

Part 2: Articles of the Constitution

Article 1 – The Constitution

Powers of the Council

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

The Constitution

This Constitution, and all its appendices, is the Constitution of the Elmbridge Borough Council.

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 citizens, businesses and other organisations;
2. support the active involvement of citizens in the process of 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.

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

Composition and eligibility

- (a) **Composition.** The Council will comprise forty-eight Members, otherwise called Councillors. Three Councillors 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 voters of the area or those living or working there will be eligible to hold the office of Councillor.

Election and terms of Councillors

The ordinary election of a third of all Councillors will normally be held on the first Thursday in May in each year, except that in 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.

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 their ward and represent their ward as a whole;
- (v) be involved in decision-making; and
- (vi) be available to represent the Council on other bodies.

(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) Councillors have a duty to maintain the highest standards of conduct and ethics; and
- (iv) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Procedure Rules in Part 5 of this Constitution.

Conduct

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in Part 6 of this Constitution, and such other protocols as may from time to time be approved by the Council.

Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 7 of this Constitution.

Article 3 – Citizens and the Council

Citizens' rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Procedure Rules in Part 5 of this Constitution:

- (a) Voting and petitions.** Citizens on the electoral roll 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 and its committees except for those parts of the meeting where confidential or exempt information is likely to be disclosed, and where that part of the meeting is therefore held in private;
 - (ii) attend meetings of the Cabinet when Key Decisions are being discussed and made;
 - (iii) find out from the Forward Plan what Key Decisions will be taken by the Cabinet and when;
 - (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet; and
 - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) Complaints.** Citizens have the right to complain to:
- (i) the Council itself under its complaints process;
 - (ii) the Ombudsman after using the Council's own complaints process; and
 - (iii) the Council's Audit and Standards Committee about a breach of the Councillors' Code of Conduct.

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 – The Full Council

Meanings

- (a) Policy Framework.** The Policy Framework means the following plans and strategies:
- (i) those listed by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and subsequent regulations made under Section 32 of the Local Government Act 2000, and all as required to be adopted by the Council, including:
 - Council Plan;
 - Crime and Disorder Reduction Strategy; and
 - Plans and strategies which together comprise the Development Plan.
 - (ii) those other plans and strategies which CLG Guidance recommends should be adopted by the Council as part of its Policy Framework;
 - (iii) other plans and strategies which the Council has decided should be adopted by the Council:
 - The Capital Strategy including the Asset Management Plan;
 - IEG Statement;
 - Treasury Management Policy Statement (stating policies, objectives and approach to risk management of treasury management activities);
 - Financial Strategy;
 - Corporate Strategic Risk Register;

- Constitution;
- ICT Digital Strategy
- Affordable Housing Policy Statement;
- Energy Efficiency and Affordable Warmth Strategy;
- Housing Benefits Anti-Fraud Policy;
- Housing Benefits Overpayment Policy;
- Private Sector Grant Policy;
- Housing Strategy;
- Homelessness Strategy;
- Supporting People Strategy;
- Surrey Waste Management Strategy;
- Safeguarding Children Strategy;
- Sport and Physical Activity Strategy;
- Licensing and Gambling Policy.

(b) Budget. The budget includes 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.

Functions of the Council

Only the full Council will exercise the following functions:

Adopt and change the Constitution excepting those matters delegated to the Monitoring Officer referred to in Article 12(a):

1. subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 5 of this Constitution, make 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;
2. appoint the Leader;
3. agree and/or amend the terms of reference for committees and decide on their composition;
4. appoint representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council;
5. adopt an allowances scheme;
6. change the name of the area, confer the title of honorary alderman or freedom of the Borough;
7. confirm the appointment of the Chief Executive;
8. make, amend, revoke, re-enact or adopt bylaws and promote or oppose the making of local legislation or personal Bills;
9. all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet; and
10. all other matters which, by law, must be reserved to Council.

Council meetings

There are three types of Council meeting:

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

and they will be conducted in accordance with the Council Procedure Rules set out in Part 5 of this Constitution.

Responsibility for functions

The Council will maintain the tables set out in Part 3 of this Constitution which define the Council's functions which are not the responsibility of the Cabinet.

Article 5 – Chairing the Council

Role and function of the Mayor

The Mayor and Deputy Mayor will be elected by the Council annually.

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

Chairing the Council Meeting

The Mayor will have the following 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 Councillors who are not on the Cabinet or who do not hold the Overview and Scrutiny Committee chairmanship are able to hold the Cabinet to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council; and
6. to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

In the absence of both the Mayor and the Deputy Mayor, the Council shall elect another Member to chair that particular meeting.

Article 6 – Overview & Scrutiny Committee

Terms of reference

The Council will appoint at least one Overview and Scrutiny Committees to discharge the functions conferred by Section 21 of the Local Government Act 2000. The Terms of Reference for the Overview and Scrutiny Committee are contained within Part 4 of the Constitution.

General role

Within its terms of reference, the Overview and Scrutiny Committee 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 Cabinet and/or any, joint committee in connection with the discharge of any functions;
- (iii) consider any matter affecting the area or its inhabitants;
- (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet and/or any joint committees;
- (v) consider any matter referred to it under "Councillor Call for Action" pursuant to Section 21A of the Local Government Act 2000; and
- (vi) act as a Crime and Disorder Committee and discharge the scrutiny and review functions conferred by Section 19 and Schedule 8 of the Police and Justice Act 2006 and regulations made under Section 20 of that Act in relation to the Elmbridge Community Safety Partnership.

Specific functions

- (a) **Policy development and review.** The Overview and Scrutiny Committee may:
 - (i) assist the Council and the Cabinet in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
 - (ii) conduct research, community consultation 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 Cabinet and/or 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.** The Overview and Scrutiny Committee may:
 - (i) review and scrutinise the decisions made by and the performance of the Cabinet and/or Committees and 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 Cabinet 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 Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;
 - (v) review and scrutinise the performance of other public bodies in the area and invite reports from them and request them to address the Overview and Scrutiny Committee and local people about their activities and performance; and
 - (vi) question and gather evidence from any person (with their consent).
- (c) **Finance.** The Overview and Scrutiny Committee may exercise overall responsibility for the finances made available to it.
- (d) **Annual report.** The Overview and Scrutiny Committee will report annually to full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers.** The Overview and Scrutiny Committee may exercise overall responsibility for the work programme of any Officers specially employed to support its work.

Proceedings of Overview and Scrutiny Committee

The Overview and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 5 of this Constitution.

Article 7 – The Cabinet

The Role of the Cabinet

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

Form and composition

The Cabinet will consist of the Leader together with between two and nine Councillors appointed to the Cabinet by the Leader.

Leader

The Leader is elected by full Council at its post-election annual meeting (or, if the Council fails to elect a leader at that meeting, at a subsequent meeting of the Council). The term of office of the Leader starts on the day of his/her election as Leader and ends on the day the Council holds its first annual meeting after the Leader's normal day of retirement as a councillor unless he/she: -

- is removed from office or resigns
- ceases to be a councillor
- is disqualified from being a councillor

before that day.

Appointment of Cabinet and Scheme of Delegation

The Leader determines the size of and appoints between 2 and 9 members of the Council to the Cabinet in addition to himself/herself, allocates any areas of responsibility (portfolios) to them, and may remove them from the Cabinet at any time. The Leader determines the scheme of delegation for the discharge of the executive functions of the Council.

The Leader will report to the Council on all appointments to and changes to the Cabinet.

Appointment of Deputy Leader

The Leader appoints one of the members of the Cabinet to be his/her deputy, to hold office until the end of the term of office of 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.

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 the Leader's place. If the Deputy Leader is unable to act or the office is vacant, the Cabinet must act in the Leader's place or arrange for a member of the Cabinet to do so.

Removal of Leader

The Council may remove the Leader by way of resolution by a simple majority. In that event a new Leader will be elected: -

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

Proceedings of the Cabinet

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 5 of this Constitution.

Responsibility for functions

The Leader will maintain a list in Part 3 of this Constitution setting out which Cabinet Portfolios have been allocated by him/her, which Cabinet functions are exercised by individual Cabinet Members and which Officers are authorised or joint arrangements are in place for the exercise of particular Cabinet/Executive Functions.

Article 8 – Regulatory and other Committees

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 referred to in column 3 of that table.

Article 9 – The Audit and Standards Committee

Membership

The Audit and Standards Committee shall comprise at least:

- (i) six Councillors (or such number as achieves proportionality), excluding any member of the Cabinet and the Mayor, to be appointed by the Council at the Annual Council meeting in accordance with the political proportionality of the Council;

- (ii) persons (not exceeding three in number) who are not Councillors or Officers of the Council and who will serve as Independent Members;
- (iii) one member of a Parish Council situated wholly or mainly in the Council's area (a Parish Member), subject to consultation with the Parish Council.

Independent members. Independent members will be co-opted under the provisions of the Local Government Act 1972 to the Audit and Standards Committee.

Parish members. The Parish member must be present when matters relating to those Parish Councils or their members are being considered;

Role and Function

The Council's Audit and Standards Committee Terms of Reference are set out within Part 4 of this Constitution.

Article 10 – Area Committees and Forums

Area committees

The Council may appoint area committees as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision-making. The Council will consult with relevant parish and town Councils and the chairmen of relevant parish meetings when considering whether and how to establish area committees.

Article 11 – Joint Arrangements

Arrangements to promote well being

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

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

Joint arrangements

- (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 these other local authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Executive Functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, the Cabinet may only appoint Cabinet Members to a joint committee and those Members need not reflect the political composition of the Council.
- (d) The Cabinet may appoint Councillors to a joint committee from outside the Cabinet in the following circumstance:

- the joint committee is between a County Council and a single District 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.
- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

Access to information

- (a) The Access to Information Procedure Rules in Part 5 of this Constitution 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 Cabinet.
- (d) If the joint committee contains members who are not on the Executive of any participating authority then the Access to Information Procedure Rules in Part V of the Local Government Act 1972 (as amended) will apply.

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 Cabinet 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 full Council.

Contracting out

The Cabinet 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

Management structure

- (a) **General.** The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Council will engage persons for the following posts, who will be designated Chief Officers:

Post	Functions and areas of responsibility to include
Chief Executive	Overall corporate management and operational responsibility (including overall management responsibility for all Officers). Provision of professional advice to all parties in the

Post	Functions and areas of responsibility to include
	<p>decision-making process.</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council).</p>
Deputy Chief Executive and Strategic Director	Assets and Property, central support services, Finance, Audit, Legal and Procurement, Housing, Information Services, Local Taxation and governance support.
Strategic Director	Development control, the local plan, regeneration, highways and transportation, waste management, parking, building control, environmental health and licensing, leisure services, community services and community transport.

- (c) Chief Executive, Monitoring Officer and Chief Finance Officer. The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Chief Executive
Head of Legal Services	Monitoring Officer
Deputy Chief Executive and Strategic Director	Chief Finance Officer

Such posts will have the functions described in Article 12 below.

- (d) **Structure.** The Chief Executive will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out in Part 8 of this Constitution.

Functions of the Chief Executive

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

Functions of the Monitoring Officer

The Council delegates to the Monitoring Officer the function of maintaining the Constitution up to date including:

- (a) **Maintaining the Constitution.** The Monitoring Officer will ensure that the Constitution is widely available for consultation by Councillors, Officers and the public, putting into place amendments which may be required to reflect changes in legislation and resolutions of the Council/Cabinet, in accordance with Article 15.

- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the Chief Executive and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to an executive function if he/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 Audit and Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee.
- (d) **Receiving complaints.** The Monitoring Officer will receive complaints that any Member has failed to comply with the Member Code of Conduct, consult with an Independent Person appointed under the Localism Act 2011, arrange any investigation by a person from outside the authority and report as necessary to the Hearings Panel appointed by the Audit and Standards Committee.
- (e) **Proper Officer for access to information.** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether executive decisions are within the Budget and Policy Framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.
- (g) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Councillors.
- (h) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Chief Executive.
- (i) **Data Protection Officer.** The Monitoring Officer will carry out the role and discharge the obligations of Data Protection Officer as first required by Articles 37-39 of the General Data Protection Regulation and as subsequently enacted into UK law.

Functions of the Chief Finance Officer

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

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

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

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.

Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Member/Officer Relations set out in Part 6 of this Constitution.

Employment

The recruitment, selection and dismissal of Officers will comply with the Officer Employment Procedure Rules set out in Part 5 of this Constitution.

Article 13 – Decision-Making

Responsibility for decision-making

The Council will issue and keep up-to-date a record of which individuals or parts of the Council have responsibility for particular types of decisions or for decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

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;
- (e) clarity of aims and desired outcomes;
- (f) explaining what options were considered and giving the reasons for the decision; and
- (g) particular consideration should be given to ways in which human rights can be considered at any early stage in the decision-making process.

Types of decision

- (a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4 will be made by the full Council and not delegated.
- (b) Key Decisions.

A Key Decision is an Executive Decision which is likely –

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

A decision taker may only make a decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 5 of this Constitution.

Decision making by the full Council

Subject to Article 13, the Council meeting will follow the Council Procedures Rules set out in Part 5 of this Constitution when considering any matter.

Decision-making by the Cabinet

Subject to Article 13, the Cabinet will follow the Cabinet Procedures Rules and the Cabinet decision-making Protocol set out in Part 5 of this Constitution when considering any matter.

Decision-making by Overview and Scrutiny Committee

The Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedures Rules set out in Part 5 of this Constitution when considering any matter.

Decision-making by other committees and sub-committees established by the Council

Subject to Article 13, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Parts 5 and 6 of this Constitution as apply to them.

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

Financial management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 5 of this Constitution.

Contracts

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 5 of this Constitution.

Legal proceedings

The Head of Legal Services is authorised to institute, defend, settle or compromise, participate in or appear on behalf of the Council in any legal proceedings before any Court or Tribunal 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 Services considers that such action is necessary to protect the Council's interests. This power is subject to the requirement to seek appropriate instructions from the Head of Paid Service or a member of the Council Management Board.

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 Services 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.

Any contract with a value exceeding £60,000 entered into on behalf of the Council 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 Services or some other person authorised by him/her.

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 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 Services should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Services or some other person authorised by him/her.

Article 15 – Review and Revision of the Constitution

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.

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:

1. attend any meeting of the different parts of the Councillor and Officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by Councillors, Officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

Changes to the Constitution

- (a) The Monitoring Officer has delegated authority to immediately update the Council's Constitution as appropriate and as arising either from a full Council Resolution or to make routine or minor amendments consequential upon operational or legislative change subject to giving reasonable notice of the change to Members before implementation.
- (b) Any other changes to the Council's Constitution, including significant changes as a result of legislation will be the subject of a report to full Council prior to any update of the Council's Constitution.

[In order to reduce unnecessary paper circulation, the opportunity be maximised to submit a summary report to Council which cross-refers to detailed suggested changes to the Constitution by way of track changes on a document available on the Council's Intranet / Website.]

- (c) Change from a Leader and Cabinet form of executive to alternative arrangements or vice versa. The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

Article 16 – Suspension, Interpretation and Publication of the Constitution

Suspension of the Constitution

Limit to suspension. The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council or the Cabinet to the extent permitted within those Rules and the law.

- **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 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.

- **Rules capable of suspension.** The following Rules may be suspended in accordance with Article 16:
 - Council Procedure Rules
 - Financial Procedure Rules
 - Contract Procedure Rules

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.

Publication

The Council's Constitution is available on the Council's Website www.elmbridge.gov.uk and copies will normally be provided upon reasonable request.

Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny Committee) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;
3. Article 10 (Area Committees and Forums);
4. Article 11 (Joint Arrangements);
5. Article 13 (Decision Making) and the Access to Information Procedure Rules;
6. Part 3 (Responsibility for Functions).