

## **The Constitution**

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

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## **Article 1 – The Constitution**

### **Powers of the Council**

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

### **The Constitution**

- 1.2 This Constitution, and all its appendices, is the Constitution of the Hastings Borough Council.

The purpose of the Constitution is to:

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

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

- 1.3 The Council will be guided by the purposes stated above in all its decision making. The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

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

### **Composition and eligibility**

#### 2.1

- a. Composition. The Council comprises 32 members, otherwise called Councillors. Two Councillors are elected by the voters of each ward in accordance with an order made by the Local Government Boundary Commission for England.
- b. Eligibility. Only registered voters of the Borough or those living or working there will be eligible to hold the office of Councillor.

### **Election and terms of Councillors**

- 2.2 Half of all Hastings Councillors will be elected every other year from 2004. The terms of office of Councillors is four years starting on the fourth day after being elected and finishing on the fourth day after the date of the next regular election. If there is a requirement for an 'all out' election for example a boundary change, then of the two Councillors in each ward, the one that receives the highest number of votes will, be elected for a period of 4 years. The other Councillor in each ward will be elected for a period of 2 years to maintain the Council's 2 yearly electoral cycle.

### **Roles and functions of all Councillors**

#### 2.3

- a. Key roles. All Councillors will:
  - i. collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - ii. represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;
  - iii. deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - iv. balance different interests identified within the ward and represent the ward as a whole;
  - v. be involved in decision-making;
  - vi. be available to represent the Council on other bodies; and
  - vii. maintain the highest standards of conduct and ethics.
- b. Rights and duties
  - i. Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
  - ii. Councillors will not make public, information which is confidential or exempt or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.

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

## **Conduct**

- 2.4 Councillors will at all times observe the Councillors’ Code of Conduct and the Protocols set out in Part 5 of this Constitution.

## **Allowances**

- 2.5 Councillors will be entitled to receive allowances in accordance with the Councillors’ Allowances Scheme set out in Part 6 of this Constitution.

## Article 3 – Citizens and The Council

### Citizens' rights

3.1 Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- a. Voting and petitions. Citizens on the electoral roll for the Borough have the right to vote in elections and to petition a request for a referendum for an elected mayor form of Constitution.
- b. Information. Citizens have the right to:
  - i. attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - ii. attend meetings of the Cabinet when key decisions are being considered;
  - iii. find out from the Forward Plan what key decisions will be taken by the Cabinet and when;
  - iv. see reports and background papers, and any records of decisions made by the Council and the Cabinet; and
  - v. inspect the Council's accounts and make their views known to the External Auditor.
- c. Participation. Citizens have the right to participate in the Council's question time and may contribute to investigations by the Overview and Scrutiny Committee if invited to.
- d. Complaints. Citizens have the right to complain to:
  - i. the Council itself under its complaints procedure;
  - ii. the Ombudsman after using the Council's own complaints procedure;
  - iii. the Monitoring Officer about a breach of the Councillors' Code of Conduct.

3.2 Citizen's responsibilities

Citizens must not be violent, abusive or threatening to Councillors or Officers.

## Article 4 – The Full Council

### Meanings

#### 4.1

- a. Policy Framework. The policy framework means the following plans and strategies:-
  - i. The Corporate Plan;
  - ii. Crime and Disorder Reduction Strategy;
  - iii. Plans and strategies which together comprise the Local Plan
  - iv. Plan and strategies which together comprise the Housing Strategy
  - v. The Pay Policy

Such other plans and strategies as the Council shall, from time to time, determine that shall form part of the policy framework.

- b. Budget. The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the control of its investments.

### Functions of the Full Council

#### 4.2 Only the Council will exercise the following functions:

- a. adopting and changing the Constitution, with the exception of minor amendments, including legislative updates, which will be delegated to the Chief Legal Officer;
- b. approving and adopting the policy framework and the budget
- c. subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to or not wholly in accordance with, the budget;
- d. appointing the Leader of the Council;
- e. agreeing and/or amending the terms of reference for Committees of Council, deciding on their composition and making appointments to them;
- f. adopting or amending the Councillors' Code of Conduct;
- g. agreeing the mechanism for appointments to outside bodies;
- h. adopting an allowances scheme under Article 2.5;
- i. changing the name of the Borough, conferring the title of Honorary Alderman or Freedom of the Borough;
- j. confirming the appointment and dismissal of the Head of Paid Service, and the dismissal of the Monitoring Officer and Section 151 Officer having taken account of:
  - i. any advice, views or the recommendations of the Employment Committee;



- ii. the conclusions of any investigation into the proposed dismissal; and
  - iii. any representations from the relevant Officer.
- k. making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or bills;
  - l. all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet; and
  - m. all other matters which, by law, must be reserved to Council.

## **Council Meetings**

4.3 There are four types of Council meeting:

- a. the annual meeting;
- b. ordinary meetings;
- c. special meetings such as that to set the annual budget;
- d. extraordinary meetings.

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

## **Responsibility for functions**

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

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

### **Role and function of the Mayor**

- 5.1 The Mayor and Deputy Mayor will be elected by the Council annually from amongst the Councillors. The Mayor and in his / her absence, the Deputy Mayor will have the following responsibilities:
- a. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
  - b. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
  - c. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Councillors who are not on the Cabinet are able to hold it to account;
  - d. to promote the Borough and public involvement in the Council's activities;
  - e. in order to promote the Borough, to attend such civic and ceremonial functions as the Council and he/she determines.

## **Article 6 – Overview and Scrutiny Committee**

### **Terms of reference**

- 6.1 At the Annual Meeting the Council shall appoint such Overview and Scrutiny Committee as it sees fit. It will discharge the functions conferred by Section 21 of the Local Government Act 2000.

### **General role**

- 6.2 Within the terms of reference, the Overview and Scrutiny Committee will:
- a. review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
  - b. make reports and/or recommendations to the Full Council and/or the Cabinet in connection with the discharge of any functions;
  - c. consider any matter affecting the area or its inhabitants;
  - d. exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet; and
  - e. exercise such other functions as shall be allocated to it from time to time by statute or subordinate legislation.

### **Specific functions**

- 6.3 Policy development and review

The Overview and Scrutiny Committee may:

- i. assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
- ii. conduct research, community and other consultation in the analysis of policy issues and possible options;
- iii. advise the Cabinet on mechanisms to encourage and enhance community participation in the development of policy options;
- iv. question members of the Cabinet and Chief Officers about their views on issues and proposals affecting the area; and
- v. liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

- b. Scrutiny

The Overview and Scrutiny Committee may:

- i. review and scrutinise the decisions made by and the performance of the Cabinet and Council Officers both in relation to individual decisions;
- ii. review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;

- iii. question members of the Cabinet and Chief Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
  - iv. make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process;
  - v. review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and local people about their activities and performance; and
  - vi. question and gather evidence from any person (with their consent).
- c. Finance
- The Cabinet is required to meet reasonable requests for funding from the Overview and Scrutiny Committee. Funding should be used for specific activities in support of the functions outlined in the Terms of Reference under 6.1. If the Cabinet refuses funding then the Overview and Scrutiny Committee can ask the Full Council to determine whether or not the funding should be granted.
- d. Officers
- Officer support for Scrutiny Project Groups and other Officer support for the overview and scrutiny function will be arranged by the Continuous Improvement and Democratic Services Manager.
- e. Annual report: The Overview and Scrutiny Committee may report annually to Full Council on its workings and may make recommendations for consideration of their future work programmes and amended working methods, if appropriate.

## **Proceedings of Overview and Scrutiny Committee**

- 6.4 The Overview and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

## **Article 7 – The Cabinet**

### **Role**

- 7.1 The Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### **Form and composition**

- 7.2 The Cabinet will consist of the Council Leader (who shall be the Chair of the Cabinet), the Deputy Leader, and at least one, but not more than eight, Councillors appointed annually to the Cabinet by the Leader.

The Local Government Act 2000 provides that the political balance rules do not necessarily apply to a Cabinet or Committees of a Cabinet.

### **Leader and Deputy Leader**

- 7.3 The Leader will be a Councillor elected to the position of Leader by the Council at the annual meeting or if there is a vacancy in the position of Leader of the Council, the Council shall, at its next meeting, elect a Leader of the Council. The Leader will hold office:
- a. For a term of office which starts on the day of his/her election as Leader, and ends on the day of the post-election annual meeting which follows his/her election as Leader; or until
    - i. he or she resigns from the office; or
    - ii. he or she is no longer a Councillor; or
    - iii. he or she is removed from office by resolution of the Council; or
    - iv. he or she is otherwise disqualified by law.
  - b. The Leader shall appoint one of the members of the Cabinet to be the Council's Deputy Leader at the post-election annual meeting. The Deputy Leader shall hold office until:
    - i. the end of the term of the Leader; or
    - ii. the Leader removes the Deputy Leader from office giving written notice of the removal to the Chief Legal Officer; or
    - iii. he or she resigns from office; or
    - iv. he or she is no longer a Councillor; or
    - v. he or she is removed from office by resolution of the Council; or
    - vi. he or she is otherwise disqualified by law.
  - c. If for any reason there shall be a vacancy in the position of Deputy Leader, the Leader shall appoint another Deputy Leader from among the members of the Cabinet.
  - d. If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in his/her place.

- e. If for any reason the Leader is unable to act or the office of Leader is vacant, and the Deputy Leader is unable to act or the office of Deputy Leader is vacant the remaining members of the Cabinet must either act collectively in the Leader's place or they must arrange for a Cabinet member to act in the place of Leader.

### **Other Cabinet Members**

- 7.4 Other Cabinet members will be Councillors who shall hold office until:
- a. they resign from office; or
  - b. they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
  - c. they are no longer Councillors; or
  - d. they are removed from office by the Leader, who must give written notice of the removal to the Chief Legal Officer
  - e. they are otherwise disqualified by law.

### **Proceedings of the Cabinet**

- 7.5 Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4 of this Constitution.

### **Responsibility for functions**

- 7.6 The Leader will maintain the list in Part 3 of this Constitution setting out which individual members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the exercise of particular Cabinet functions.

### **Decision Making**

- 7.7 Decisions made in Cabinet are made collectively on a vote of a simple majority.

## **Article 8 – Regulatory and other Committees**

### **Regulatory and other Committees**

8.1 The Council will appoint the Committees set out in Part 3 of this Constitution under the heading Responsibility for Council Functions to discharge the functions described.

### **Composition of the Planning Committee, Environment and Safety Committee and Licensing Committee.**

8.2

- a. A member of the Cabinet with portfolio will not be able to serve on the Licensing Committee, Environment and Safety Committee, Planning Committee or any other regulatory Committee.
- b. No member of these Committees shall take part in any debate or vote on any matter in relation to which the member has predetermined his/her decision on the matter.
- c. Members whose professional or personal interests might create regular conflict of interest in matters coming before the Planning Committee should not be appointed to the Planning Committee. A member who is about to act in a professional or private capacity in any matter in which the Council has an interest should give notice of such intention to the Monitoring Officer.
- d. The Planning Protocol contained in Part 5 of the Constitution applies to Planning Committee Members.
- e. For all Regulatory Committees, in cases where the Chair or Vice Chair is not available to Chair the meeting (or part of), the Legal Officer advising the Committee will ask for a nomination for Chair for the duration of the meeting (or part of). The nomination must be of a permanent member of that Committee and not a substitute. The nomination must be seconded and a majority vote taken by those Councillors sitting on that Committee.

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

### **Standards Committee**

9.1 The Council will establish a Standards Committee.

### **Composition**

9.2 Membership.

a. The Standards Committee will be composed of five members of the Council. At least one Independent Person will be invited to attend. The Political Balance Rules do not strictly apply to the Standards Committee, but will be applied to the Councillor membership of the Committee. No more than one Councillor member of the Standards Committee may be a member of the Cabinet and that member may not be the Leader of the Council.

b. The appointment of Independent Person(s) must be approved by a majority of the members of the Council.

c. A meeting of the Standards Committee will not be quorate unless at least three members are present for its duration.

d. Members of the Standards Committee may on written application to the Monitoring Officer (or Deputy Monitoring Officer) at least three working days prior to the meeting of the Standards Committee appoint substitutes for that meeting, only if in the opinion of the Monitoring Officer (or Deputy Monitoring Officer) in consultation with the Chair or Vice Chair of the Standards Committee, sitting Councillors have a conflict of interest in any matter to be considered by the Standards Committee at that meeting.

9.3 Independent Persons. The Council must appoint at least one Independent Person to carry out the following advisory functions:

a. to give the Standards Committee their view on any allegations it has decided to investigate, before a decision is reached;

b. to give the Standards Committee their view on any sanctions to be imposed, before a decision on sanctions is reached;

c. to provide support as necessary to the Councillor against whom a standards complaint is made.

### **Role and function**

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

a. promoting and maintaining high standards of conduct by Councillors and co-opted members;

b. assisting Councillors and co-opted members to observe the Councillors' Code of Conduct;

c. advising the Council on the adoption or revision of the Councillors' Code of Conduct.

d. monitoring the operation of the Councillors' Code of Conduct;

e. granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Councillors' Code of Conduct (this function is also available to the Monitoring Officer);



- f. hearing and determining standards complaints made against Councillors in accordance with Council procedure and imposing or recommending sanctions where appropriate;

## **Article 10 – Joint Arrangements**

### **Arrangements to promote well being**

- 10.1 The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:
- a. enter into arrangements or agreements with any person or body;
  - b. co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
  - c. exercise on behalf of that person or body any functions of that person or body.

### **Joint arrangements**

10.2

- a. The Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not Cabinet functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- b. The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Cabinet functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- c. Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members may, but need not, reflect the political composition of the local authority as a whole.
- d. The Cabinet may appoint members to a joint committee from outside the Cabinet if the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the joint committee any Councillor who is a Councillor for a ward which is wholly or partly contained within the area;  

The political balance requirements may, but need not, apply to such appointments.
- e. Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

### **Access to information**

10.3

- a. The Access to Information Rules in Part 4 of this Constitution apply.
- b. If all the members of a joint committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.
- c. If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

## **Delegation to and from other local authorities**

10.4

- a. The Council may delegate its functions to another local authority
- b. The Cabinet may delegate Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances.
- c. The decision whether or not to accept such a delegation from another local authority shall be reserved to the Full Council.

## **Contracting out**

- 10.5 The Council and / or the Cabinet may contract out their respective functions to another body or organisation where such functions
- i. which may be exercised by an Officer and
  - ii. which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994; or
  - iii. under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles,  
provided there is no delegation of the Council's discretionary decision-making.

## **Article 11 – Officers**

### **Management Structure**

#### 11.1

- a. General. The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions. Appointment of staff cannot be the responsibility of the Cabinet. Appointment of staff below the level of Managing Director must be the responsibility of the Head of Paid Service or his/her nominee.
- b. Chief Officers. The Council (by a committee or sub-committee) will engage persons for such posts, as it may from time to time decide, collectively described as “Chief Officers” in this Constitution.
- c. The Council will designate the following posts as:-
  - i. Managing Director – Head of Paid Service
  - ii. Chief Legal Officer – Monitoring Officer
  - iii. One of the Assistant Directors – Chief Finance OfficerSuch posts will have the functions described in Article 11.2 - 11.4 below.
- d. 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 at Part 7 of this Constitution. Changes made to this Structure do not constitute amendments to this Constitution.

### **Functions of the Head of Paid Service**

#### 11.2

- a. Discharge of functions by the Council. The Head of Paid Service will, from time to time, report to Full Council on the manner in which the discharge of the Council’s functions is co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.
- b. Restrictions on functions. The Head of Paid Service may not be the Monitoring Officer but, if a qualified accountant, may hold the post of Chief Finance Officer.

### **Functions of the Monitoring Officer**

#### 11.3

- a. Maintaining the Constitution. The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Councillors, staff and the public.
- b. Ensuring lawfulness and fairness of decision making. After consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the Full Council, or to the Cabinet in relation to Cabinet functions, if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- c. Supporting the Standards Committee. The Monitoring Officer will contribute to the

promotion and maintenance of high standards of conduct through provision of support to the Standards Committee

- d. Conducting investigations. The Monitoring Officer will conduct investigations or arrange for investigations into complaints alleging breach of the Code of Conduct and make reports or recommendations in respect of them to the Standards Committee in accordance with procedures adopted by the Council.
- e. Proper Officer for access to information. The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.
- f. The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.
- g. Providing advice. The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- h. Restrictions on posts. The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

## **Functions of the Chief Finance Officer**

### 11.4

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

## **Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

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

## **Conduct**

- 11.6 Officers will comply with the Officer's Code of Conduct and the Protocol on Officer/Councillor Relations set out in Part 5 of this Constitution.

## **Employment**

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

## **Article 12 – Decision Making**

### **Responsibility for decision making**

12.1 The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Parts 3 and 8 of this Constitution.

### **Principles of decision making**

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

- a. proportionality (i.e. the action must be proportionate to the desired outcome);
- b. due consultation and the taking of professional advice from Officers;
- c. respect for human rights (see below for further details);
- d. a presumption in favour of openness;
- e. clarity of aims and desired outcomes; and
- f. reasonable and based only upon relevant information.

An explanation of what options were considered and the reasons for the decision will be included as part of the record of any decision.

### **Types of decision**

12.3

- a. Decisions reserved to Full Council.

Decisions relating to the functions listed in Article 4.2 will be made by the Full Council and not delegated.

- b. Key decisions

- i. A key decision means a Cabinet decision which is likely to involve expenditure or savings in excess of £250,000 or which is likely to have a significant effect on communities living or working in an area comprising two or more wards.
- ii. A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

### **Decision making by the Full Council**

12.4 Subject to Article 12.8, The Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

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

12.5 Subject to Article 12.8, The Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

## **Decision making by the Overview and Scrutiny Committee**

12.6 The Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

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

12.7 Subject to Article 12.8, Other Committees and Sub-Committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

## **Decision making by Council bodies acting as tribunals**

12.8 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 and the Human Rights Act 1998.

## **Decision making by Ward Councillors**

12.9 The Council and Cabinet are able to delegate authority to individual Ward Councillors to make decisions in relation to matters affecting their ward. Where delegation has been given, the Ward Councillor is required to produce a record of decisions, which are accessible by the public for six years. The Ward Councillor is required to act in accordance with a protocol agreed by the Council or Cabinet when exercising the power.

## **Call-over**

12.10 The Council, Cabinet and Committees may operate a call-over process to determine which matters on the agenda are to be discussed and those that are to be agreed without discussion. The Chair of the meeting may undertake the call-over and all matters which are not called are the subject of a motion from the Chair to agree all matters not called.



## **Article 13 – Finance, Contracts and Legal Matters**

### **Financial management**

- 13.1 The management of the Council's financial affairs will be conducted in accordance with the Financial Rules set out in Part 9 of this Constitution.

### **Contracts**

- 13.2 Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 9 of this Constitution.

### **Legal proceedings**

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

### **Authentication of documents**

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

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

- 13.5 The Common Seal of the Council will be kept in a safe place in the custody of the Chief Legal Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Chief Legal Officer should be sealed. The affixing of the Common Seal will be attested by the Chief Legal Officer or some other person authorised in that regard by the Chief Legal Officer.

### **Common Seal of Hastings Housing Company**

- 13.6 The Common Seal of the Hastings Housing Company will be kept in a safe place in the custody of the Chief Legal Officer. A decision of the Hastings Housing Company, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Chief Legal Officer should be sealed. The affixing of the Common Seal will be attested by the Chief Legal Officer or some other person authorised in that regard by the Chief Legal Officer.

## **Article 14 – Review and Revision of the Constitution**

### **Duty to monitor and review the Constitution**

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

### **Protocol for monitoring and review of Constitution by the Monitoring Officer**

- 14.2 A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:
- a. observe meetings of different parts of the Councillor and Officer structure;
  - b. undertake an audit trail of a sample of decisions;
  - c. record and analyse issues raised with him/her by Councillors, Officers, the public and other relevant stakeholders; and
  - d. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### **Changes to the Constitution**

- 14.3 Changes to the Constitution will be approved by the Full Council. However, minor changes, not affecting the substance of the Constitution, such as correction of typographical errors, updating of legislation, changes in job titles or the management structure, may be made by the Monitoring Officer in consultation with the Leader of the Council and the Chair of Working Arrangements Group.

## **Article 15 – Suspension, Interpretation and Publication of the Constitution**

### **Suspension of the Constitution**

15.1

- a. Limit to suspension. The Articles of this Constitution may not be suspended.
- b. Procedure to suspend Standing Orders. The procedure to suspend Standing Orders is set out in Part 4 of this Constitution. The extent and duration of suspensions will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

### **Interpretation**

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

### **Publication**

15.3

- a. The Monitoring Officer will make available a copy of this Constitution to each Councillor of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the Councillor first being elected to the Council
- b. The Monitoring Officer will ensure that copies are available for inspection on request at the Council offices, and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- c. The Monitoring Officer will ensure that the Constitution is made readily available within the area and is updated as necessary. The Constitution can be found on the Council's Website at [www.hastings.gov.uk](http://www.hastings.gov.uk).

## **Schedule 1: Description of Executive Arrangements**

The following parts of this Constitution constitute the Executive arrangements:

1. Article 6 (Overview and Scrutiny Committee) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;
3. Article 10 (Joint Arrangements);
4. Article 12 (Decision Making) and the Access to Information Procedure Rules;
5. Part 3 (Responsibility for Functions).