

Part 2

Articles of the Constitution

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Article 1 – The Constitution

1.01 Powers of the Council

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

1.02 The Constitution

This Constitution in all its parts, is the Constitution of the Ashford Borough Council.

The purpose of the Constitution is to:

1. Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
2. Support the active involvement of citizens in the process of local authority decision-making;
3. Help Councillors represent their constituents more effectively;
4. Enable decisions to be taken efficiently and effectively;
5. Create a powerful and effective means of holding decision-makers to public account;
6. Ensure that no Member of the authority 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; and
8. Provide a means of improving the delivery of services to the community.

1.03 Interpretation and Review 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 above.

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

Article 2 – Members of the Council

2.01 Composition and Eligibility

(a) Composition

The Council consists of 43 Members (otherwise called Councillors). One or more Members will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.

(b) Eligibility

Only registered local government electors of the Borough, or those living, working, occupying land as an owner or a tenant will be eligible to hold the office of Councillor.

2.02 Election and Terms of Councillors

Election and Terms. The regular election of Councillors will be held on the first Thursday in May every four years. The current Council was elected in May 2011 and the next election will be in May 2015. The terms of office of Councillors will be four years starting on the fourth day after being elected and will finish on the fourth day after the date of the next regular election four years later.

2.03 Roles and Functions of all Councillors

(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) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (iii) effectively represent the interests of their ward and of individual constituents;
- (iv) respond to constituents' enquiries and representations, fairly and impartially;
- (v) participate in the governance and management of the Council; and
- (vi) maintain the highest standards of conduct and ethics.

(b) **Rights and Duties.**

Councillors:

- (i) 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; (A copy of the 'Rights of Access to Meetings and Documents by Councillors' is contained in Appendix 3 to the 'Access to Information Procedure Rules' as contained in Part 4 of this Constitution) and
- (ii) will not make public, information which is exempt or confidential or without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.

For these purposes, "exempt" and "confidential" information are defined in the Access to Information Procedure Rules as contained in Part 4 of this Constitution.

2.04 Conduct

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations as contained in Part 5 of this Constitution.

2.05 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme as contained in Part 6 of this Constitution.

Article 3 – Citizens and the Council

3.01 Citizens' Rights

Citizens have the following rights. Rights to information and to participate are explained in more detail in the Access to Information Procedure Rules and Appendix I thereto as contained in Part 4 of this Constitution:

- (a) **Voting and Petitions.** Citizens on the Electoral Register for the area have the right to vote and sign a petition to request a referendum for an elected Mayor form of Constitution.
- (b) **Information.** Citizens have the right to:
 - (i) Attend meetings of the Council, the Executive and all other Committees except where exempt or confidential information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) Find out from the Forward Plan what key decisions will be taken by the Executive and when;
 - (iii) See reports and background papers, and any records of decisions made by the Council and the Executive except where exempt or confidential information is likely to be disclosed; and
 - (iv) Inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to participate in Meetings of the Council, the Executive and all other Committees as described in the Council's Scheme of Public Participation as set out in Appendix II to the Access to Information Procedure Rules as contained in Part 4 of this Constitution, and may contribute to investigations by the Overview and Scrutiny Committee and to policy development via a Policy Advisory Group at the invitation of that Committee and Group.
- (d) **Complaints.** Citizens have the right to complain to:
 - (i) The Council itself under its Complaints Procedure;
 - (ii) The Local Government Ombudsman after using the Council's Complaints Procedure; and

- (iii) The Borough Council's Monitoring Officer about the conduct of a Borough, Parish or Town Councillor in the Ashford Borough Area provided the complaint relates to conduct which is, or may be, a breach of the Councillor Code of Conduct.

3.02 **Citizens' Responsibilities**

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

Article 4 –Full Council

4.01 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- Best Value Performance Plan;
 - Community Strategy;
 - Crime and Disorder Reduction Strategy;
 - Local Transport Plan;
 - Plans and strategies and alterations thereto which together comprise the Local Development Framework.

The Council can adopt additional plans to form part of the policy framework.

- (b) **Budget.** The budget includes:-
- (i) The allocation of financial resources to different services and projects;
 - (ii) Provision of contingency funds, such as balances;
 - (iii) Council Tax base;
 - (iv) Setting the Council Tax;
 - (v) Decisions relating to the control of the Council's borrowing requirement;
 - (vi) Overall control of the Council's capital expenditure, and funding and
 - (vii) Setting of virement limits.
- (c) **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 Section 35 of the Leasehold Reform, Housing and Urban Development Act 1993 for the inclusion of a disposal in a disposals programme or for consent to that disposal under Section 32 (power to dispose of land held for the purposes of Part II) or Section 43 (consent required for certain disposals not within Section 32) of the Housing Act 1985.

4.02 **Functions of the full Council**

Only the Council will exercise the following functions. A more detailed list of functions is contained in Part 3, Appendix 1.

- (a) Adopting and changing the Constitution;
- (b) Approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- (c) Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) Electing the Leader (Minute No. 324/12/10);
- (e) Agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;
- (f) Appointing representatives to outside bodies unless the appointment is a matter for determination by the Executive or has been delegated by the Council;
- (g) Changing the name of the area, conferring the title of Honorary Alderman or the Freedom of the Borough;
- (h) Adopting an Allowances Scheme under Article 2.05;
- (i) Confirming the appointment of the Head of Paid Service;
- (j) Making, amending, revoking, re-enacting, adopting or enforcing bylaws and the promotion of opposition to the making of local legislation or personal Bills;
- (k) The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities in relation to the discharge of functions which are not the responsibility of the Executive;
- (l) Power to resolve not to issue a Casino Premises Licence;
- (m) Functions in relation to the Council's Licensing Policy. This includes the adoption of statements of principles in relation to

Family Entertainment Centre Gaming Machine Permits or Prize
Gaming Permits.

4.03 **Council meetings**

There are four types of Council meeting:

- (a) the Annual Meeting;
- (b) Ordinary Meetings;
- (c) Extraordinary Meetings; and
- (d) Special Meetings.

These will be conducted in accordance with the Council's General Procedure Rules in Part 4 of this Constitution.

4.04 **Responsibility for Functions**

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

Article 5 – Chairing the Council

5.01 Role and Function of the Mayor

The Mayor and in his absence, the Deputy Mayor will have the following roles and functions:

- (a) **The Symbol of the Council and First Citizen.** The Mayor will represent and promote the Council as a whole and its area in all Civic and Ceremonial matters and act as a focal point for the community.
- (b) **The Council Meeting.** The Mayor will preside at meetings of the Full Council, promoting the efficient despatch of business and due observation of the requirements of this Constitution and in particular the Council's General Procedure Rules having due regard to the rights of Councillors and the interests of the public.

5.02 Responsibilities

The Mayor will be elected by the Council annually. S/he will have no authority to take Executive decisions, but will have the following principal responsibilities:

1. To uphold and promote the purposes of the Constitution, and to interpret the Constitution when 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 the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the Executive are able to hold the Executive to account.
4. To promote public involvement in the Council's activities;
5. To be the first citizen of the Borough and the focus of local democracy;
6. To attend such civic and ceremonial functions as the Council and s/he determines appropriate; and
7. To determine, in the absence of the Overview and Scrutiny Committee Chairman whether an urgent decision which is contrary to the policy framework may reasonably be regarded as urgent in the circumstances. If the Mayor does not agree, then the matter must be referred to the Full Council for decision;

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NB This procedure will only be used if it is impracticable to convene a quorate meeting of the Full Council in the time available before the decision must be made.

Article 6 – Overview and Scrutiny Committee, Policy Advisory Group, Task Groups and Participative Groups

6.01 Terms of Reference

The Overview and Scrutiny Committee

The Council will appoint an Overview and Scrutiny Committee to discharge the functions conferred by Section 21 of the Local Government Act 2000 or Regulations under Section 32 of the Local Government Act 2000.

The functions reflect the individual Portfolio Holders who comprise the Executive. (Page No 61 to 78 refers).

The Policy Advisory Group.

This Group considers issues referred to it by the Executive, Full Council, or the Leader or Deputy Leader or Portfolio Holder or Chief Executive in consultation with the Leader or Deputy Leader. The terms of reference of the Group mirror those of the Overview and Scrutiny Committee detailed above. They help inform the Executive and Full Council on policy development. The Group is also used as the mechanism to enable any Councillor who is not a Member of the Executive to feed views into the development of any partnership plan/strategy. The Group is broadly politically balanced, and may include the Executive Member whose portfolio includes the subject matter of the policy being developed. The operation of the Group allows the Council's tradition of working together at Member level in the interests of the Borough's citizens to continue. They enable all Members of the Council whether Members of the Executive or not to have input into policy development outside of the context and constraints of the Full Council and the Overview and Scrutiny Committee process. The Group can question and gather evidence from any person (with their consent).

Task Groups

The Groups consider issues referred to them by the Council, Executive, Overview and Scrutiny or Policy Advisory Group and when they have dealt with the specific issues they are disbanded. The recommendations of the Task Group are considered by the Committee which established them.

Participative Groups

Participative Groups consider issues referred to them by either the Leader or Deputy Leader, or Portfolio Holder or Chief Executive and when they have dealt with the issue they shall be disbanded. At least once every six months the findings and conclusions of the Groups work shall be submitted to the appropriate Portfolio Holder and the Leader and Deputy Leader of the Council. The membership of the Groups shall be cross party

and will not be subject to political balance and can also include Council Officers and representatives from outside the Council. The composition of the Group will be determined by its founders in consultation with the relevant Head of Service. Special Responsibility Allowance will not be payable to those Members participating but travel and mileage allowance for attendance will be payable. Reasonable expenses may, at the discretion of the respective Head of Service, be paid to those participating in the Group. (Minute No 93/7/10).

6.02 **General Role**

Within their terms of reference:

The Overview and Scrutiny Committee may:

- (i) Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) Make reports and/or recommendations to the Full Council and/or the Executive and/or any Joint or Area Committee in connection with the discharge of any functions (the decision making power remains with the original decision taker);
- (iii) Consider any matter affecting the area or its inhabitants; and
- (iv) Exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive and/or any Executive Committee, Executive Member or Area Committees or Officer(s).

The Policy Advisory Group may:

- (i) Support the work of the Executive and the Council as a whole by developing policy;
- (ii) Make reports and recommendations to the Executive and/or the Council on its policies and budgets etc.

Task Groups may:

- (i) Support the work of the Executive, the Council, Overview and Scrutiny and Policy Advisory Group;
- (ii) Make reports and recommendations to the Council, Executive, Overview and Scrutiny and Policy Advisory Group.

6.03 Specific Functions

- (a) **Overview and Scrutiny Committee may:**
- (i) Review and scrutinise the decisions made by and performance of the Executive, Executive Committees, Executive Members and Council Officers both in relation to individual decisions and over time;
 - (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 Executive, Members of other appropriate Committees and Council 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 Executive, other appropriate Committees and/or the Council arising from the outcome of the overview and 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 appropriate Overview and Scrutiny Committee and local people about their activities and performance;
 - (vi) Question and gather evidence from any person (with their consent).
 - (vii) **Finance.** The Overview and Scrutiny Committee and Policy Advisory Group may exercise via the Senior Scrutiny Support Officer overall responsibility for the finances made available to them. This budget is to be used to support scrutiny and policy review work.
 - (viii) **Annual Report.** The Overview and Scrutiny Committee must report annually to full Council on their work and make recommendations for future work programmes and amended working methods if appropriate.
 - (ix) **Officers.** The Overview and Scrutiny Committee may exercise overall responsibility for the work programme of the Officers employed to support their work.

(b) **Policy Development and Review.**

The Overview and Scrutiny Committee may:

- (i) Assist the Council and the Executive 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) Consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) Question Members of the Executive and/or Committees and Chief Officers about their views on issues and proposals affecting the area;
- (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.

The Policy Advisory Group may:

- (i) support the work of the Executive and the Council as a whole by considering issues referred to them by the Executive, Full Council, or by the Leader or Deputy Leader or by the Portfolio Holder or Chief Executive in consultation with the Leader or Deputy Leader;
- (ii) Make reports and recommendations to the Executive and/or the Council on the issues referred either by way of a 'Chairman's Report' or by the inclusion of the Groups view within an Officer's report to the Executive or Full Council upon the issue concerned.

6.04 Proceedings of the Overview and Scrutiny Committee

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

Article 7 – Executive

Note: Article 7 has been amended to reflect the new Executive arrangements to take effect after the May 2011 elections (Minute No. 324/12/10 refers).

7.01 Role

The Executive will carry out all of the Council's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

7.02 Form and Composition

The Executive will consist of the Leader together with between two and nine Councillors appointed to the Executive by the Leader. The Cabinet may be composed of one or more parties.

7.03 Leader

The Leader will be a Councillor elected to the position of Leader by the Council. The term of office for the Leader will start on the day of his/her election as Leader and end on the day of the next post Local Election Annual Meeting which follows his/her election as Leader. The Leader will hold office unless he/she:-

- (i) resigns from the office;
- (ii) is suspended from being a Member under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of the suspension);
- (iii) is no longer a Councillor (otherwise than by expiration of office);
- (iv) is removed from office by resolution of the Council on the basis of a motion signed by five Members of the Council and included on the agenda for a Council Meeting. Such motion must be given in writing to the Proper Officer at least 14 days prior to the relevant meeting and shall indicate the reasons for the motion. The motion shall take precedence over any other item of business.

7.04 Other Executive Members

Only Councillors may be appointed to the Executive. There may be no co-optees, deputies or substitutes for Executive Members. Neither the Mayor nor Deputy may be appointed to the Executive and Members of the Executive (including the Leader) may not be Members of the Overview and Scrutiny Committee.

Other Executive Members are appointed by the Leader and shall hold office until the end of the term of office of the Leader or until they:

- (a) Resign from the office of Executive Member;
- (b) Are removed from office by the Leader;
- (c) Are suspended from being Councillors by virtue of action under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (d) Are no longer Councillors.

7.05 Deputy Leader

The Leader will appoint one of the Members of the Cabinet (Executive) to be his/her Deputy, to hold office until the end of the term of office of the Leader (unless the person resigns as Deputy Leader, ceases to be a Councillor or is disqualified or removed from office by the Leader). The Leader may if he/she thinks fit, remove the Deputy Leader from office, but must then appoint another person in his/her place.

7.06 Absent Leader

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. 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.

7.07 Removal of Leader

As referred to in 7.03 (iv) above and authorised by Section 44 (C) of the Local Government Act 2000 (as amended) provision is made for removal of the Leader by resolution. The Act further specifies that if the Council passes a resolution to remove the Leader, a new Leader is to be elected:-

- (i) at the meeting at which the Leader is removed from office, or
- (ii) at a subsequent meeting.

7.08 Proceedings of the Executive

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

7.09 **Responsibility for Functions**

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

NB: Details of delegations to Executive Members are contained at the foot of the individual Executive Members Portfolio of responsibilities.

All delegations to Officers are contained in a separate schedule in Part 3 of this Constitution.

Article 8 – Regulatory and Other Committees

8.01 Regulatory and Other Committees

The Council will appoint the Committees set out in Part 3 of this Constitution to discharge the functions described beneath each of them.

Article 9 –Standards Committee

9.01 Standards Committee

The Council will establish a Standards Committee. Standards Sub-Committees including an Assessment Panel, Review Panel and a Hearings Panel, comprising of Members of the Standards Committee, to deal with local assessments, determinations, investigations etc.

9.02 Composition

(a) **Membership.** The Standards Committee will be composed of:

- Five Councillors (other than the Leader);
- Three persons who are not Councillors or Officers of any other body having a Standards Committee (Independent Members). The Council is responsible for making these appointments.
- Three Members of Parish Councils wholly or mainly in the Council's area (a parish member) nominated by the Ashford Branch of the Kent Association of Parish Councils (Minute No. 337/12/07 refers).

(b) **Independent Members.**

- Independent Members will be entitled to vote at meetings;
- Independent Members to the Standards Committee will be recruited following public advertisement. Applicants will be short-listed and interviewed by an Independent Members Interview Panel composed of non-Council Members. This Panel will make recommendations to the Council as to the identity of persons to be appointed as Independent Members of the Standards Committee. The Council will confirm or reject the recommendations. See 9.02 (a) above.

(c) **Parish Members.** The Parish Member must normally be present when matters relating to Parish Councils or their members are being considered although this does not apply to Sub-Committee meetings;

(d) **Assessment Panel, Review Panel and Hearings Panel**

- The Standards Committee may also constitute Sub-Committees which will be called The Assessment Panel, The

Review Panel and Hearings Panel to consider complaints received by the Standards Committee post 8th May 2008. For the detailed terms of reference and guidance please refer to Part 3, Appendix 4 of this Constitution. (Page Nos 155 to 220 refer).

- (e) **Chairing the Committee.** The Chairman of the Committee will be elected at the first meeting of the Standards Committee each year. The Chairman must be an Independent Member. The Sub-Committees of the Standards Committee must also be chaired by an Independent Member.

9.03 **Role and Function**

The Standards Committee will have the following roles and functions:

- (a) Consideration and determination of reports following referrals for local investigation or local determination (Minute No. 577(ii)/5/05 refers).
- (b) Promoting and maintaining high standards of conduct by Councillors and Co-opted Members;
- (c) Assisting Councillors, Co-opted Members to observe the Members' Code of Conduct;
- (d) Advising the Borough and Parish Councils and the members of those Councils on the adoption, operation, review and amendment of Local Codes of Conduct;
- (e) Monitoring the operation of the Members' Code of Conduct and receiving periodic reports from the Monitoring Officer in relation thereto;
- (f) Mentoring, training, monitoring and compliance by Councillors and Co-opted Members (and where applicable Parish Councils) with all the Member's and other appropriate Codes of Conduct and procedures such as Procedure Rules, Constitutions and the Complaints Procedure;
- (g) Granting dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
- (h) Undertaking initial assessments, reviews and hearings into allegations that Councillors have breached the Code of Conduct.

- (i) So far as relevant, the exercise of (a) to (h) above in relation to Parish Councils in its area and the members of those Parish Councils;
- (j) Monitoring of Ombudsman investigations and reports and findings of maladministration including the receipt of periodic reports thereon from the Monitoring Officer and/or the Senior Scrutiny Officer;
- (k) Monitoring of Issues of Probity raised in Ombudsman investigations;
- (l) Monitoring and keeping under review the corporate complaints procedures and complaints relating to Councillors, Co-opted Members or to Officers' conduct;
- (m) Monitoring and promotion of protocols and standards of behaviour for Councillors, Co-opted Members and Officers of the Borough Council;
- (n) Monitoring and review of procedures for Councillors, Co-opted Members and Officers relating to dealings with outside organisations including appropriate indemnification;
- (o) Monitoring and review of procedures for Councillors, Co-opted Members and Officers relating to the acceptance of gifts and hospitality and the declaration of pecuniary and non-pecuniary interests;
- (p) Regularly reviewing the arrangements for training Councillors and Co-opted Members in Local Government law and procedures.
- (q) The consideration of applications received from any officers of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government Act 1989 in respect of the post held by that Officer and can direct the Authority that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of the Act.
- (r) Upon application and following consideration of the Assessment Panel to direct the authority to include a post in the list maintained under Section 2(2) of the 1989 Act.

NOTES

1. Only one Member of the Committee at any one time also to be a Member of the Executive of the Borough Council.

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2. Whilst the Standards Committee has the role of advising the Council upon issues relating to Councillor and Officer codes of conduct, it has no role in relation to staff disciplinary or grievance procedures as they are applied in individual cases.
3. The following legal requirements designed to promote the independence and impartiality of the Standards Committee should be noted:
 - It be comprised of at least four Members;
 - 25% of Members of the Committee must be independent of the Borough and Parish Councils wholly or mainly in its area.
 - At least one Independent Member must always be present;
 - There must be a Parish Council Member on the Committee who is not a Borough Councillor;
 - Political balance does not apply.

Article 10 – Area Committees and Forums

10.01 Area Committees and Forums

The Council may appoint Area Committees or Forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of Best Value and efficient, transparent and accountable decision making.

The Council will consult with relevant Parish and Town Councils and the Chairmen of relevant Parish Meetings when considering whether and how to establish Area Committees or Forums within parished areas.

10.02 Form, Composition and Function

- (a) **Table of Area Committees/Forums.** The Council will facilitate or contribute to the establishment of a number of Community Forums. At the time this Constitution was being revised in May 2003 the Community Forums which were ‘active’ or in the process of being established are set out in the first column of the table below, composed as set out in the second column of that table and with the terms of reference set out in the third column.

Name of Committee	Composition	Terms of Reference
<p>Willesborough Community Forum (covering all or part of the following Polling Districts):</p> <p>North Willesborough (NW.1 and NW.2)</p> <p>Highfield (HI.1)</p> <p>Aylesford Green (AG.1 and AG.2)</p> <p>South Willesborough (SW.1)</p>	<p>These bodies will be consultative initially. The membership of the Forum(s) will be: Borough Councillors and County Councillors who represent wards/divisions within the areas covered by the Forums;</p>	<p>The Forum(s) are consultative and act in an advisory capacity. They may submit reports on matters of concern locally to the Executive or to the Council. They will be a key consultee on the development of the Community Plan in so far as it affects those areas. They will be consulted on plans and strategies of other bodies which will have an impact upon the residents</p>
<p>Kennington Community Forum (covering all or part of the following Polling Districts)</p> <p>Kennington (KE.1 and KE2.)</p> <p>Little Burton Farm (LBF.1)</p>	<p>The Borough Councils, Communications Partnerships – Forums and Consultation Portfolio Holder (to serve on each</p>	<p>They will be consulted on plans and strategies of other bodies which will have an impact upon the residents</p>

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Name of Committee	Composition	Terms of Reference
<p>Bybrook (BY.1)</p> <p>Bockhanger (Grosvenor Hall) (BO.1)</p> <p>Oaklands Community Association (covering all or part of the following Polling Districts)</p> <p>Victoria (Watercress) (VI.1)</p> <p>Beaver (BE.1 and BE.2)</p> <p>Central Ashford Community Forum (covering all or part of the following Polling Districts)</p> <p>Stour (ST.1 and ST.2)</p> <p>Victoria (Town Centre) (VI.2)</p> <p>Godinton (GO.1 and GO.2)</p> <p>South Ashford</p> <p>Victoria (V1.3 and V1.4 only)</p> <p>Singleton South (S1.1 and S1.2)</p> <p>Beaver (BE.1 and BE.2)</p> <p>Norman (NO.1 and NO.2)</p>	<p>Area Forum)</p> <p>Residents and people who work within the respective areas.</p>	<p>and people who work or provide services within the those areas.</p>

NB: In the event that Area Forums are reconstituted as Area Committees this Article of the Constitution will be amended.

Article 11 – Joint Arrangements

11.01 Arrangements to Promote Well-Being

The Executive, 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.

11.02 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions, which are not executive functions, in any of the participating authorities, or to advise the Council thereon. Such arrangements may involve the appointment of a Joint Committee with those other local authorities.
- (b) Nothing in (a) above enables the Council to arrange for the discharge of any of its functions by another local authority if, or to the extent that, the function is also a function of the other local authority and is the responsibility of the other local authority's Executive.
- (c) Arrangements made under (a) above with respect to the discharge of any of the Council's functions shall cease to have effect in relation to those functions if, or to the extent that:
 - (i) the Council are operating or begin to operate Executive arrangements, and those functions become the responsibility of the Executive of the Council; or
 - (ii) the authority with whom the arrangements are made (in relation to a function which is also a function of that authority) and that authority are operating or begin to operate Executive arrangements, and the function becomes the responsibility of that authority's Executive.
- (d) Nothing in (b) or (c) above affects arrangements made by the Council in arranging for the discharge of functions of and by another local authority.
- (e) The Executive may establish joint arrangements with one or more local authorities to exercise functions which are executive functions.

Such arrangements may involve the appointment of Joint Committees with those other local authorities.

- (f) Except as set out below, the Executive may only appoint Executive Members to a Joint Committee, and those Members need not reflect the political composition of the local authority as a whole.
- (g) The Executive may appoint Members to a Joint Committee from outside the Executive in the following circumstances:
- 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 Executive may appoint to the Joint Committee any Councillor who is a Member for a ward which is wholly or partly contained within the area;
 - The Joint Committee is between the County Council and Borough Council and relates to functions of the Executive of the County Council. In such cases, the Executive of the County Council may appoint to the Joint Committee any Councillor who is a member for an Electoral Division which is wholly or partly contained within the area.
 - In both of these cases the political balance requirements do not apply to such appointments.
- (h) Details of joint arrangements including any delegations to Joint Committees and Officers are contained in Part 3 of this Constitution.

11.03 **Access to Information**

- (a) The Access to Information Procedure Rules as contained in Part 4 of this Constitution apply.
- (b) If all the Members of a Joint Committee are Members of the Executive in each of the participating authorities then its access to information regime is the same as that applied to the Executive.
- (c) If the Joint Committee contains Members who are not on the Executive of any participating authority then the Access to Information Rules in Part VA of the Local Government Act 1972 will apply.

11.04 **Delegation To and From Other Local Authorities**

- (a) The Council may delegate non-executive functions to another local authority or, in certain circumstances, the Executive of another local authority.
- (b) The Executive may delegate executive functions to another local authority or the Executive of another local authority in certain circumstances.
- (c) The decision as to whether or not to accept such a delegation from another local authority shall be reserved to the Full Council.

11.05 **Contracting Out**

- (a) The Executive may contract out to another body or organisation functions which are subject to an Order under Section 70 of the Deregulation and Contracting Out Act 1994, (functions of local authorities) to the extent that the functions are the responsibility of the Executive or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, where there is no delegation of the Council's discretionary decision making.
- (b) The Executive may revoke such an arrangement or authorisation to the extent that the Section 70 function is an Executive function.

Article 12 – Officers

12.01 Management Structure

- (a) **General.** The Chief Executive will submit to the Full Council for approval a staffing structure which he considers appropriate to carry out its functions.
- (b) **Chief Officers.** The Full Council will engage persons for the following posts, who will be designated Chief Officers:

Post	Functions and Areas of Responsibility
Chief Executive (Head of Paid Service)	<p>To provide strong managerial leadership, motivating and inspiring the Council's staff in ensuring that all members of the Council are fully supported in their various roles and that Council policies are effectively implemented in order to achieve the Authority's strategic and corporate objectives as efficiently and economically as possible.</p> <p>To ensure that the Council is organised effectively and is able to respond to changing needs, that operational accountabilities are clearly defined and appropriately managed and that all services and staff have clear objectives that relate directly to the delivery of the Corporate Plan.</p>
Deputy Chief Executive	<p>To support the Chief Executive in carrying out the above roles, and to deputise for the Chief Executive as necessary.</p> <p>Section 151 Officer</p>

- (c) **Head of Paid Service, Monitoring Officer and Chief Finance Officer.**

The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Head of Legal and Democratic Services	Monitoring Officer
Deputy Chief Executive	Chief Finance (Section 151) Officer

Such posts will have the functions described in Article 12.02–12.04 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.

12.02 **Functions of the Head of Paid Service**

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

12.03 **Functions of the Monitoring Officer**

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.
- (b) **Ensuring Lawfulness and Fairness of Decision Making.** After consulting with the Head of Paid Service, and Chief Finance (Section 151) Officer, the Monitoring Officer will report to the Full Council or to the Executive 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 following a report by a Local Commissioner. 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) **Receiving Reports.** The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of Case Tribunals.
- (e) **Conducting Investigations.** The Monitoring Officer will conduct or make arrangements for investigations into matters referred by Ethical Standards Officers and make reports or recommendations in respect of them to the Standards Committee.

- (f) **Proper Officer for Access to Information.** The Monitoring Officer will ensure that Executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.
- (g) **Advising Whether Executive Decisions are Within the Budget and Policy Framework.** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.
- (h) **Providing Advice.** The Monitoring Officer will provide advice on the scope of powers, authority to take decisions, maladministration, probity and policy framework issues to all Councillors and Co-opted Members.
- (i) **Restrictions on Posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

12.04 **Functions of the Chief Finance (Section 151) Officer**

- (a) **Ensuring Lawfulness and Financial Prudence of Decision Making.**

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance (Section 151) Officer will report to the Full Council or to the Executive in relation to an executive function and the Council's external auditor if 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.
- (b) **Administration of Financial Affairs.** The Chief Finance (Section 151) Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to Corporate Management.** The Chief Finance (Section 151) Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing Advice.** The Chief Finance (Section 151) Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.

- (e) **Give Financial Information.** The Chief Finance (Section 151) Officer will provide financial information to the media, members of the public and the community.

12.05 **Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance (Section 151) Officer**

The Council will provide the Monitoring Officer and Chief Finance (Section 151) Officer with such Officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 **Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations as contained in Part 5 of this Constitution.

12.07 **Employment**

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

Article 13 – Decision Making

13.01 Responsibility for Decision Making

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

13.02 Principles of Decision Making

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

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consultation and the taking of professional advice from Officers;
- (c) Respect for Human Rights (see below for further details);
- (d) A presumption in favour of openness; and
- (e) Clarity of aims and desired outcomes.
- (f) The record of decisions will include details of the options considered and the reasons for the decision.

13.03 Types of Decision

- (a) **Decisions Reserved to Full Council.** Decisions relating to the functions listed in Article 4.02 and Part 3 of this Constitution will be made by the Full Council and not delegated.
- (b) **Key Decisions.**
 - (i) A 'Key Decision' is an Executive decision which is likely to:
 - Result in the Council 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
 - Be significant in terms of its effects on communities living or working in an area comprising two or more wards of the Council's area.

- In accordance with Section 38 of the Local Government Act 2000, in determining the meaning of “significant” for the purposes of the above, regard shall be had to any guidance for the time being issued by the Secretary of State.
- (ii) A decision taker may only make a ‘Key Decision’ in accordance with the requirements of the Executive Procedure Rules as contained in Part 4 of this Constitution.

13.04 Decision Making by the Full Council

Subject to Article 13.08, the Full Council will follow the Council Procedure Rules as contained in Part 4 of this Constitution when considering any matter.

13.05 Decision Making by the Executive

Subject to Article 13.08, the Executive will follow the Executive Procedure Rules as contained in Part 4 of this Constitution when considering any matter.

13.06 Decision Making by the Overview and Scrutiny Committee

The Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules as contained in Part 4 of this Constitution when considering any matter.

13.07 Decision Making by other Committees and Sub-Committees Established by the Council

Subject to Article 13.08, other Council Committees and Sub-Committees will follow those parts of the Council Procedure Rules as contained in Part 4 of this Constitution as apply to them.

13.08 Decision Making by Council Bodies Acting as Tribunals

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

Article 14 – Finance, Contracts and Legal Matters

14.01 Financial Management

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

14.02 Contracts

Every contract made by the Council will comply with the Contracts Procedure Rules as contained in Part 4 of this Constitution.

14.03 Legal Proceedings

The Head of Legal and Democratic Services 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 Head of Legal and Democratic Services considers that such action is necessary to protect the Council's interests.

14.04 Authentication of Documents

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

Any contract with a value exceeding that specified within the Financial Procedure Rules entered into on behalf of the Council in the course of the discharge of an Executive function shall be made in writing. Such contracts must either be signed by at least two Officers of the authority or made under the Common Seal of the Council attested by the Head of Legal and Democratic Services or other authorised signatory.

14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal and Democratic Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal and Democratic Services should be sealed. The affixing of the Common Seal will be attested by the Head of Legal and Democratic Services or another solicitor employed by the Council.

Article 15 – Review and Revision of the Constitution

15.01 Duty to monitor and review the constitution

The Selection and Constitutional Review Committee will consider any recommended revision to the Constitution and make recommendations to the Council in respect thereof.

Protocol for Monitoring and Review of Constitution by Monitoring Officer. A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

- (a) Observe meetings of different parts of the Member and Officer structure;
- (b) Undertake an audit trail of a sample of decisions;
- (c) Record and analyse issues raised with him by Members, Officers, the public and other relevant stakeholders; and
- (d) Compare practices in this Council with those in other comparable Councils, or national examples of best practice.

15.02 Changes to the Constitution

- (a) **Approval.** Changes to the Constitution will only be approved by the Full Council after consideration of a proposal by the Executive, Overview and Scrutiny Committee or the Selection and Constitutional Review Committee or the Monitoring Officer.
- (c) **Change from a Leader and Cabinet Form of Executive to a Mayoral Form of Executive.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum.

Article 16 – Suspension, Interpretation and Publication of the Constitution

16.01 Suspension of the Constitution

- (a) **Limit to Suspension.** The Articles of this Constitution may not be suspended. The Council Procedures Rules; Contract Procedures Rules and Financial Procedures Rules may be suspended by the Full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to Suspend.** A motion to suspend any Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are present at the meeting. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution as contained in Article 1.
- (c) **Rules Capable of Suspension.** Only the Council's Procedure Rules, Contract Procedures Rules and Financial Procedure Rules may be suspended in accordance with Article 16.01.

16.02 Interpretation

Interpretation of the Constitution will have regard to the purposes of the Constitution as contained in Article 1.03. 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 as contained in Article 1.

16.03 Publication

- (a) The Proper Officer will give a printed copy or a CD Rom of this Constitution to each Member of the authority upon delivery to him of the individual's Declaration of Acceptance of Office on the Member first being elected to the Council.
- (b) The Proper Officer will ensure that copies of this Constitution are available for inspection at council offices, libraries, on the Council's internet site 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 Proper Officer will ensure that a summary of the Constitution is made widely available within the area and is updated as necessary.

Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the Executive arrangements:

		Page No(s)
Article 6:	Overview and Scrutiny Committee and the Overview and Scrutiny Procedure Rules as contained in Part 2 and Part 4 of this Constitution;	21 and 541
Article 7:	Executive and the Executive Procedure Rules as contained in Part 2 and Part 4 of this Constitution;	25 and 525
Article 10:	Area Committees and Forums (when the Council decides upon the final form of Area Forums);	33
Article 11:	Joint Arrangements as contained in Part 2 and Part 3 of this Constitution;	35 and 233
Article 13:	Decision Making and the Access to Information Procedure Rules as contained in Part 2 and Part 4 of this Constitution;	42 and 399
Part 3:	Responsibility for Functions as contained in Part 3 of this Constitution.	49

Part 2
Articles of the Constitution -
Suspension, Interpretation and Publication of the Constitution