

PART 2 – ARTICLES OF THE CONSTITUTION

	<u>Page No.</u>
Article 1 The Constitution	2
Article 2 Members of the Council	2-3
Article 3 The Public and the Council	3-4
Article 4 The Full Council	4-5
Article 5 Chairing the Council	6-7
Article 6 Scrutiny Panels	7-8
Article 7 The Executive	8-10
Article 8 Regulatory and other Committees	10
Article 9 The Standards Committee	10-11
Article 10 Local Engagement Forums and the Rural Forum	11
Article 11 Joint Arrangements	11-12
Article 12 Officers	13-15
Article 13 Decision-Making	15-16
Article 14 Finance, Contracts and Legal Matters	16-17
Article 15 Review and Revision of the Constitution	17
Article 16 Suspension, Interpretation and Publication of the Constitution	17-18
Schedule 1 Description of Executive Arrangements	18

Articles of the Constitution

Article 1 – The Constitution

1.1 Powers of the Council

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

1.2 The Constitution

These articles comprise the Constitution of the Swale Borough Council and should be read in conjunction with the Appendices.

1.3 Purpose of the Constitution

The purpose of the Constitution is to:

- (1) Enable the Council to provide clear leadership to the community in partnership with the public, 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 one will review or scrutinise a decision in which they were directly involved;
- (7) Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (8) Provide a means of improving the delivery of services to the community.

1.4 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

2.1 Composition and Eligibility

- (a) **Composition.** The Council will comprise 47 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Boundary Commission for England and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the Borough or those living or working or owning land or premises there will be eligible to hold the office of Councillor.

2.2 Election and Terms of Councillors

Election and terms. The ordinary election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May in each year beginning in 2003, except that in 2005, and every fourth year after there will be no regular election. The terms of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later. The Council is currently considering moving to whole council elections, which would mean that all councillors would stand for election in 2011, and then every four years.

2.3 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) 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, without the consent of the Council 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 Procedural Rules in Part 4 of this Constitution.

2.4 Conduct

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

2.5 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution. The Scheme is approved by full Council following advice from an independent Members' Allowances Panel.

Article 3 – Citizens and the Council

3.1 Citizen's Rights

The public have the following rights. Their rights to information and to participate are

explained in more detail in the Procedural Standing Orders in Part 4 of this Constitution:

- vote at local elections if they are register to vote;
- Petition to request a referendum on a mayoral form of Executive.
- Contact their local councillor about any relevant matters of concern to them
- Obtain a copy of the constitution
- Attend meetings of the Council, Executive, Committees, Area Forums etc except where exempt or confidential items are being discussed and to speak/ask questions/present petitions in accordance with the public participation scheme.
- Contribute, when invited, to investigations and reviews undertaken by Scrutiny Panels
- Find out from the forward plan what key decisions will be taken by the Executive and when.
- See reports and background papers (except where confidential or exempt) and any record of decisions made by the Council and Executive.
- Complain if they think the Council has not followed its procedures properly, using the Council's complaints process; to the local government ombudsman after using the Council's complaints process first.
- Complain to the Monitoring Officer if they have evidence to suggest that a councillor has not followed the Council's Code of Conduct.
- Inspect the Council's accounts and make their views known to the external auditor.

The Council welcomes participation by local people in its work. If you would like to be regularly consulted about matters of interest to you then join the Council's on-line citizen's panel 'Voice for Swale'. Contact policy@swale.gov.uk

3.2 Citizen's responsibilities

A healthy democracy depends upon active citizenship. Citizens are encouraged to make conscientious use of their roles both as voters, by voting at every opportunity, and as members of the wider community. The Council welcomes participation by local people in its work. If you would like to be regularly consulted about matters of interest to you then join the Council's citizen's panel 'Voice for Swale'.

Citizens must not be violent, abusive or threatening to members or officers and must not wilfully damage things owned by the council, members or officers. Citizen's are asked that they treat our staff and premises with respect and consideration.

Article 4 – The Full Council

The full council is responsible for approving the budget and policy framework

4.1 Meanings

- (a) Policy Framework - The Policy Framework means the relevant plans and strategies set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Some plans and strategies are required by law to be part of the policy

framework, where others are for the Council to decide whether they should form part of the policy framework.

Those required by the above Regulations or recommended by Guidance are:

- Annual Report and Performance Plan (Best Value Performance Plan)
- Community Strategy
- Community Safety Strategy (Crime and Disorder Reduction Strategy)
- Local Transport Plan
- Plans and strategies which together comprise the Development Plan (LDF)
- Food Law Enforcement Service Plan
- The Plan and Strategy which comprise the Housing Investment Programme
- The Cultural Strategy
- Asset Management Plan

The Council has decided to include the following:

- Corporate Plan and supporting strategies
- Equalities Strategy
- Climate Change Policy

- (b) Budget - This includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits. This includes the Treasury Management Strategy (reviewed annually in February/March) and the outcome of the previous year's strategy (reported to Council in June/July) and the Medium Term Financial Strategy (reviewed annually in February/March).

4.2 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or 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 an executive functions which is covered by the policy framework budget where the decision maker is minded to make it in a matter which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget,
- (d) appointing the Leader and Members of the Executive;
- (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 an executive function or has been delegated by the Council;
- (g) changing the name of the area, conferring the title of Honorary Alderman or Freeman of the Borough;
- (h) adopting a Members' Allowances Scheme, after considering recommendations made by the Independent Members Allowances Panel;

- (i) confirming the appointment of the Head of the Paid Service following a recommendation from the Appointments Committee.
- (j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (k) All local choice functions set out in Part 3 of the constitution which the Council decides should be undertaken by itself rather than the Executive and
- (l) all other matters which, by law, must be reserved to Council.

4.3 Council Meetings

There are three types of Council meeting:

- (a) the Annual Meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

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

4.4 Responsibility for Functions

Part 3 of the Constitution sets out the responsibilities for the Council's functions which are not the responsibility of the Executive.

Article 5 – Chairing the Council

5.1 Role and function of the Mayor

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

Ceremonial Role

Paul Millard, in his book "Civic Ceremonial", describes the role of the Mayor as "a symbol of the Authority, a symbol of an open society and an expression of social cohesion." The Mayor will represent the Council at all civic and ceremonial events, acting as the ambassador for the Borough. The Mayor is the symbol of the Council and the official representative of the Crown, taking precedence in the Borough over all others except Royalty or the Queen's representative the Lord Lieutenant.

Chairing the Council Meeting

The Mayor will be elected by the Council annually. The 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 Members who are not on the Executive are able to hold the Executive to account.
- (d) To promote public involvement in the Council's activities.
- (e) To be the conscience of the Council; and
- (f) To attend such civic and ceremonial functions as the Council and he/she determines appropriate.

Article 6 – Scrutiny Committees

6.1 Terms of Reference

The Council will establish Scrutiny Committees to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations under section 32 of the Local Government Act. The Council has two Scrutiny Committees:-

- Scrutiny
- Policy Overview

The terms of reference for these Committees are set out in the constitution.

6.2 General role

Within their terms of reference, Scrutiny Panels will:

- (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 policy, in connection with the discharge of any functions;
- (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 policy or area committees.

6.3 Specific Functions

- (a) Policy - development and review. Scrutiny Panels 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 Committees 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 - Scrutiny Panels may:
- (i) review and scrutinise the decisions made by, and performance of, the Executive and Committees 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 and/or Committees and Chief Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
 - (iv) make recommendations to the Executive or appropriate Committee 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 Panel and local people about their activities and performance; and
 - (vi) question and gather evidence from any person (with their consent).
- (c) The Scrutiny Committees shall exercise overall responsibility for any finances made available to them.
- (d) Annual Report – the Scrutiny Committees must report annually to the full council on their work and make recommendations for future work programmes and amended working methods if appropriate.

6.4 Proceedings of Scrutiny Panels

Scrutiny Panels will conduct their proceedings in accordance with Procedural Standing Orders set out in Part 4 of this Constitution.

Article 7 – The Executive

7.1 Role

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

7.2 Form and Composition

The Executive will consist of the Leader together with at least two but not more than nine additional councillors who shall be appointed by the Council, following a recommendation by the Leader.

7.3 Leader

The Leader will be a Councillor elected by the Council to the position of Leader at its Annual Meeting or at the next meeting when a vacancy occurs. The Leader will hold office until:

- (a) the next Annual Council meeting; or
- (b) he/she resigns from the office; or

- (c) is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (d) is no longer a Councillor; or
- (e) is removed from office by resolution of the Council.

7.4 Other Executive Members

Other Executive members shall be elected by Council at the annual meeting or at the next meeting after a vacancy, except that the Leader may make an interim appointment to replace an Executive member subject to ratification at the next council meeting. All councillors are eligible to serve as members of the Executive. Executive Members will hold office until:

- (a) the next annual meeting; or
- (b) they resign from office; or
- (c) 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
- (d) they are no longer Councillors; or
- (e) the Council replaces them on the recommendation of the Leader.
- (f) they are transferred to another Portfolio.

7.5 Auxiliary Executive Members/ Portfolio Assistants

Portfolio Assistants will operate as set out below:-

- (a) The Portfolio Assistants are informal appointments, made by the Group and not by the Council. As such they do not receive any special responsibility allowance. At the request of the relevant Executive Member, they can be asked to deputise for them at external meetings for which they would receive appropriate travelling and subsistence allowance, in accordance with the Members Allowances Scheme in Part 6 of this Constitution.
- (b) Portfolio Assistants have no decision-making powers and do not have any direct influence on decision-making, which does not, in most cases, affect their ability to take part in Scrutiny.
- (c) The arrangement of Portfolio Assistants is intended to be informal and relatively low key.
- (d) The arrangement will provide training and development opportunities for those Members involved.
- (e) The Portfolio Assistants will be well briefed on current issues, and will be copied in on any papers distributed to Portfolio Holders.
- (f) Portfolio Assistants are to be invited to any meetings or events in which Portfolio Holders are involved.
- (g) Officers are advised not to give Portfolio Assistants any information that they would not be prepared to give to a Member of an opposition group.

(h) The number of Portfolio Assistants will be no greater than the number of Portfolio Holders.

7.6 Proceedings of the Executive

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

7.7 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.

Article 8 – Regulatory and Other Committees

8.1 Regulatory and Other Committees

The Council will appoint the Committees set out in the left hand column of the table – Responsibility for Council Functions – in Part 3 of this Constitution to discharge the functions described in column 3 of that table.

Article 9 – The Standards Committee review all of this in light of new arrangements agreed.

9.1 Standards Committee

The Council has established a Standards Committee and Sub-Committees to deal with allegations into complaints that councillors have breached the code of conduct.

9.2 Composition

Political Balance – Standards Committees do not have to comply with the political balance rules contained in Section 15 of the Local Government and Housing Act 1989.

- (a) Membership – The Standards Committee will be composed of:
 - (b) a maximum of six Borough Councillors;
 - (ii) three people who are not Councillors or an Officer of any other body having a Standards Committee (an independent Member)
 - (iii) two members of a Parish Council wholly or mainly in the Council's area (a Parish Member – appointed by the Swale Branch of the Kent Association of Parish Councils).
- (b) Independent Members – Independent Members will be entitled to vote at meetings.
- (c) Parish Members - A Parish Member must be present when matters relating to those Parish Councils or their Members are being considered.
- (d) Chairing the Committee - An Independent Member will chair the Committee. A Member of the Executive may not chair the Committee.

9.3 Role and Function

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors and co-opted Members;

- (b) assisting the Councillors and co-opted Members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer to the Monitoring Officer;
- (h) the exercise of (a) to (g) above in relation to the Parish Councils wholly or mainly in its area and the Members of those Parish Councils.

The terms of reference are set out in Part 3 of the Constitution.

Article 10 – Local Engagement Forums

10.1 Form, Composition and Function

The Council has established three Local Engagement Forums which comprise of councillor representatives for that area from Swale Borough Council, Kent County Council, the Kent Association of Local Councils, and from the Local Strategic Partnership.

Local Engagement Forums will comply with the Access to Information Rules contained in the Procedural rules in Part 4 of this Constitution. Further information about the Local Engagement Forums is contained in Part 3 of the Constitution.

8.2 Swale Rural Forum - Form, Composition and Function

The Council has established a Rural Forum which is made up of councillors from wards in the Leader + Programme area, the Executive Member for Environment and the Kent Association of Local Authorities, and various representatives from other organisations such as the National Farmers Union and the Diocese of Canterbury.

8.3 Rural Forum – Access to information

The Rural Forum will comply with the Access to Information Rules contained in the Procedural Standing Orders in Part 4 of this Constitution.

Article 11 – Joint Arrangements

11.1 Arrangements to Promote Well-being

The Executive, to promote the economic, social or environmental well-being of Swale, 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.

11.2 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 advise the Council. [Such arrangements may involve the appointment of a Joint Committee with those other local authorities.]

(b) 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 the other local authorities.

(c) 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.

(d) The Executive may appoint Members to a Joint Committee from outside the Executive 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 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.

In both of these cases the political balance requirements do 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.

11.3 Access to Information

(a) The Access to Information Rules contained in the Procedural Rules in Part 4 of this Constitution will apply to Joint Committees.

(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.

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

11.5 Contracting Out

The Council, for functions which are not Executive functions, and the Executive – for Executive functions may contract out to another body or organisation, functions which may be exercised by an Officer and which are subject to an Order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the

Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision-making.

Article 12 – Officers

2.1 Management Structure

(a) General - The full Council may engage such staff (referred to as Officers) as it considers necessary 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 (and Head of Paid Service)	Overall corporate management and operational responsibility, including overall management responsibility for all officers. Provision of professional advice to all parties in the decision making process. Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions. Representing the Council on partnership and external bodies (as required by statute or the Council). Organisational development and policy (including communications).
Director of Corporate Services (and Monitoring Officer)	Legal, Democratic, Estates, Audit, Printing, Finance, Governance and Scrutiny
Director of Operational Services	Parking and Highways, Emergency Planning, Facilities, Safety and Security, Waste, Environmental Health, Environmental Response, Environmental Protection, IT Services, Customer Services Centre and District Offices, Council Tax, and Benefits.
Director of Regeneration	Development Control, Planning Policy Planning Administration, Cultural Development, Sustainable Development, Voluntary and Community Sector, Leisure, Swale Forward Partnership, Homelessness and Housing Development, Private Housing, Staying Put.

(c) Head of Paid Service, Monitoring Officer and Chief Financial Officer. The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Director of Corporate Services	Monitoring Officer
Head of Legal	Deputy Monitoring Officer
Head of Finance	Chief Finance Officer

Such posts will have the functions described in Article 12.2–12.4 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. The management structure of the Authority is set out at Part 7 of this Constitution.

12.2 Functions of the Head of Paid Service

(a) Discharge of functions by the Council - The Head of the 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 the Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

12.3 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 the Head of the Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Executive in relation to an Executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

(c) Supporting the Standards Committee - The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

(d) Receiving reports - The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of the case tribunals.

(e) Conducting investigations - The Monitoring Officer will conduct 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 or Head of Finance 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 and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.

(i) Restrictions on posts - The Monitoring Officer cannot be the Chief Finance Officer or the Head of the Paid Service.

12.4 Functions of the Chief Finance Officer

(a) Ensuring lawfulness and financial prudence of decision-making - After consulting the Head of the Paid Service and the Monitoring Officer, the Chief Finance 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 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 will provide financial information to the media, members of the public and the community.

12.5 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

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

12.6 Conduct

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

12.7 Employment

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

Article 13 – Decision-Making

13.1 Responsibility for Decision-Making

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

13.2 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;
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes

13.3 Types of Decision

- (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 an Executive decision which, is likely -

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

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in Swale.

Note: The financial threshold in relation to the significant level for key decisions has been agreed as £100,000. (Minute No. 280(15)/7/05 refers).

(ii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

13.4 Decision-Making by the Full Council

Subject to Article 13.8, the Council meeting will follow the Council Procedural Rules as set out in Part 4 of this Constitution when considering any matter.

13.5 Decision-Making by the Executive

Subject to Article 13.8, the Executive will follow the Procedure Rules relating to the Executive as set out in Part 4 of this Constitution when considering any matter.

13.6 Decision-Making by Scrutiny Panels

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

13.7 Decision-Making by other Committees, Panels and Working Groups established by the Council

Subject to Article 13.8, other Council Committees, Panels and Working Groups will follow those parts of the Council’s Procedure Rules set out in Part 4 of this Constitution as apply to them.

13.8 Decision-Making by Council bodies acting as tribunals

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

Article 14 – Finance, Contracts and Legal Matters

14.1 Financial-Management

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

14.2 Contracts

Every contract made by the Council will comply with the Contract Procedure Rules as set out in Part 4 of this Constitution.

14.3 Legal Proceedings

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

14.4 Authentication of Documents

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

14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal. A decision of the Council, or 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 should be sealed. The affixing of the Common Seal will be attested by the Head of Legal or some other person authorised by him/her.

Article 15 – Review and Revision of the Constitution

15.1 Duty to Monitor and Review the Constitution

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

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 it could be amended 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 and 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.

15.2 Changes to the Constitution

Changes to the Constitution will only be approved by the full Council after consideration of the proposals by the Executive and any informal working group or arrangements agreed by the Monitoring Officer and Leader.

Article 16 – Suspension, Interpretation and Publication of the Constitution

16.1 Suspension of the Constitution

- (a) Limit to suspension - The Articles of this Constitution may not be suspended. The Rules of Procedure relating to meetings of the Council as to the proceedings and business of

the Council may be suspended by the full Council to the extent permitted within those Procedure Rules and the law.

(b) Procedure to suspend - A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors who are eligible to attend and vote at the meeting are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

16.2 Interpretation

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

16.3 Publication

(a) The Proper Officer will give a printed copy of this Constitution to each Member of the authority upon delivery to him/her of that individual's Declaration of Acceptance of Office on the Member first being elected to the Council.

(b) The Proper Officer, will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by Members of the local press and the public on payment of a reasonable fee. The Constitution will also be available to view on www.swale.gov.uk/dso

(c) The Proper Officer will ensure that the 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:

1. Article 6 (Overview and Scrutiny Panels) and the Procedural Rules that relate to Scrutiny;
2. Article 7 (The Executive) and the Procedural Rules that relate to the Executive;
3. Article 10 (Local Engagement Forums/Area Forum);
4. Article 11 (Joint arrangements);
5. Article 13 (Decision-making) and the Procedural Rules that relate to Access to Information;
6. Part 3 (Responsibility for Functions).