances a 28-day notice will be issued;
- b) find out from the Council's website what "Key Decision(s)" will be taken by the Cabinet, or by any bodies or individuals to whom the Cabinet may have delegated the exercise of any of its functions, and when it is expected those decisions will be taken;
- c) see reports and background papers (excluding confidential/exempt information) and any records of decisions made by the Council, Cabinet, Committees, Boards and sub-Committees; and
- d) inspect the Council's accounts and make their views known to the external auditor.
- e) make a request for information under the Freedom of Information Act 2000.
- f) submit a Subject Access Request (SAR) to request a copy of what data the council holds about an individual.

3) Participation

Citizens have the right to ask a meeting of Council a question. Citizens do not have an automatic right to ask a question at other committee meetings, but may be invited to do so by the committee or by the committee Chair, such as to contribute to investigations by a Scrutiny Committee.

Public speaking is allowed at meetings of the Planning Committee.

Citizens also have the right to apply to be an Independent Person or Member of the Independent Remuneration Panel where vacancies are advertised.

4) **Complaints**

Citizens have the right to complain to:-

- a) the Council itself under its Complaints Procedure;
- b) the Local Government and Social Care Ombudsman or Housing Ombudsman, after using the Council's Complaints Procedure;
- c) the Standards Committee about an alleged breach of the Member Code of Conduct set out in Annex 3.1 to this Constitution. These complaints should be addressed to the Monitoring Officer, Gravesham Borough Council, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU.

3.2. Citizens' Conduct

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

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4. Article 4 - The Council

4.1. Meanings

The terms listed below have the following meanings throughout this Constitution.

1) Policy Framework

The 'Policy Framework' means the following Plans and Strategies to be adopted by the Council:

- a) Corporate Plan (or equivalent document);
- b) Equalities Policy (or equivalent document);
- c) Local Plan and all related plans and alterations;
- d) Pay Policy Statement;
- e) Housing Strategy (including the Housing Investment Programme and Housing Business Plan);
- f) Community Safety Strategy.

In addition, the Council meeting can adopt any other formal plans or strategies which the Council may decide, or which legislation requires, should form part of the Policy Framework. This includes but is not exclusive to:

- a) Working in Partnership Framework;
- b) Code of Corporate Governance;
- c) Climate Change Strategy
- d) Licensing Policies as required under the Gambling Act 2005.

2) Budget

The budget is the approved allocation of financial resources to services, projects and contingency funds. It also includes, for the purpose of this Constitution, the processes of approving the Council tax base, the budget, the Council tax level itself and the borrowing requirement, the setting of controls on capital expenditure and any limits on budget virements.

Full Council is responsible for approving the Medium Term Financial Strategy, Treasury Management Strategy and Capital Strategy.

3) Housing Land Transfer

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

4.2. Functions of the Council

Only the Council will exercise the following functions:-

1) **Constitutional and Procedural Matters, etc.**

- a) to adopt and change the Articles of this Constitution;
- b) to change the name of the area;
- c) to make, amend or revoke the Procedural Rules set out in Annex 2 to this constitution;
- d) to make, amend or revoke the Codes of Conduct and Protocols set out in Annex 3 to this Constitution;
- e) to confer the Freedom of the Borough or the title of Honorary Alderman.

2) **Setting the Policy Framework and Related Matters**

- a) to approve the Council's Policy Framework, except that in-year amendments to Plans or Strategies forming part of the Policy Framework and Budget will be delegated to the Cabinet by the Council;
- b) to determine each year the Council's revenue and capital budget and Council Tax levy, except that determining the rents of Council dwellings and related properties and the charges to be made for the Council's services, is delegated to the Cabinet;
- c) subject to the Urgency Procedure contained in the Access to Information Procedure Rules detailed in Annex 2.2 to this Constitution, to make decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget where the Cabinet is minded to make it in a manner which would be:-
 - i. contrary to the Policy Framework; or
 - ii. contrary to (or not wholly in accordance with) the Budget.
- d) to adopt, amend or revoke the Members' Allowances Scheme under Annex 4 of this Constitution, including the levels and pensionability of Councillors' allowances;
- e) to make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation or personal Bills;
- f) to authorise applications to the Secretary of State for housing land transfers of housing stock.

3) **Appointments and Delegations, etc.**

- a) to appoint (and remove) the Leader of the Executive;
- b) to determine the terms of reference, composition and membership of other Committees, Boards and Panels that report directly to the Council, and appointments to them;
- c) to adopt and approve amendments to the powers and terms of reference of joint and area committees and to make appointments to them;
- d) to appoint representatives to Outside Bodies, except where the appointment has been delegated by the Council;

- e) to make or confirm the appointment of the Council's Statutory Officers required under Article 12.5 of this Constitution;
- f) subject to the requirements of the law and the Officer Employment Procedural Rules set out in Annex 2.8 to dismiss the Head of Paid Service or other Statutory Officers.

4) Regulatory and Electoral Matters

- a) to deal with findings of maladministration (on receipt of a report from the relevant Scrutiny Committee or the Monitoring Officer following a report by the Local Government Ombudsman);
- b) to determine the action to be taken on reports by the Monitoring Officer or the Chief Finance Officer (including Section 112 and Section 114 reports);
- c) to consider reports concerning the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer pursuant to the procedures set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;
- d) to determine matters relating to local elections unless the function has been delegated by the Council;
- e) to review matters relating to electoral and administrative arrangements and to determine the Council's response to any consultations or proposals by the Electoral Commission relating to the Borough.

5) Other Matters

- a) to determine any matters referred to the Council for decision by a Committee, Board or Panel that reports directly to the Council;
- b) to resolve any dispute between any of the subsidiary bodies of the council if required;
- c) to deal with all 'local choice functions' set out in Annex 1.14 to this Constitution which the Council decides should be undertaken by itself rather than by the Cabinet or a committee or Board;
- d) to deal with any other matter which must, by law, be reserved for determination by the Council.

4.3. Council Meetings

There are three types of Council meetings:-

- 1) The Annual Meeting;
- 2) Ordinary Meetings;
- 3) Extraordinary Meetings;

and they will be conducted in accordance with the Council Procedure Rules detailed in Annex 2.1 to this Constitution.

4.4. Responsibility for Functions

The Council will review and maintain Annex 1 to this Constitution, setting out the responsibilities for the non-executive functions of the Council, its Committees, Sub-Committees, Boards and Panels and delegations of those functions.

The Leader of the Executive will review and maintain Annex 1 to this Constitution setting out the responsibilities for the executive functions and delegations of those functions.

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5. Article 5 – Chairing the Council

5.1. Mayor - Making

The title of 'Mayor' is derived from the Council's status as a Borough and this office is filled annually by a Councillor who is elected by the Council at its Annual Meeting at the start of each municipal year.

Mayor-making is regarded as an important civic and ceremonial event. The election of the Mayor is not decided by the Borough's electorate but by a majority of the Councillors present and voting at the Annual Meeting of the Council in May of each year.

A Deputy Mayor is elected by the Council from among the Councillors.

The Mayor is addressed as 'The Worshipful the Mayor of Gravesham'. The Deputy Mayor is addressed as 'The Deputy Mayor'.

5.2. Role and functions of the Mayor

The Mayor is the First Citizen of the Borough of Gravesham.

The Mayor, and in his/her absence the Deputy Mayor, have the following roles and functions:-

- 1) to uphold and promote the purposes of this Constitution and to interpret the Constitution on advice from the Monitoring Officer where necessary;
- 2) 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;
- 3) to ensure that meetings of the Council are forums for the debate of matters of concern to the local community and the place at which Members who are not in the Cabinet, nor hold office of Committee/Board Chair, are able to hold Cabinet Members and Committee/Board Chairs to account;
- 4) together with all Members of the Council, to promote public involvement in the Council's activities;
- 5) to be the conscience of the Council;
- 6) to attend such civic and ceremonial functions as the Council, the Mayor and the Leader of the Executive determines are appropriate.
- 7) Such other duties that may fall to the Mayor to exercise by virtue of statute or this Constitution

The Mayor and Deputy Mayor cannot be appointed to the Cabinet.

6. Article 6 – Scrutiny

6.1. Purposes of Scrutiny

To achieve enhanced accountability and transparency of the decision-making process, effective overview and scrutiny is essential. The main functions of the Overview and Scrutiny Committee are to:

- meet in public to discuss and make recommendations on the development of policy;
- provide effective challenge by holding the Leader and Cabinet to account for their actions and decisions;
- provide community focus in considering matters of local concern through representation of the views of their constituents and other organisations to the Cabinet and to the Council; and
- examine the operation and impact of the Council's policies, to provide a useful means of improving the development of policies and delivery of services.

6.2. Specific Functions

Within allocated budgets Overview and Scrutiny Committees may:

- assist the Council and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues;
- question members of the Cabinet and/or Committees and employees about their views on issues and proposals affecting the area;
- review and scrutinise the decisions, initiatives and projects and performance of the Cabinet and/or Committees and Council employees in relation to individual decisions, initiatives and projects;
- review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- question members of the Cabinet and/or Committees and employees 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;
- make recommendations to the Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;

6.3. Appointment and Membership

The Council will, at its Annual Meeting, appoint at least one Scrutiny Committee to discharge the scrutiny functions required by legislation.

No committee appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment.

Any Scrutiny Committee appointed by the Council must reflect the political balance of the Council.

Members of the Cabinet may not be Members of a Scrutiny Committee.

The Chair of any Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions shall be a Member appointed by Full Council.

In deciding the membership of a Scrutiny Committee, the Council shall take into account the particular skills and expertise required to ensure that thorough and informed scrutiny and reviews take place.

A scrutiny committee may co-opt people to act as non-voting members in accordance with the Scrutiny Procedure Rules.

6.4. Sub-Committees

A Scrutiny Committee may delegate any of its functions to a sub-committee of itself, the membership of which must be drawn solely from the Members (including substitutes) of the appointing Scrutiny Committee.

No more than three sub-committees of any one Scrutiny Committee may be in existence at any one time.

Any sub-committee appointed by a Scrutiny Committee must reflect the political balance of the Council unless the Committee determines otherwise with no votes being cast against by any Committee Member present and voting.

6.5. Meetings and Procedure

A Scrutiny Committee must meet in public except where confidential and/or exempt matters are being discussed.

Meetings must be conducted in accordance with the Scrutiny Procedure Rules set out in Annex 2.5 to this Constitution.

6.6. Scope of external Scrutiny

Within its Terms of Reference a Scrutiny Committee may examine matters which are not the direct responsibility of the Council where these are relevant to the remit of the Committee (or sub-committee).

A Scrutiny Committee may also make reports or recommendations to the Cabinet and/or to the Council in relation to matters which are not the responsibility of the Council but which nevertheless affect the Borough or its inhabitants.

6.7. Witnesses and Consultees

A Scrutiny Committee may, within the limitations set in the Scrutiny Procedure Rules in Annex 2.5 to this Constitution, require Members of the Cabinet, or any other Member of the Council or any Director or Chief Officer of the Council to appear before the Committee and answer questions.

Officers are employed by the Council to work for and serve the Council as a whole. Scrutiny Committees will respect the political neutrality of Officers.

The scrutiny process benefits from input from all those with a legitimate interest, including the local community and other local public, private and voluntary organisations. Particular attention should be paid to obtaining views from “hard to reach” groups such as minority ethnic communities and people with disabilities. Where appropriate, representatives of legitimate community groups should be asked to contribute to the review of issues particularly affecting them, for example residents’ and tenants’ associations.

A Scrutiny Committee may, therefore, also invite any other person to appear before it, subject to that person’s consent.

6.8. Limitations

A Scrutiny Committee can only discharge the following functions and no other functions of the Council:-

- 1) to carry out the scrutiny functions required by legislation, The Scrutiny Procedure Rules and the committee’s Terms of Reference;
- 2) to make reports or recommendations to the Cabinet or the Council on those matters;
- 3) to make reports or recommendations to the Cabinet or the Council in respect of matters which affect the Council’s area or its inhabitants.

This is to ensure there is a clear separation between the discharge of functions and the review and oversight of those functions.

6.9. Finance and Staffing

A Scrutiny Committee shall exercise overall responsibility for the expenditure of any budget made available to it and for the use of any officer time allocated to it by the Council.

7. Article 7 - Leader and Cabinet Executive

7.1. Role and Functions

The Council has adopted a form of executive arrangements known as "Leader and Cabinet Executive". The various parts of this Constitution that together comprise the Council's executive arrangements are set out in Annex 1.18 to this Constitution.

The Cabinet Executive (meaning the Leader and such other Members of the Council as the Leader may appoint) will exercise all of the Council's functions which are not the responsibility, whether by law or under this Constitution, of any other part of the Council.

The Leader may take decisions on every matter that is not assigned to anyone else by this Constitution. The Leader may however, make arrangements to delegate some matters to the Cabinet, a Cabinet Committee, individual Cabinet members, or to employees.

7.2. Form and Composition

- 1) The Cabinet Executive will comprise:-
 - 1.1 The Leader who will be a Councillor elected by the Council at the Annual Meeting of the full Council following on from the ordinary election of all Councillors;
 - 1.2 no more than ten Cabinet Members, including the Leader and the Deputy Leader.
 - 1.3 Neither the Mayor nor Deputy Mayor of the Council may be appointed to the Cabinet.

There shall not be any co-optees, deputies or substitutes for Members of the Cabinet, excepting that Members of the Cabinet (including the Leader) may be substitutes for each other on any sub-Committees, Panels or Working Groups established by, and reporting to, the Cabinet.

7.3. Leader of the Executive

- 1) The Leader will be a Councillor elected by the Council at the Annual Meeting of the Full Council following on from the ordinary election of all Councillors. The term of office of the Leader starts on the day of his/her election as Leader and ends on the day of the next post election Annual Meeting (under whole Council elections) unless, before that day, he/she:-
 - 1.1 is removed from office or resigns;
 - 1.2 ceases to be a Councillor;
 - 1.3 is disqualified from being a Councillor; or
 - 1.4 the Council passes a resolution to remove the Leader.

- 2) During his/her term of office the Leader will continue to hold office as a Councillor and accordingly, any enactment which provides for earlier retirement as a Councillor will not apply.
- 3) In the event of there being a vacancy in the office of Leader the Council shall elect a new Leader at its next ordinary meeting.
- 4) The Council will have the power to remove the Leader from office before the end of his/her four year term by way of resolution. At any meeting of the Full Council a Councillor may propose that "the Council has no confidence in the Leader". If carried by a simple majority of those Councillors present and voting, the Leader will be removed from office.
- 5) If the Council passes a resolution to remove the Leader, a new Leader will be elected:-
 - 5.1 at the same meeting at which the Leader is removed from office; or
 - 5.2 at a subsequent meeting.

7.4. Deputy Leader

- 1) The Leader will appoint a Deputy Leader from among the Cabinet Members. The Deputy Leader, unless he resigns as Deputy Leader, is removed by the Leader, or ceases to be a Member of the Council, will hold office until the end of the term of office of the Leader.
- 2) The Deputy Leader will have authority to exercise the Leader's powers only in the event that the Leader is unable to act at any time or the office of Leader is vacant.
- 3) If the Deputy Leader is unable to act or the office is vacant, the Cabinet (Executive) must act in the Leader's place or arrange for a Member of the Cabinet (Executive) to do so.

7.5. Appointment of the Cabinet and scheme of delegation

- 1) The Leader will decide the size of his/her Cabinet (subject to a maximum of ten, including the Leader and Deputy Leader) and will appoint Cabinet Members from among the serving Councillors. The Leader and Cabinet members may not be members of an Overview and Scrutiny Committee.
- 2) Cabinet members appointed by the Leader shall hold office until:
 - a) they resign; or
 - b) they are no longer Councillors; or
 - c) they are removed from office by the Leader who must deliver written notice of any removal to the Chief Executive and to the Cabinet member concerned. The removal will take effect immediately after receipt of the notice by the proper officer.

- 3) All executive functions of the Council will be vested in the Leader. The Leader may exercise those functions himself/herself, or may delegate specified executive functions to be exercised by the Cabinet collectively, a Cabinet Committee, an individual Cabinet Member or an Officer. The Leader may revoke such delegations at any time.
- 4) Delegation of executive function(s) to be exercised by a Cabinet Member or by a Ward Councillor in accordance with Section 236 of the Local Government and Public Involvement in Health Act 2007; will be at the discretion of the Leader.
- 5) The Leader will report to Council on all appointments and changes to the Cabinet (Executive) and delegation of executive functions of the Council.

The Leader of the Executive may not be appointed to the Standards Committee and other Members of the Cabinet may not be Chair of the Standards Committee.

Not more than two Members of the Cabinet (or the nearest whole number equivalent to 20 per cent of the total membership of the Planning Committee, whichever is the lesser figure) may be appointed to the Planning Committee or such other committee or sub-committee as may be appointed to determine matters relating to the grant of licences and statutory consents or enforcement action against persons. No Member of the Cabinet so appointed shall be the Chair or Vice-Chair of the Planning Committee nor of any other committee or sub-committee discharging similar functions.

The nearest whole number equivalent to 50 per cent of the total membership of the Appointments Board will be selected by the Leader of the Executive for appointment to the Appointments Board (or such other committee as may be appointed to determine matters relating to the appointment of officers).

Not less than three Members of the Appointments Board who have been selected by the Leader of the Executive (or the nearest whole number equivalent to 50 per cent of the total membership of an Appointments Panel constituted from the membership of the Appointments Board, whichever is the lesser figure) will be appointed to an Appointments Panel or any other body authorised to make an appointment to the Council's staff.

7.6. Proceedings of the Cabinet

Proceedings of the Leader and Cabinet Executive shall take place in accordance with the Executive Procedure Rules set out in Annex 2.4 to this Constitution.

7.7. Delegation of Powers

The Head of Communities shall maintain a list setting out clearly which Members of the Cabinet, sub-committees of the Cabinet, officers of the Council, area committees or joint arrangements with other local authorities carry current responsibilities for the discharge of functions delegated by the Cabinet, together with the current allocation of portfolios amongst Cabinet Members. This list, as amended from time to time, shall be incorporated within Annex 1 to this Constitution and shall be made publicly available.

7.8. Cabinet Committees

The Leader may appoint Cabinet Committees to advise the Cabinet about carrying out its functions. Such Committees, and appointments of individuals to them, may exist for a fixed or unspecified period, but in any event will cease upon a change in the political control of the Council or at the Annual Meeting of the Council immediately following a general election of the entire Council.

When establishing a Cabinet Committee, the Leader shall also state the Committee's Terms of Reference and composition, which shall be made publicly available. Appointments and terminations of appointments of individuals to existing committees shall similarly be made public.

Such Committees may be made up of any mixture of Councillors. Council officers may attend meetings of such Committees to provide information.

Cabinet Committees need not comply with the legislation on political proportionality, but they should reflect a broad cross-section of both the Council and the wider community. Committees should be constituted having regard to the particular knowledge and skills of those appointed.

Any written reports made by a Cabinet Committee to the Cabinet shall be made publicly available, except where they contain confidential and/or exempt information.

7.9. Ethics and Probity

Members of the Cabinet will be treated no differently from other Councillors in that they will be subject to the Member Code of Conduct set out in Annex 3.1 to this Constitution, and to investigation should any allegations of breaches of the Code be received.

Members of the Cabinet will be required to declare and register their interests and, if appropriate, to seek local dispensations from the Standards Committee.

7.10. Officer Support

Officers are employed by the Council to work for and serve the Council as a whole. The Cabinet will respect the political neutrality of Officers.

8. Article 8 – Planning Committee and other Committees

8.1. Appointment of Committees by the Council

The Council will appoint a Planning Committee to deal with the Council's development control, licensing and other quasi-judicial functions, together with such other committees, boards and panels as it considers appropriate to discharge its functions, with the exception of any such functions which are reserved to the full Council under Article 4 of this Constitution.

In addition, the council will appoint the Committees, boards and panels as set out in in Annex 1.2 to this Constitution to undertake the responsibilities set out in that annex.

No committee, board or panel appointed under this Article will continue in existence after the next Annual Meeting of the Council following its appointment.

In respect of any committee, board or panel appointed under this Article, the Council may at any time:-

- 1) dissolve or alter its membership; and/or
- 2) withdraw, extend or modify its terms of reference and powers; and/or
- 3) refer to it any matter not reserved to the full Council.

8.2. Meetings of Committees

Meetings of all committees, boards and panels appointed to discharge the Council's functions will be held in public, except where confidential and/or exempt matters are being discussed.

8.3. Membership of Committees

The Council shall determine the size and membership of the Committees and appoint Members in accordance with the rules on political proportionality contained in the Local Government and Housing Act 1989 where this applies.

9. Article 9 – The Standards Committee

9.1. Standards Committee

The Council has established a Standards Committee, which plays an important role in strengthening and maintaining the high standards of conduct required of Members and officers.

9.2. Composition

- a) Membership. The Standards Committee is composed of nine Members.
- b) Political Balance. The Standards Committee will be politically balanced.
- c) Quorum. The Quorum of the Councillor Conduct Committee shall be three Councillors.
- d) Chairing the Committee. A Member of the Executive may not chair the Committee. The Mayor/Deputy mayor must not chair the Committee.

9.3. Role and function

For the Standards Committee Terms of Reference see Annex 1.2 of the Constitution.

The Committee deals with allegations that a Councillor or voting or non-voting co-opted member of the Council or the six Parish Councils has breached the relevant Members Code of Conduct and can decide whether or not an investigation is to be carried out in relation to those complaints. The Committee has given delegated authority to the Monitoring Officer to carry out an initial screening of complaints received. The complaint will only be referred to Standards Committee where the following criteria do not apply:

- No Councillor has been identified
- No potential breach of the code has been identified
- Insufficient detail to make a determination
- The complaint is more than 6 months old and no cogent explanation for the delay in reporting
- The complaint relates to matters that are not within the CCC's remit.
- The complaint is considered trivial, malicious or vexatious.

If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person.

The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.

The Committee may on hearing all relevant parties and in accordance with an agreed procedure, decide whether a breach of the relevant Councillor Code of Conduct has occurred and if so what action should be taken.

The Committee shall state reasons for its decision.

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10. Article 10 – Area Committees and Forums

10.1. Form and Composition

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

The Council will consult with relevant Parish Councils when considering whether and how to establish area committees. The objective will be to establish a partnership approach to strengthen the focus of action and to help give local communities a real input into decisions which affect them.

Area committees or forums can take many forms and undertake a variety of roles. For example, they may be made up of Councillors, representatives from other public, private and voluntary sector bodies in the area and , or they may be made up of Councillors only.

Area committees can be purely advisory and consultative bodies or they can have specific functions and budgets delegated to them by the Council.

Area Forums must be advisory and/or consultative bodies only.

10.2. Appointment of Area Committees & Forums

Where the Council decides to appoint an Area Committee or Forum, it shall detail the Committee or Forum's Terms of Reference and composition (as amended from time to time) in Annex 1.8 to this Constitution.

The composition of Area Committees and Forums must in all cases reflect the law on co-optees and political balance commensurate with their Terms of Reference. In general, however, Area Committees need not reflect the political balance of the Council as a whole if all of the voting Members on the committee represent Wards within its area and that area does not exceed two fifths of the total for the Council by reference to population or area.

Area Committees may also include voting co-optees if the Committee is appointed exclusively to discharge functions relating to:-

- 1) Corporate Property Management;
- 2) Housing Management (of 1,500 dwellings or one quarter of the Council's stock, whichever is the less);
- 3) Promotion of tourism;
- 4) Festival Management;
- 5) Joint County/District Functions discharged by a joint committee.

10.3. Delegation of Functions to Area Committees

The Council may only delegate to Area Committees those functions which are not the functions of the Executive and which are not reserved by law to the Council itself.

Subject to the provisions of Article 7.7 of this Constitution, the Executive may delegate functions to an Area Committee. In deciding to delegate functions for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

If both executive and non-executive functions are delegated to the same Area Committee, the agendas for, and reports submitted to, the meeting must make it clear whether the decisions required relate to Executive functions or not.

Where the Council decides to appoint an Area Committee, Annex 1.8 to this Constitution must clearly state:-

- 1) which of the Area Committee's powers and functions are the responsibility of the Executive (and therefore exercisable under the supervision of the Executive) and which are not;
- 2) the budgets and limits on authority accompanying a delegation by the Council or the Executive.

Both the Council and the Executive will continue to have powers to discharge the functions which they have delegated to an Area Committee. This ensures that there is sufficient flexibility so that if the Council or the Cabinet need to exercise the powers (for example in consequence of the exercise of another power) then they have the ability to do so.

Functions which are the responsibility of the Executive and which are delegated to an Area Committee must be exercised in accordance with the Council's Policy Framework and Budget and any written guidance provided by the Executive in relation to those functions.

Regardless of any other provisions of this Constitution, however, an Area Committee may not take a decision which significantly affects all of the Council's area, or a part of the Council's area in respect of which that Committee does not have functions, though it may make recommendations to the Executive to do so.

10.4. Conflicts of Interest: Membership of Area and Scrutiny Committees

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

- 1) if the relevant Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of an Area Committee of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless an exemption or dispensation to do so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution;
- 2) where the relevant Scrutiny Committee is reviewing policy affecting the whole or a large part of the Borough generally, the Member must declare his/her interest orally before the relevant agenda item is reached, but need not withdraw from the decision making process.

10.5. Area Committees: Access to Information

Area Committees will comply with the Access to Information Rules detailed in Annex 2.2 to this Constitution.

Agendas and notices for Area Committee meetings which deal both with functions of the Executive and functions which are not the responsibility of the Executive must identify clearly which items are which.

10.6. Executive Members on Area Committees

A Member of the Cabinet may serve on an Area Committee if otherwise eligible to do so as a Councillor.

11. Article 11 – Joint Arrangements

11.1. Arrangements to Promote Well-being

In order to promote the economic, social or environmental well-being of its area, the Cabinet may:-

- 1) enter into arrangements or agreements with any person or body;
- 2) co-operate with, or facilitate or co-ordinate the activities of, any person or body;
- 3) exercise on behalf of that person or body any functions of that person or body.

11.2. Joint Arrangements

The Council may enter into arrangements with one or more other local authorities and/or their Executives to discharge jointly functions which are not functions of the Executive. Those arrangements may include establishing a joint committee either to advise the local authorities on matters of joint interest or to discharge functions on their behalf.

The Executive may establish joint arrangements with one or more other local authorities (including Parish Councils) to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.

Except as set out below, the Executive may only appoint Members of the Cabinet to a joint committee and those appointments need not reflect the political composition of the Council as a whole.

The Executive may appoint Members from outside the Cabinet to a joint committee where the joint committee has functions for only part of the area of the Council and that area is smaller than two-fifths of the Council by area or population. In such cases, the Executive may appoint to the joint committee any Councillor who is a Councillor for a Ward which is wholly or partly contained within the area of the joint committee. The political balance requirements do not apply to such appointments.

When entering into any such joint arrangements the Executive may agree:-

- 1) the number of Members of a joint committee to be appointed from each of the participating local authorities; and
- 2) arrangements for the delegation by joint committees to sub-committees of themselves or to Officers.

In deciding whether to enter into any such joint arrangements in respect of functions for which it is responsible, the Executive must satisfy itself that those arrangements will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain,

accountable for those functions as the clear, accountable corporate leadership of the Council.

The terms of reference and other relevant details of all joint arrangements, as amended from time to time (including the membership of, and any delegations to, joint committees) shall be set out in Annex 1.15 to this Constitution.

11.3. Access to Information

If a joint committee is composed solely of Members who are also Cabinet Members in their own authority, then the access to information regime in the Cabinet Procedure Rules set out in Annex 2.4 to this Constitution apply to the joint committee's business.

However, if any Member of a joint committee is not a Cabinet Member in their own authority, then the Access to Information Rules in Part VA of the Local Government Act 1972, and set out in Annex 2.2 to this Constitution, apply.

11.4. Delegation to and from other Local Authorities

The Council may delegate non-executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority (including Parish Councils).

The Executive may delegate executive functions to another local authority or, in certain circumstances (see below), to the Cabinet of another local authority.

The circumstances that determine whether or not a function may be delegated to the Cabinet of another local authority are as follows:-

- 1) The function concerned must be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
 - a) is the responsibility of the Cabinet in both authorities;
 - b) is the responsibility of the Cabinet in the delegating authority, but the function is not a function of the authority to which it is being delegated;
 - c) is not the responsibility of the Cabinet in the delegating authority, but is the responsibility of the Cabinet in the authority to which it is being delegated;
- 2) The function concerned cannot be the responsibility of the Cabinet of the authority to which the function is being delegated in circumstances where the function concerned:-
 - a) is not the responsibility of the Cabinet in the delegating authority, and the function is not a function of the authority to which it is being delegated;
 - b) is not the responsibility of the Cabinet in both the delegating authority and the authority to which it is being delegated.

- 3) It is for the two authorities to choose whether or not the Cabinet in the authority to which it is being delegated should be responsible for the function in circumstances where the function concerned is the responsibility of the Cabinet in the delegating authority, but not in the authority to which it is being delegated.

In all cases, however, the decision as to whether or not to accept such a delegation from another local authority is reserved to the Council.

The Council and/or the Executive (as appropriate) continue to have the power to discharge the functions which are the subject of joint committee arrangements.

Functions which are the responsibility of the Executive and which are to be discharged under joint arrangements must be exercised in accordance with the Policy Framework and Budget set by the Council.

In deciding to delegate a function for which it is responsible, the Executive must satisfy itself that the delegation will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

11.5. Contracting Out

Provided there is no delegation of the Council's statutory decision-making functions, the Executive may contract out to another body or organisation those of its functions which may in law be exercised by an officer of the Council and which are either:-

- 1) subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or
- 2) under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles.

In deciding to contract out a function for which it is responsible, the Executive must satisfy itself that contracting out that function will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that the arrangements will deliver best value. The Executive remains and will be seen to remain, accountable for those functions as the clear, accountable corporate leadership of the Council.

11.6. Scrutiny of Joint Arrangements

A Scrutiny Committee whose Terms of Reference include responsibility for scrutiny of executive decisions in respect of the matter concerned is able to hold the Executive to account both for a decision to delegate or contract out a particular function and for the actual discharge of the function.

11.7. Conflicts of Interests – Membership of Joint and Scrutiny Committees

It is a fundamental principle of accountability that a Councillor cannot scrutinise his/her own decisions. Therefore:-

If the relevant Scrutiny Committee is examining specific matters in relation to the business of a joint committee or joint arrangement of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Scrutiny Committee meeting unless a local dispensation to do so is given by the Standards Committee in accordance with the Standards Committee Protocol set out in Annex 3.8 to this Constitution.

Where the relevant Scrutiny Committee is reviewing policy generally and where the specific business of a joint committee or joint arrangement of which the Councillor concerned is a Member is not a central or significant feature of that review, then the Member must declare his/her interest orally before the relevant agenda item is reached, but may speak and vote.

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12. Article 12 – Officers of the Council

12.1. Terminology

The term ‘officers’ means all employees and staff (managerial, professional, technical, administrative, clerical and manual) engaged by the Council to carry out its functions.

12.2. General Principles

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:-

- 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;
- 2) adequate support from officers is provided for the discharge of all the Council’s functions and specifically the roles of the Council, the Cabinet, Scrutiny Committees, other Committees, Boards, Panels and individual Members representing their communities, etc.;
- 3) day to day managerial and operational decisions remain the responsibility of the Council’s Directors, Assistant Directors, Heads of Service and other officers;
- 4) the Council seeks to avoid creating potential conflicts of interests for officers arising from the separation of the Cabinet and Scrutiny roles; and
- 5) all officers have access to appropriate training and development to help them support the various functions of the Council and its Members effectively.

The roles, responsibilities and rights of officers and Members are set out in the Member/Officer Protocol set out in Annex 3.4 to this Constitution.

12.3. Appointment of Officers Generally

The Council will employ such officers as it considers necessary to carry out its functions efficiently and effectively.

Appointments of officers cannot be the responsibility of the Executive.

Appointment of officers other than Directors and Chief Officers is the responsibility of the Head of Paid Service or his/her nominee(s).

12.4. Appointment of Directors and Chief Officers

The Council will employ persons for the posts, functions and areas of responsibility specified in Annex 1.11 to this Constitution (as amended from time to time), who will be designated as Directors and Chief Officers (as appropriate).

Appointments to posts of Directors and Chief Officers will be made by an Appointments Panel constituted from within the membership of an Appointments Board appointed by the full Council.

The composition of the Appointments Board, and any Panel constituted from within its membership, shall comply with Article 7.4 of this Constitution.

The political proportionality rules shall apply to the Appointments Board and to any Appointment Panel constituted from within its membership.

12.5. Statutory Officers

The Council will designate the posts specified in Articles 12.7 to 12.9 below (as amended from time to time) to discharge the functions set out in those Articles.

12.6. Management 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 Annex 5 to this Constitution.

12.7. Functions of the Head of Paid Service

The Head of Paid Service, when s/he consider appropriate, will report to the Council or to the Executive on the manner in which the discharge of the Council's functions is co-ordinated, the numbers and grades of officers required for the discharge of functions and the organisation of officers.

The Head of Paid Service may not be designated as the Council's Monitoring Officer but may hold the post of Chief Finance Officer if s/he is a qualified accountant.

12.8. Functions of the Monitoring Officer

The Monitoring Officer performs a key function in ensuring lawfulness and integrity in the operation of the Council's decision-making process including investigation and reporting on issues that embrace all aspects of the Council's functions.

In order for the Monitoring Officer to carry out his/her statutory duties and powers, the Council will need to ensure that s/he has access as necessary to meetings and papers and that Members consult with him/her regularly.

The statutory duties and powers of the Monitoring Officer are as follows:-

- 1) **Maintaining the Constitution:** to ensure an up-to-date version of the Constitution is maintained and that it is widely available for consultation by Members, Officers and the public;
- 2) **Ensuring Lawfulness and Integrity of Decision Making:** after consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the Council, or to the Cabinet in relation to an executive function, if s/he considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered;
- 3) **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;
- 4) **Access to Information:** the Monitoring Officer is the Proper Officer for this purpose and will make sure that effective arrangements exist to ensure that Cabinet decisions, together with the reasons for those decisions and relevant reports and background papers are made publicly available as soon as possible;
- 5) **Advising whether decisions are within the Policy Framework:** the Monitoring Officer will advise whether the decisions of the Cabinet and Key Decisions by officers are in accordance with the Council's Policy Framework;
- 6) **Providing Advice:** the Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, impropriety, probity and Policy Framework issues to all Councillors;
- 7) **Restrictions on Posts:** the Monitoring Officer cannot be the Chief Finance Officer (Section 151 Officer) or the Head of Paid Service.
- 8) **Exemptions from political restrictions:** The Monitoring Officer will consider and determine any requests for dispensations from Gravesham Members and voting co-opted Members in cases where the timing of a request would make it impractical to convene a meeting of the Standards Committee

The duties of the Monitoring Officer must be carried out personally but may be carried out by a deputy nominated by him/her to act in the event of absence or illness. It is the function of the Monitoring Officer to appoint a deputy, not the Council.

12.9. Functions of the Chief Finance Officer (Section 151 Officer)

The Council recognises the importance of the Chief Finance Officer's key role in providing advice on vires issues (i.e. whether or not the Council has the power to do something), maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Members of the Council.

In particular, the Chief Finance Officer has a statutory responsibility for:-

- 1) **Ensuring Lawfulness and Financial Prudence of Decision Making:** after consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council, or to the Cabinet in relation to executive functions, and the Council's external auditor, if s/he 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;
- 2) **Administration of Financial Affairs:** the Chief Finance Officer has responsibility for the administration of the financial affairs of the Council;
- 3) **Contributing to Corporate Management:** the Chief Finance Officer contributes to the Corporate Management of the Council, in particular through the provision of professional financial advice;
- 4) **Providing Advice:** the Chief Finance Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Policy Framework and Budget issues to all Councillors and will support and advise Councillors and officers in their respective roles;
- 5) **Provision of Financial Information:** the Chief Finance Officer provides financial information to Councillors and the public.

The duties of the Chief Finance Officer (apart from the administration of the financial affairs of the Council) must be carried out personally, but can be carried out by a deputy nominated by him/her in cases of absence or illness. It is the function of the Chief Finance Officer to appoint a deputy, not the Council.

12.10. Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer

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

12.11. Conduct

Officers are subject to the Officer Code of Conduct set out in Annex 3.2 to this Constitution, which is included in their terms and conditions of employment. Officers must comply with the Officer Code of Conduct.

12.12. Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules detailed in Annex 2.8 to this Constitution.

13. Article 13 – Decision making

Explanatory note

The Council is required to keep an up to date record of which part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Annex 1 of this Constitution.

13.1. Responsibility for decision making

A purpose of the Executive structure is to expedite decision making. Accordingly the intention of the Council is that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness. References to the Executive include the Leader, Cabinet or any portfolio holder or officer exercising powers individually.

The Leader, or in circumstances set out in the Constitution, the Deputy Leader, will determine the level at which decisions are made, but such decisions will only be effective when notified to and recorded by the Proper Officer unless otherwise provided for within this Constitution.

The separation of powers between the Council and the Executive is fundamental to the operation of modernised local government.

The Local Authorities (Functions and Responsibilities) Regulations 2000 as amended set out what decisions the Council must make itself and these are detailed in Article 4.2.

Annex 1.1 sets out those functions which are reserved to Full Council.

13.2. Principles of decision making

All decisions of the Council, its Committees, the Executive and those under delegated powers shall have regard to the following principles of good practice:-

- consideration of all options available;
- having regard to due consultation;
- consideration of professional advice from officers;
- clarity of aims and desired outcomes;
- the action proposed must be proportionate to the desired outcome;
- having respect and regard for human rights;
- presumption for openness;
- only relevant matters taken into account;
- due weight to all material considerations;
- proper procedures will be followed.

13.3. Types of decision

- a) Decisions reserved to Full Council – decisions relating to the matters listed in Article 4.2 will be made by Full Council and not delegated.
- b) Decisions made by Committees appointed by the Council – power to make such decisions is delegated by the Council in accordance with the terms of reference contained in Annex 1.2 of this Constitution (Section 101, Local Government Act 1972).
- c) Decisions of the Executive will comprise:-
 - i. key decisions; and
 - ii. other decisions.

“Key decisions” relate to an Executive decision, which is likely:-

- i. to result in the authority incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates;
or
- ii. to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Council’s area.

A key decision may only be made in accordance with the requirements of Annex 2.2.

In accordance with Section 9Q of the Local Government Act 2000, in determining the meaning of “significant” the Council shall determine thresholds above which items are significant and will ensure these limits are published. Such thresholds are to be found in Annex 1.17. Any decisions involving expenditure or saving above the published threshold for the service or function concerned will be a key decision. A key decision may not necessarily involve significant expenditure or savings but may however be significant in terms of its effect on communities in two or more wards within the Council’s area.

A decision taker may only make a key decision in accordance with the requirements set out in Annex 2.2.

13.4. Decision making by the Full Council

Subject to Article 13.8, when considering any matter, the Council meeting will follow the Council Procedure Rules set out in Annex 2.1 of this Constitution.

13.5. Decision making by the Executive

Subject to Article 13.8, when making an Executive decision the Executive or officer (if appropriate) exercising delegated powers will follow the requirements set out in Annex 2.2.

13.6. Decision making by the Scrutiny and Audit Committees

When considering any matter the Scrutiny and Audit Committees will follow the scrutiny procedures rule set out in Annex 2.5.

13.7. Decision making by other Committees established by the Council

Subject to Article 13.8, other Council Committees or Boards will follow those parts of the Council Procedure Rules set out in Annex 2.1 of this Constitution as apply to them.

13.8. Decision making by Council bodies acting as tribunals

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

14. Article 14 – Finance, Contracts and Legal Matters

14.1. Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Annex 2.6 to this Constitution.

14.2. Contracts

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Annex 2.7 to this Constitution.

14.3. Legal Proceedings

In accordance with the Scheme of Delegation to Officers as set out in Annex 1.13 to this Constitution (as amended from time to time) officers of the Council are authorised to institute, to defend or participate in any legal proceedings in any case where such action(s) is necessary to give effect to decisions of the Council or in any case where it is considered that such action is necessary to protect the Council's interests.

14.4. Authentication of Documents

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

14.5. Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer.

The Common Seal of the Council will be affixed to documents which are required to be sealed in compliance with the Council's Financial /Contract Procedure Rules. It will also be affixed to documents which require it due to their nature or the nature of the proceedings or transaction to which they relates.

A decision of the Council or of the Cabinet or of any subsidiary body or individual authorised by the Council or by the Cabinet to act on their behalf will be sufficient authority for sealing any document necessary to give effect to the decision.

15. Article 15 – Review and Revision of the Constitution

15.1. Duty to Monitor and Review the Constitution

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

The Monitoring Officer will also carry out a general or partial review (as appropriate) of the Constitution in the following circumstances:-

- 1) at the direction of a court or of the Secretary of State;
- 2) on the recommendation of the Local Government Ombudsman, the Council's external auditors or one of the Council's Statutory Officers appointed in accordance with Article 12.05 of this Constitution;
- 3) by a decision of the Council;
- 4) in the event that no general review of the Constitution has taken place within the preceding 10 years then, unless the Council decides otherwise, a general review shall be carried out.

On completion of a review, the Monitoring Officer will submit his/her report to the Council if s/he considers it appropriate. The Monitoring Officer has delegated authority to make minor changes to the Constitution, with significant changes presented to Full Council [as per paragraph 15.3].

15.2. Monitoring & Review of the Constitution by the Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Council's Constitution and to make recommendations to the Council for ways in which it could be amended in order better to achieve the purposes set out in Article 1 of the Constitution.

In undertaking this task the Monitoring Officer may:-

- 1) observe meetings of different parts of the Member structure;
- 2) undertake an audit trail of a sample of decisions;
- 3) record and analyse issues raised with him/her by Members, officers, the public and other bodies or persons with a legitimate interest; and
- 4) compare practices in the Council with those in other comparable authorities, or national examples of best practice.

15.3. Procedures for Changes to the Constitution

1) Changes to the Articles, Procedural Rules and Protocols, etc.

Changes to the Articles of the Constitution; the Procedural Rules set out in Annex 2; the Codes of Practice and Protocols set out in Annexes 3; and the Members' Allowances Scheme set out in Annex 4 can only be made by the full Council, which may not delegate this function.

Such proposals for changes may only be considered by the Council on receipt of a written report by the Monitoring Officer.

2) Proposals for changes to any of the Procedural Rules set out in Annexes 2; to any of the Codes of Practice and Protocols set out in Annexes 3; and/or to the Members' Allowances Scheme set out in Annex 4 may be considered and determined forthwith by the Council. The Proper Officer shall be authorised to make minor textual changes to the Articles and Annexes to the Constitution where this is necessary as a consequence of:-

- a) a decision properly made by the full Council to amend any part of them (for example cross-references, paragraph numbering, nomenclature, etc.);
- b) legislation or a court order.

3) Changes to Other Parts of the Constitution

To ensure transparency and accountability in the Council's decision-making processes, the Proper Officer shall ensure that the following parts of the Constitution are at all times kept up to date and accurately reflect the relevant decisions of the Council, its committees and sub-committees and of the Cabinet:-

- a) Summary and Explanation: giving a summary and brief explanation of the main provisions of the Constitution;
- b) Annex 1: setting out the responsibilities for functions and the delegations of those responsibilities;
- c) Annex 5: setting out the current organisational structure of the Council.

4) Change in the Form of Governance Arrangements

The Council may change its existing form of governance. A resolution is required to make such a change. A document setting out the new arrangements must be available for inspection and public notice must be given in local newspapers. The Council may be required to hold a referendum.

5) Consultation on Other Constitutional Changes

Where a proposal to change this Constitution does not involve a change in the form of governance arrangements (whether from a Leader and Cabinet form to an elected Mayoral form, or vice-versa), there will not normally be a requirement to consult with local electors and other interested persons in the Borough, unless the changes proposed will have substantial implications for all or a significant proportion of them.

16. Article 16 - Suspension, Interpretation & Publication of the Constitution

16.1. Suspension of the Constitution

1) Limits to Suspension

The Articles of this Constitution may not be suspended.

Certain elements of the Procedure Rules set out in Annex 2 to this Constitution may be suspended. Those Procedure Rules may be suspended by the Council to the extent detailed in the table set out in sub-paragraph (3) of this Article 16.1 below and permitted by the law.

2) Procedure to Suspend

A motion to suspend any Rules at a meeting of the Council 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 which it is intended to achieve, taking account of the purposes of the Constitution set out in Article 1.

3) Rules Capable of Suspension

The following Procedure Rules may be suspended to the extent indicated below:

Rules that may be Suspended	Limitations on Suspension
Annex 2.1 - Council Procedure Rules: all except paragraphs 20.5 (Right to Require an Individual Vote to be Recorded) and 21.2 (No Requirement to Sign Minutes of Previous Meeting at Extraordinary Meeting)	Suspension may only be exercised by the full Council for the consideration of specified business at a single meeting only.
Annex 2.6 – Financial Procedure Rules	Suspension may only be exercised by the full Council to the extent permitted by law. The reasons for suspension shall be stated in each case.
Annex 2.7 - Contract Procedure Rules	Suspension may only be exercised by the full Council or the Cabinet in respect of a single contract or category of contract to the extent permitted by law. The reasons for suspension shall be stated in each case.

16.2. Interpretation

The ruling of the Mayor as to the construction or application of this Constitution, or as to any proceedings of the Council, will not be challenged at any meeting of the Council.

Such interpretation will have regard to the purposes of the Constitution contained in Article 1.

16.3. Publication

The Head of Communities will:-

- 1) provide a copy of this Constitution to each Member of the Council upon delivery to him/her of that individual's declaration of acceptance of office when the Member is first elected to the Council;
- 2) ensure that copies of this Constitution are available for inspection at the Council's offices, at libraries and other appropriate locations and can be purchased by the local press and members of the public on payment of a reasonable fee;
- 3) ensure that the Summary and Explanation of this Constitution is made widely available within the Borough and is updated as necessary.