

# **CORPORATE GOVERNANCE GROUP AGENDA**

**Thursday 12<sup>th</sup> November 2020 at 12.30pm**

In accordance with the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, this meeting will be held via Zoom and by the Council's YouTube channel – Braintree District Council Committees.

Members of the public will be able to view and listen to this meeting via YouTube.  
To access the meeting please use the link below:

<http://www.braintree.gov.uk/youtube>

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**Members of the Corporate Governance Group are requested to attend this meeting to transact the business set out in the Agenda.**

**Membership:-**

Councillor P Euesden	Councillor R van Dulken (Chairman)
Councillor D Hume	Councillor D Wallace
Councillor H Johnson (Vice Chairman)	Councillor T Walsh
Councillor D Mann	Councillor Mrs L Walters
Councillor Miss V Santomauro	

Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by 11am on the day of the meeting.

A WRIGHT  
Chief Executive

## INFORMATION FOR MEMBER – DECLARATIONS OF MEMBERS’ INTERESTS

### Declaration of Disclosable Pecuniary Interests (DPI), Other Pecuniary Interests (OPI) or Non-Pecuniary Interests (NPI).

Any Member with a DPI, OPI or NPI must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a DPI or OPI or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the Chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

### Public Question Time – Registration and Speaking:

In response to the Coronavirus the Council has implemented procedures for Public Question Time for its virtual meetings which are hosted via Zoom.

The Agenda allows for a period of up to 30 minutes for Public Question Time.

Participation will be via the submission of a written question or statement which will be read out by an Officer or the Registered Speaker during the meeting. All written questions or statements should be concise and should be able to be read **within 3 minutes** allotted for each question/statement.

Members of the public wishing to participate are requested to register by contacting the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by midday on the working day before the day of the Committee meeting. For example, if the Committee meeting is due to be held on a Tuesday, the registration deadline is midday on Monday, (where there is a bank holiday Monday you will need to register by midday on the previous Friday).

The Council reserves the right to decline any requests to register for Public Question Time if they are received after the registration deadline.

Upon registration members of the public may indicate whether they wish to read their question/statement or to request an Officer to read their question/statement on their behalf during the virtual meeting. Members of the public who wish to read their question/statement will be provided with a link to attend the meeting to participate at the appropriate part of the Agenda.

All registered speakers are required to submit their written questions/statements to the Council by no later than 9am on the day of the meeting by emailing them to [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk). In the event that a registered speaker is unable to connect to the virtual meeting their question/statement will be read by an Officer.

Questions/statements received by the Council will be published on the Council’s website. The Council reserves the right to remove any defamatory comment in the submitted questions/statements.

The Chairman of the Committee has discretion to extend the time allocated for public question time and to amend the order in which questions/statements are presented to the Committee.

**Documents:** Agendas, Reports, Minutes and Public Question Time questions and statements can be accessed via [www.braintree.gov.uk](http://www.braintree.gov.uk)

**Data Processing:** During the meeting the Council will be collecting performance data of participants' connectivity to the meeting. This will be used for reviewing the functionality of Ms Teams/Zoom and YouTube as the Council's platform for virtual meetings and for monitoring compliance with the legal framework for Council meetings. Anonymised performance data may be shared with third parties.

For further information on how the Council processes data, please see the Council's Privacy Policy. [https://www.braintree.gov.uk/info/200136/access\\_to\\_information/376/privacy\\_policy](https://www.braintree.gov.uk/info/200136/access_to_information/376/privacy_policy)

We welcome comments to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended, you can send these to [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk)

## **PUBLIC SESSION**

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- 1 Apologies for Absence**
- 2 Minutes of the Previous Meeting**  
To approve as a correct record the Minutes of the meeting of the Corporate Governance Group held on 23<sup>rd</sup> July 2020 (copy previously circulated).
- 3 Public Question Time**  
(See paragraph above)
- 4 Declarations of Interest**  
To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest relating to items on the agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.
- 5 Constitution Review: Chapter 1: The Articles** **5 - 59**
- 6 Planning Committee - Review of Scheme of Delegation** **60 - 75**
- 7 Urgent Business - Public Session**  
To consider any matter which, in the opinion of the Chairman, should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.

<b>Constitution Review: Chapter 1: The Articles</b>		<b>Agenda No: 5</b>
<b>Portfolio</b>	<b>Finance and Performance</b>	
<b>Corporate Outcome:</b>	<p><b>A sustainable environment and a great place to live, work and play</b></p> <p><b>A well connected and growing district with high quality homes and infrastructure</b></p> <p><b>A prosperous district that attracts business growth and provides high quality employment opportunities</b></p> <p><b>Residents live well in healthy and resilient communities where residents feel supported</b></p> <p><b>A high performing organisation that delivers excellent and value for money services</b></p> <p><b>Delivering better outcomes for residents and businesses and reducing costs to taxpayers</b></p>	
<b>Report presented by:</b>	<b>Kim Cole, Head of Governance and Monitoring Officer</b>	
<b>Report prepared by:</b>	<b>Kim Cole, Head of Governance and Monitoring Officer</b>	
<b>Appendix and Background Papers:</b>	<b>Public Report</b>	
<p>1. Appendix 1: Revised Constitution: Index, Introduction and Chapter 1: The Articles.</p> <p>2. Background Paper: The Table of Changes</p> <p>3. Background Papers: Chapter 1: The Articles (Tracked Changed)</p>	<b>Key Decision: No</b>	
<b>Executive Summary:</b>		
<p>The Council is required to review its Constitution on an Annual basis. This would normally be reflective of changes made during the year and seek to ensure that it remains fit for purpose for the forthcoming 12 month period.</p> <p>However, the Constitution as a complete document has not been reviewed and substantially updated for a number of years. As the Council changes the way it works through virtual platforms and looks to strengthen its decision making, it is considered that it is now an appropriate time for this to be carried out.</p>		
<b>Recommended Decision:</b>		
<p>The Corporate Governance Group are asked:</p> <p>1. To note the works programme for the Governance and Constitutional review;</p>		

2. To note the new Constitution layout;
3. To note the draft Introduction
4. To note the proposed changes to Chapter 1: The Articles
5. To agree that comments and suggested amendments will be considered by the Monitoring Officer and incorporated where necessary ahead of approval by the Council at its meeting on 29 March 2020.

**Purpose of Decision:**

To agree to the proposed changes of the Constitution, in order to ensure more efficient governance arrangements and bring certainty to its decision making and comply with the Councils Statutory requirements.

**Any Corporate implications in relation to the following should be explained in detail.**

<b>Financial:</b>	No matters arising out of this report.
<b>Legal:</b>	<p>The Council is required to have in place a Constitution which sets out the councils Procedure rules, its Code of Conduct and any such information as the Council considers appropriate.</p> <p>The proposals set out in this report ensure that the Council complies with its statutory obligation and ensures that the Constitution remains a useable document for its Members, Officers and members of the Public.</p>
<b>Safeguarding:</b>	No matters arising out of this report.
<b>Equalities/Diversity:</b>	Equality Impact Assessment not necessary at this stage of considerations.
<b>Customer Impact:</b>	No matters arising out of this report.
<b>Environment and Climate Change:</b>	No matters arising out of this report.
<b>Consultation/Community Engagement:</b>	No matters arising out of this report.
<b>Risks:</b>	No matters arising out of this report.
<b>Officer Contact:</b>	Kim Cole
<b>Designation:</b>	Head of Governance and Monitoring Officer
<b>Ext. No:</b>	2629
<b>E-mail:</b>	Kim.cole@braintree.gov.uk

## 1. Introduction

- 1.1 The Council has adopted its Constitution which sets out how the Council works, how decisions are made and the procedures that are followed to ensure these are efficient, transparent and the Council is accountable to local people. Some of these procedures are required by law, while others are a matter of choice for the Council.
- 1.2 The Council is required to review its Constitution on an Annual basis. This would normally be reflective of changes made during the year and seek to ensure that it remains fit for purpose for the forthcoming 12 month period.
- 1.3 However, the Constitution as a complete document has not been reviewed and substantially updated for a number of years but rather has gone through ad hoc updates as the need has arose. As the Council changes the way it works through virtual platforms and looks to strengthen its decision making, it is considered that it is now an appropriate time for this to be carried out.
- 1.4 The Monitoring Officer has been reviewing the Council Constitution together with the Councils Governance arrangements and has set out a programme of works through which the Constitution, in its entirety, will be considered and updated where necessary to reflect the current practices, ensure compliance with its statutory obligations and ensure that the Constitution remains a useable document for its Members, Officers and members of the Public.

## 2. Constitution Review

- 2.1 The purpose of the review is to bring consistency to its content, remove duplication, simplify and standardise the language used, and bring its contents up to date to reflect the practices of the Council. Specific key changes are set out below.
- 2.2 In order to ensure Member engagement and input into the review, the revisions will be considered through a variety of gateways, and the key dates are set out below. The intention is to bring the final revised Constitution to Full Council for approval on 29 March 2021.

	<b>Developing Democracy Group</b>	<b>Corporate Governance Group</b>
Chapter 1: The Articles	20 October 2020	12 November 2020
Chapter 2: Procedure Rules and Chapter 3: Codes and Schemes	16 December 2020	26 January 2021
Chapter 4: responsibility for Functions	9 February 2021	24 February 2021

- 2.3 Currently the Constitution is divided into three separate Chapters, the review proposes to expand this to four chapters which will collectively set out the rules governing the Council's business. These Chapters are as follows:

### **(a) Chapter 1 – Articles of the Constitution**

The Articles explain the rights of citizens and how the key parts of the Council operate and explains key roles and responsibilities.

**(b) Chapter 2 – Council Procedure Rules**

Contains the Councils Standing Orders and Procedure Rules. These govern how the Council will conduct its business, and provides the framework through which its meetings will be conducted.

**(c) Chapter 3 – Codes and Schemes**

Contains the Member and Officer Code of Conduct, together with Members Allowance Scheme.

**(d) Chapter 4 – Responsibility for Functions**

Sets out the keys delegated powers to each element of the Councils decision making structure

- 2.4 The delegations to officers and cabinet members are scattered throughout the Constitution. This makes it extremely difficult to ascertain who holds the relevant decision making power for key aspects of the councils business, and leads to ambiguity and misunderstanding. Therefore as part of the review, all delegations will be removed from Chapters one two and three, and placed in the new chapter four.
- 2.5 Each chapter currently has its own index. This can be confusing when searching for specific topics within the Constitution and mean that points contained within it are not easily found. Therefore a whole new index covering all four chapter will now appear at the start of the Constitution.
- 2.6 It is important to remember that the Constitution is a public facing document, and one that is used by members of the public to understand the Council and its functions and how it takes decisions. Accordingly, a new Introduction has been brought in to help establish what the Constitution is and its general principles.
- 2.7 The Articles have been revised and the proposal is to make them succinct and to reorder them so that the reader is taken through a start to finish process of how the Council operates and the key Councillor and Officer roles. The proposed changes are set out in the table below:

<b>Current Articles</b>	<b>New Articles</b>
Article 1 The Constitution	Article 1 The Constitution
Article 2 Members of the Council	Article 2 Citizens and the Council
Article 3 Citizens and the Council	Article 3 Officers
Article 4 The Council	Article 4 Members of the Council
Article 5 Chairing the Council	Article 5 The Cabinet
Article 6 The Cabinet	Article 6 The Council
Article 7 Scrutiny	Article 7 Decision Making
Article 8 Planning Committee	Article 8 The Council Committees
Article 9 Licensing Committee	Article 9 Scrutiny Arrangements
Article 10 Corporate Governance Group	Article 10 Joint Arrangements
Article 11 Other Committees	Article 11 Finance, Contracts & Legal Matters
Article 12 Joint Arrangements	
Article 14 Decision making	

Article 15 Finance, Contracts & Legal Matters	
Article 16 Review & Revision of the Constitution	

## **Article 1 – The Constitution**

- 2.8 Article 1: The Constitution and Article 16: Review and Revision of the Constitution, have been merged to provide a central point for all aspects of the Constitution, its purpose, its interpretation and how it is revised and changed.

## **Article 2 – The Public and the Council**

- 2.9 Article has been updated, and the terminology used has been changed from Citizen to Member of the Public.

## **Article 3 - Officers**

- 2.10 Article 3 was previously Article 13. This has been updated to bring in definitions that will be used throughout the Constitution, including the use of the term Chief Officers. In addition it clearly provides the functions of each of the Statutory Officer required by the Council and who holds those roles within the Council.

- 2.11 It also introduces amendments to the Corporate Directors titles to include the areas for which they have responsibility for. Under the proposals they will be identified as follows:

- Corporate Director (Finance)
- Corporate Director (Growth)
- Corporate Director (Operations)

- 2.12 This is necessary to provide clarity as to which Corporate Director holds what functions and will be necessary when Chapter 4 is brought forward as each of the Corporate Directors will have significantly different duties and responsibilities delegated to them in the course of their roles. It is essential that Officers and members of the Public are able to clearly identify the person with who responsibility has been delegated, and for the Council to be clear on who is authorised to take decisions in order to robustly defend any challenge against its decision making powers.

## **Article 4 – Members of the Council**

- 2.13 Article 4 was previously Article 2, and has been reordered to provide a flow to the Articles.
- 2.14 The eligibility criteria for becoming a Councillor has been added to the Articles having been identified as missing from the current version.
- 2.15 The Article then sets out the roles, duties and responsibilities of Councillors, before then providing clear defined roles of key Councillor roles, including the Chairman and Vice-Chairman of the Council and Leader and Deputy Leader of the Council, and brings all key roles within one Article.

## **Article 5 – The Council**

- 2.16 The functions of Council have been updated and clarified. The Policy Framework and the Budget details have been brought it from Article 14, so that all the key duties and responsibilities which fall to Council are contained within one Article.
- 2.17 The Policy framework is made up of mandatory and adopted plans and strategies. For ease and so that members of the public can understand which are mandatory these have been separated out into their respective lists.

## **Article 6 – The Cabinet**

- 2.18 This Article has been updated to provide an explanation of what the Cabinet is, how its membership is established, and what its functions are.
- 2.19 It also contains details of the Cabinet Members, who appoints them, what their duties and responsibilities are and any limits to their decision making powers.

## **Article 7 – Decision Making**

- 2.20 This Article sets out how the Council, Cabinet and their Committees take decisions. It sets out the definition of the Decision Planner and links this to the Forward plan, which is a statutory requirement when Key Decisions are taken by Cabinet.
- 2.21 The Definition of Key decisions has been reviewed and currently there are two financial limits, £50k – Revenue and £100k – Capital. The current definition requires that any expenditure or saving which reaches these limits will be a Key Decision. It is unusual for a Council to have two values, and most will opt for one monetary value, which is clear and easy to identify. A review of other Local Authorities has shown the following values:

Braintree DC	£50k – Revenue £100K – Capital
Thurrock	£500k
Essex CC	£2m
Chelmsford CC	£200k
Colchester BC	£500k
East Suffolk C	£250k
Epping DC	£250k
Harlow	£50k
Oxford CC	£500k
Southend BC	£250k
Tendring DC	£100k

- 2.22 It is recommended that the Councils limit is set between £150k and £250k.

## **Article 8 – Council Committees**

- 2.23 Previously the Council Committees each held their own Article, as part of the review it is proposed that all Council Committees are listed within one article to provide clarity as to which committees are the Council Committees and therefore subject to the political balance rules.

## **Article 9 – Scrutiny Arrangements**

- 2.24 Currently the Scrutiny Article contained three of the four Scrutiny Committees of the Council. In order to bring all scrutiny roles, Committees and their responsibilities under one article, the proposal is to merge Article 10: The Corporate Governance Group into Article 9: Scrutiny Arrangements.
- 2.25 The Corporate Governance Groups Terms of Reference have been reviewed, and in line with recent good practise guidelines issued by CIPFA have been updated, and the specific functions have been separated out into clear headings for ease of reference.
- 2.26 The Planning ToR have not yet been revised, and this will need to be done following consideration of the new Planning Delegations, which are subject to a separate report.

## **Article 10 – Joint Arrangements**

- 2.27 This Article has only undergone small updates in order to bring clarity and consistency of language.

## **Article 11 – Finance, Contracts and Legal Matters**

- 2.28 The delegations contained within this section have been removed and will be captured within the new Chapter 4: Roles and Responsibilities which will contain the full suite of delegations held by Cabinet Member's and key officers.
- 2.29 Currently the Article requires sealing to be applied to those contracts identified by the Monitoring Officer. This can be very difficult to define and results in clarification being sought or contracts that would have benefited from the additional protection provided by sealing to be signed underhand.
- 2.30 Accordingly it is proposed that the sealing is linked to a financial limit. In considering other Councils the following monetary values have been identified:

**Table B – Sealing Limits**

Essex CC	£1m
East Suffolk C	OJEU Threshold
Epping DC	£50k
Oxford CC	£150k
Rochford	£30k
Southend BC	£1m
Tendring DC	£50k

- 2.31 It is proposed that the Council link the sealing requirement to a value of £150k.

## **3. Conclusion**

- 3.1 The changes proposed as part of the Chapter one revision is the first part of the Governance and Constitution review. These changes are necessary to bring to Constitution up to date, and to remove ambiguity and duplication.

Through standardising the language and bringing in key definitions, the Constitution will become a useable document which can be understood by everyone.



## **The Constitution**



## **Introduction**

### **1. The Council's Constitution**

- 1.1 The Council has adopted the Constitution which sets out how the Council works, how decisions are made and the procedures that are followed to ensure these are efficient, transparent and the Council is accountable to local people. Some of these procedures are required by law, while others are a matter of choice for the Council.

### **2. Principles of the Constitution**

- 2.1 In seeking to reinforce local democracy, the Constitution is founded on the following principles:-
- (a) The creation of an easily understood system of political management which will provide a clear and accountable leadership balanced and challenged in its activities by other Councillors.
  - (b) The establishment of an open and streamlined decision making process within which the views of local people are given full consideration.
  - (c) The Council as leader in the local community, working on behalf of the citizens of Braintree.

### **3. What is in the Constitution?**

- 3.1 The Constitution is divided into four chapters which set out the basic rules governing the Council's business. These Chapters are as follows:
- (a) Chapter 1 – Articles of the Constitution  
The Articles explain the rights of citizens and how the key parts of the Council operate and explains key roles and responsibilities.
  - (b) Chapter 2 – Council Procedure Rules  
Contains the Councils Standing Orders and Procedure Rules. These govern how the Council will conduct its business, and provides the framework through which its meetings will be conducted.
  - (c) Chapter 3 – Codes and Schemes

Contains the Member and Officer Code of Conduct, together with Members Allowance Scheme.

(d) Chapter 4 – Responsibility for Functions

Sets out the keys delegated powers to each element of the Councils decision making structure

- 3.2 Article 1 of the Constitution commits the Council to acting within the law to provide clear leadership to the community and to provide services to that community in an efficient, effective and accountable manner.

#### 4 **How the Council Operates**

- 4.1 The Council is made up of 49 Councillors (also known as Members) elected every four years. Members are democratically accountable to the residents of their electoral divisions. The overriding duty of Members is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

- 4.2 Members are required to follow a local code of conduct to ensure high standards in the way they undertake their duties. The Code of Conduct is set out in Chapter 3 of the Constitution.

- 4.3 All Members meet together as full Council and these meetings are open to the public unless excluded because there is confidential information being discussed. In addition the Council is able to establish Committees which are tasked to deal with specific responsibilities.

- 4.4 The Council is required to appoint the Leader of the Council and the Leader in turn appoints up to nine other Councillors, who together make up the Cabinet (the Executive). The Cabinet Members each have specific responsibilities and these are known as portfolios, which are determined from time to time by the Leader of the Council. Like with Council, Cabinet is able to establish committees which are tasked to deal with specific responsibilities.

#### 5 **How Decisions are made**

- 5.1 The Council have a number of ways in which decisions can be taken, and responsibility for various aspects of the Councils functions is delegated to various parts of the Council.

- 5.2 All non-executive decisions are taken by Council who determine the overall policies and sets the budget for each year by setting the Budget and the Policy Framework within which all executive decisions are made.

- 5.3 Cabinet are responsible for most of the day to day decisions. Decisions taken by Cabinet are known as executive decisions, with major decisions being called Key Decisions. The definition of Key Decisions can be found in Article {X}.

5.4 In each instance it is possible for full Council and Cabinet to delegate those responsibilities to a Committee, Sub Committee, or to Officers. The Delegations in place are set out in Chapter 4 of the Constitution.

## 6 **Overview and Scrutiny**

6.1 The Council has appointed four Overview and Scrutiny Committees that support the work of the Cabinet and the Council as a whole. These committees are independent of the Cabinet and no Member on any Overview and Scrutiny Committee may exercise Executive functions.

6.2 Overview and Scrutiny Committees have a dual role that covers policy development of the Council and the Cabinet as well as the review of decisions taken by both Council and Cabinet.

## 7 **The Council's Officers**

7.1 The Council's employees (called "Officers") give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely.

7.2 The Officer Code of Conduct, set out within Chapter 3, governs the practice of officers and requires officers to have regard to the Seven Nolan principles of public life.

## 8 **Citizens' Rights**

8.1 Citizens have a number of rights and these are set out in detail in **Article X**. Some of these are legal rights, while others depend on the Council's own procedures.

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## **Chapter 1**

### **The Articles**

# **Article 1 – The Constitution**

## **1. The Council’s Constitution**

- 1.1 This is the Constitution of Braintree District Council.
- 1.2 The Constitution has been produced in accordance with the Local Government Act 2000 as amended by the Localism Act 2011 and should be interpreted in the light of all other relevant legislation
- 1.3 The Council has adopted the Constitution which sets out how the Council works, how decisions are made and the procedures that are followed to ensure these are efficient, transparent and the Council is accountable to local people. Some of these procedures are required by law, while others are a matter of choice for the Council.
- 1.3 The Council will exercise all its powers and duties in accordance with the law and this Constitution.

## **2. Purpose of the Constitution**

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

## **3. Publication**

- 3.1 The Monitoring Officer will ensure that a current copy of the Constitution is available for inspection at the Council offices, and placed on the Council’s website: [www.braintree.gov.uk](http://www.braintree.gov.uk).
- 3.2 A paper copy can be purchased by members of the public and press on payment of a reasonable fee, electronic copies will be available free of charge.
- 3.3 The Monitoring Officer shall provide a copy of the Constitution to each newly elected Councillor.

## **4. Interpretation**

- 4.1 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.
- 4.2 Advice and guidance on the Constitution can be obtained from the Monitoring Officer or the Governance and Members Team. Such advice will have regard to the purpose of this Constitution as set out above.

## **5. Suspension**

- 5.1 The Articles of this Constitution may not be suspended.
- 5.2 The Council Procedure Rules may be suspended to the extent permitted by this Constitution and by law and carried out in accordance with the procedure contained within the relevant set of rules.
- 5.3 The extent and duration of the suspension of the Council Procedure Rules must be proportionate to the result to be achieved and must take into account the purpose of the Constitution as set out above.

## **6. Review of the Constitution**

- 6.1 The Monitoring Officer shall monitor and review the operation of the Constitution annually, to ensure that the aim and principles of the Constitution are given full effect.
- 6.2 It is important that the Monitoring Officer is aware of the strengths and weaknesses of the Constitution adopted by the Council, and will make recommendations for ways in which it could be amended in order better to achieve the purposes set out above.
- 6.3 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 by Councillors, officers, the public and other relevant stakeholders; and
  - (d) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

## **7 Changes to the Constitution**

- 7.1 Any minor changes and routine updating of the Constitution shall be the responsibility of the Monitoring Officer. Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Corporate Governance Group.
- 7.2 However, if either:

- (i) the Head of Paid Service makes changes to the organisation of the Council's officers or the way in which the delivery of the functions is organised at officer level which impact on the specific powers of the Chief Executive, Chief Officers and other officers contained in Chapter 4 of the Constitution (Responsibility for Functions); or
- (ii) the Chief Finance Officer (Section 151 Officer) determines that changes are necessary to the Financial Procedure Rules, contained in Chapter 2 of the Constitution, for the proper administration of the Council's financial affairs; and
- (iii) the said officers determine that in the interest of the Council the changes should be implemented in advance of the next available meeting of the full Council, then those officers may make such minimum amendments to those parts of the Constitution referred to above as necessary, provided always that:
  - (a) agreement is obtained from the Chairman of the Council or in their absence the Vice-Chairman of the Council, and
  - (b) notification of such changes shall be submitted to the next available meeting of the Council for formal approval.

7.3 Where the Leader of the Council makes changes to the membership of the Cabinet or the Cabinet portfolios, deputy cabinet members, any committee of the Cabinet, officers or joint arrangements responsible for the exercise of particular Executive functions, those changes shall be automatically implemented into the Constitution by the Monitoring Officer without requiring any further approval by Council. Notification of such changes shall be submitted to the next available meeting of the Council to note.

## **Article 2 – The Public and the Council**

### **1. Introduction**

- 1.1 This Article sets out what members of the Public can expect from the Council and what rights they have both under relevant legislative provisions and those which are provided by the Council.
- 1.2 The Constitution also shows how the Council and its Councillors expect to be treated by members of the public in return.

### **2. Members of the Public Rights**

- 2.1. Members of the Public have the following rights available to them:-

#### **Access to Information**

- 2.2 The Public have a right to:

- (i) have access to information as set out in the Access to Information Procedure Rules, contained within Chapter 2 of this Constitution;
- (ii) attend meetings of the Council, Cabinet and their respective Committees except where such attendance is excluded as set out in the Access to Information Procedure Rules, contained within Chapter 2 of this Constitution;
- (iii) find out from the Decision Planner, which incorporates the Forward Plan, what Key Decisions will be taken by the Cabinet and when these are due to take place;
- (iv) have access to reports and background papers, and any records of decisions made by the Council and the Cabinet except where such access is excluded as set out in the Access to Information Procedure Rules, contained within Chapter 2 of this Constitution;
- (v) inspect the Council's accounts and make their views known to the external auditor;
- (vi) request and receive information in the possession of the Council, as provided for under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, subject to defined exceptions contained within those statutory provisions; and
- (vii) contact their local Member about any matters of concern to them.

#### **Participation**

- 2.3 The Public have a right to participate in the public question time at meetings in accordance with the provisions set out in Chapter 2 of the Constitution and to contribute to investigations by the Overview and Scrutiny Committees,

#### **Voting**

- 2.4 The public registered on the electoral roll for the District have the right to vote for their

local Councillor(s) in local elections and to sign a petition to request a referendum for an elected mayor.

### **Petitions**

- 2.5 The public living, working or learning in the District are able to submit petitions to the Council in accordance with the Councils Petition Policy.

### **Complaints**

- 2.6 The Council takes complaints seriously. The public have the right to complain to:
- (i) The Council under its Corporate Complaints Procedure.
  - (ii) The Local Government and Social Care Ombudsman or the Housing Ombudsman, after first raising their complaint using the Councils Corporate Complaints Procedure and giving the Council an opportunity to respond; and
  - (iii) The Monitoring Officer about individual Councillor Conduct in accordance with the Code of Conduct Complaints Procedure.
- 2.7 For some parts of the Councils activities there are specific statutory processes to appeal a decision and these should be followed where necessary.

### **Treatment by the Council**

- 2.8 The Public have the right to be treated impartially and fairly by the Council.

## **3. The Publics Responsibilities**

- 3.1. Members of the Public must not be violent, abusive or threatening towards Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.
- 3.2. The Council reserves the right to suspend services or limit access where there are issues caused as a result of the behaviours of Members of the Public as set out above.

## **Article 3 - Officers**

### **1. General**

- 1.1 The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.
- 1.2 The recruitment, selection and dismissal of employees will comply with the Officer Employment and Disciplinary Procedure Rules contained in Chapter 3 of this Constitution.
- 1.3 Officers will comply with the Officers Code of Conduct and the Protocol on Member/Officer Relations contained in Chapter 3 of this Constitution.
- 1.4 The functions set out within this Article are in addition to those delegations to Chief Officers set out in Chapter 4 of this Constitution.

### **2. Management Structure**

- 2.1. The senior management structure of the Council comprises of the Chief Executive and the Corporate Directors, known as the Chief Officers, who each has responsibilities which may include statutory responsibilities, service areas, corporate strategies and specific projects.
- 2.2. The Chief Officers contribute:
  - (i) to the corporate management of the Council,
  - (ii) represent and promote the Council as a local authority securing high quality services for the People within the District that demonstrates best value; and
  - (iii) develop partnership working.
- 2.3. At any time when there is no Chief Executive in post, any reference in this Constitution to the Chief Executive shall be construed as a reference to the Head of Paid Service.
- 2.4. The following posts shall be designated as Chief Officers:
  - (i) The Chief Executive
  - (ii) The Corporate Director (Finance)
  - (iii) The Corporate Director (Growth)
  - (iv) The Corporate Director (Operations)

### **3. Statutory Officers**

- 3.1. The Council has designated the following statutory posts as follows:

Post	Designation
Chief Executive	Head of Paid Service
Corporate Director responsible for Finance	S.151 Officer
Head of Governance	Monitoring Officer

3.2 The post titles as shown in the first column above may be varied by the Chief Executive.

#### **4. The Head of Paid Service**

4.1 The Council must appoint a Head of Paid Service and provide that officer with such staff, accommodation and resources as are in their opinion sufficient to discharge their functions.

4.2 The Head of Paid Service shall not be the Monitoring Officer but may hold the post of the S.151 Officer if they are a qualified accountant.

4.3 The Head of Paid Service will determine and publicise a description of the overall structure of the Council showing the management structure and deployment of officers, a copy of this is available on the Councils website.

4.4 The Head of Paid Service will report to 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.

4.5 In the absence of the Monitoring Officer or their delegated officer, the Head of Paid Service shall be the qualified person with regards to disclosure of exempt information under S.36 of the Freedom of Information Act 2000.

#### **5. The S.151 Officer**

5.1. The S.151 Officer shall not be the Monitoring Officer.

5.2. The S.151 Officer is responsible for the following functions:-

- (i) After consulting with the Head of Paid Service and the Monitoring Officer, the S.151 Officer will report to the full Council or to the Cabinet in relation to an executive function and the Council's external auditor if, they consider 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.
- (ii) for the administration of the financial affairs of the Council, and ensure maintenance of an efficient and effective internal audit function.
- (iii) to contribute to the corporate management of the Council through the provision of professional financial advice.
- (iv) to provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework to all Councillors and will support and advise Councillors and Officers in their respective roles.

- (v) Provide financial information to the media, members of the public and the community.

## **6. The Monitoring Officer**

- 6.1. The Monitoring Officer shall not be the S.151 Officer or the Head of Paid Service.
- 6.2. The Monitoring Officer is responsible for the following responsibilities:-
  - (i) Maintaining the Constitution. Subject to the provisions of Article 1, the Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Councillors, staff and members of the public.
  - (ii) Ensuring lawfulness and fairness of decision making. After consulting with the Head of Paid Service and the S.151 Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to a Cabinet function if they consider 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.
  - (iii) To contribute to the promotion and maintenance of high standards of conduct through provision of support to the Corporate Governance Group and the Standards Sub-Committee.
  - (iv) To be the Proper Officer to receive complaints for the failure to comply with the Code of Conduct for Members.
  - (v) To be the Proper officer for access to information and 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.
  - (vi) Advise on whether Cabinet decisions are within the Budget and Policy Framework.
  - (vii) Providing 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.
  - (viii) To be the primary qualified person with regards to disclosure of exempt information under S.36 of the Freedom of Information Act 2000. In the Absence of the Monitoring officer or their delegated officer, responsibility for carrying out the functions will fall to the Head of Paid Service.

## **7. Duty to Provide Sufficient Resources**

- 7.1. The Council will provide the Head of Paid Service, S.151 Officer and the Monitoring Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their statutory duties to be performed in accordance with the law.

## **Article 4 – Members of the Council**

### **1. Composition and Eligibility**

- 1.1. The Council comprises of 49 Councillors, also known as Members, who represent their 26 Wards. Members will be elected by the Voters of each electoral division in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- 1.2. Each Ward may have a number of Councillors who represent it. Although once elected Councillors will make decisions for the whole district and not just for the ward they were elected for.
- 1.3. Only registered voters for the area of the Council or those living or working, or owning land or premises in that area will be eligible to hold office as a Member.

### **2. Election and Term of Office**

- 2.1. The regular election of Councillors will be held on the first Thursday in May every four years. An election was held in 2019 and the next election will be held in 2023. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### **3. The Councillors**

#### **Purpose**

- 3.1 In the performance of the role of a Councillor, the Councillor is required to:
  - (i) to participate in the good governance of the District;
  - (ii) To contribute actively to the formation and/or scrutiny of the Councils policies, budgets, strategies and service delivery;
  - (iii) to represent effectively the interests of the wards for which each Member was elected and deal promptly with constituents enquiries and representations;
  - (iv) to promote the Councils engagement with all members of the public and groups and ensure that there are opportunities for all views to be heard;
  - (v) to champion the continuous improvement of the quality of life of the community in terms of equity, economy and environment;
  - (vi) to ensure that the Council's resources are used to achieve the maximum benefit for the people in the District;
  - (vii) to represent the Council effectively when appointed to an outside body;
  - (viii) to act at all times with probity and propriety in the best interest of the Council and in accordance with the Councils Code of Conduct and;
  - (ix) to champion the cause for their Ward as far as the Equity Framework for Local Government is concerned.

#### **Roles and Responsibilities**

- 3.2 Members of the Council shall be responsible for the following duties and responsibilities:

- (i) To fulfil the statutory and locally determined requirements of an elected member, including compliance with all relevant codes of conduct, and participation in those decisions and activities reserved to full Council.
- (ii) To participate effectively as a member of any Committee or Panel to which the Member is appointed, including related responsibilities for the services falling within the Committee's terms of reference, and its liaison with other public bodies to promote better understanding and partnership working.
- (iii) To participate in the activities of an outside body to which the Member is appointed, providing two-way communication between the organisations and representing the policies and practices of the Council. Also, for this purpose, to develop and maintain a working knowledge of the Council's policies and practices in relation to that body and of the community needs and aspirations in respect of that body's role and functions.
- (iv) To participate in the scrutiny or performance review of the services of the Council including, where the Council so decides, the scrutiny of policies and budget, and their effectiveness in achieving the strategic objectives of the Council.
- (v) To participate, as appointed, in consultative processes with the community and with other organisations.
- (vi) To provide a link between the Council and the community, through the various forums available.
- (vii) To develop and maintain a working knowledge of the Council's services, management arrangements, functions/duties and constraints, and to develop good working relationships with relevant officers of the Council.
- (viii) To develop and maintain a working knowledge of the other organisations and services which serve the District.
- (ix) To contribute constructively to open government and democratic renewal through active encouragement to the community to participate generally in the democratic process.
- (x) To conduct the business of the Council within the Council and not through the written or broadcast media.
- (xi) To maintain confidentiality in all relevant Council business.
- (xii) To find a suitable substitute and to brief them on the meeting due to be attended, on occasions when personal attendance is not possible and where substitutes are permissible.
- (xiii) To identify individual learning and development needs and participate fully in training opportunities provided.
- (xiv) not to 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 Member or Officer entitled to know it.
- (xv) Maintain the highest standards of conduct and ethics in accordance with the Code of Conduct for Members and the Nolan Seven Principles of Public Life; and
- (xvi) attend at least one meeting of the Council every six months.

#### **4. Rights of all Councillors**

- 4.1 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.

## **5. Conduct of Councillors**

- 5.1. All Councillors will abide by their obligations under the Code of Conduct and the Protocol on Member/Officer Relations as set out in Chapter 3 of the Constitution.

## **6. Allowances**

- 6.1. Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Chapter 3 of this Constitution.

## **7. The Chairman of the Council**

- 7.1 The Chairman of the Council and the Vice-Chairman will be elected by the Council annually. The appointment will be for a single municipal year, however it will be permissible for the Chair or the Vice-Chair to serve in future years.
- 7.2 The Chairman or the Vice-Chairman may not hold office as the Leader of the Council, Deputy leader of the Council or be a member of Cabinet during their term of office.
- 7.3 The duties and responsibilities set out below are in addition to their role as a Councillor, as set out in paragraph 3.

### **Purpose**

- (i) To provide effective civic and ceremonial leadership to the Council;
- (ii) To chair the meetings of full Council and ensure its business is carried out efficiently and in line with the Constitution; and
- (iii) To act as an ambassador for the Council and the District itself.

### **Duties and Responsibilities**

- (i) To be politically impartial and uphold the democratic values of the Council; and
- (ii) To represent the Council at civic and ceremonial functions, acting on behalf of and supported by the Whole Council in a non-partisan manner;
- (iii) To preside over meetings of the full Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (iv) To ensure that the Council meeting is a forum for debate of matters of concern to the local community and the place at which Members who are not on the Cabinet are able to hold the Cabinet to account;
- (v) To uphold and promote the purposes of the Constitution and to interpret the Constitution in consultation with the Monitoring Officer when necessary; and
- (vi) To promote public involvement in the Council's activities by recognising and thanking those individuals and organisations who have brought success to the District.
- (vii) to provide fair and visible civic leadership to the Council and promote active

- citizenship;
- (viii) to act as a link between the Council and various groups and organisations within the Braintree District;
  - (ix) to maintain an overview of the needs and concerns of the community they serve;
  - (x) to raise the profile of the Council and the District and to promote the aims and values of the Council within the community;
  - (xi) attend such civic and ceremonial functions of the Council as they determine appropriate; and
  - (xii) to provide support and advice to Members of the Council.

## **8. The Vice-Chairman of the Council**

- 8.1. The Vice-Chairman shall fulfil the functions of the Chairman of the Council in their absence and at all other times to assist the Chairman as required.

## **9. The Leader of the Council**

- 9.1 The Leader of the Council is appointed by the Council at the first annual Meeting following the ordinary election of District Members.
- 9.2 The Leader shall be chosen from the majority political party group within the Council membership, the leader of that political party group will be the Leader of the Council. Where there is no majority political party group within the Council, the Leader of the Council will be a Councillor elected to that position at Full Council.
- 9.3 The Leader of the Council will hold office for a period of 4 years or until the Leader's ordinary term of office as a Councillor expires (whichever is the shorter). The Leader of the Council shall continue to hold office until:
- (i) they resign from the office; or
  - (ii) they are no longer a Councillor; or
  - (iii) they are removed from office by a resolution of the Council.
- 9.4 The duties and responsibilities of the Leader of the Council as set out below, are in addition to his role as a Member of the Council and his role as a member of Cabinet.

### **Purpose**

- (i) To provide political leadership and strategic direction for the Council;
- (ii) To ensure effective corporate governance;
- (iii) To -act as an ambassador for the Council;
- (iv) To provide stewardship of the Council and its resources;
- (v) work closely with other Cabinet Members to ensure the development of effective policies and high quality services to the people of the Braintree District;
- (vi) guide policy and strategy proposals through the Council where the final

- decision rests with the Council;
- (vii) maintain professional working relationships and establish mutual respects with the Chairmen of the Committees and with all other Councillors and Officers;
  - (viii) be a promoter and upholder of equalities and high standards of ethical conduct; and
  - (ix) to ensure the Council delivers high quality, value for money services.

### **Duties and Responsibilities**

- (i) All executive functions of the Council are vested by law in the Leader of the Council.
- (ii) To work with relevant Cabinet Members in developing revenue budget and capital programme strategies and ensuring probity and financial monitoring;
- (iii) To appoint or dismiss Cabinet members and to determine the allocation of portfolios for subsequent notifications to the Council;
- (iv) To Chair Cabinet meetings;
- (v) To exercise executive functions not allocated to either the Cabinet or to Cabinet members, or to delegate such functions to another Cabinet Member or Committee or Officer;
- (vi) To appoint or dismiss Cabinet Committees and Sub-committees and determine their Membership;
- (vii) To be the key contact for outside organisations;
- (viii) To be the key interface between the Members and the Chief Executive and Senior Officers for the strategic management of the Council;
- (ix) To be the representative voice of the Council, including but not limited to its dealings with Central Government, other Local Authorities and their Associations and positively promote the Council as a whole in the media;
- (x) To act as the political spokesperson for the Council; and
- (xi) To promote the long term financial, business and economic stability of the Council;

## **10. The Deputy Leader of the Council**

- 10.1 The Leader shall appoint a Cabinet Member to be the Deputy Leader.
- 10.2 The duties and responsibilities of the Deputy Leader of the Council, as set out below, are in addition to his role as a Councillor as set out in paragraph 3 and their role as a Cabinet Member contained in Article 5.
- 10.3 Any exercise of function by the Deputy Leader will be subject to any limitations, qualifications or other instructions as may be issued by the Leader in writing to the Chief Executive either generally or in relation to the exercise of a particular function.
- 10.4 Where a vacancy occurs in the office of Deputy Leader, the Leader of the Council shall appoint another Cabinet Member in their place.

## **Purpose**

- (i) To assist and work with the Leader of the Council to provide effective political leadership and strategic direction for the Council;
- (ii) To assist and work with the Leader of the Council in delivering his responsibilities to the Council within his role profile as set out above; and
- (iii) where appropriate and permissible under the Council's Constitution, to act in the absence of the Leader of the Council.

## **Duties and Responsibilities**

- (i) to deputise for the Leader of the Council in his absence from Council and Cabinet meetings;
- (ii) in the Leader of the Council's absence, to carry out the requirements of his role profile as set out above so far as legally possible and permissible; and
- (iv) to carry out such other duties and undertake portfolio responsibility as delegated by the Leader of the Council.

## **Article 5 – The Council**

### **1. Introduction**

- 1.1 The Local Government Act 2000 (as amended by the Localism Act 2011) gives the Council responsibility for approving the Budget and Policy Framework. The Council as a whole retains responsibility for regulatory functions and has a role in holding the Cabinet to account.

### **2. Functions of Council**

- 2.1 Only Council will exercise the following functions:

- (i) Adopt and approving changes to the Constitution in accordance with the procedure set out in Article 1.
- (ii) Adopting and approving changes to the Members' Allowance Scheme;
- (iii) Approve the Budget and the Policy Framework;
- (iv) To take decisions in respect of any recommendation made by the Cabinet or Committees which would be contrary to the Budget and/or the Policy Framework;
- (v) Take decisions in respect of functions which must by law be reserved to the Council, local choice functions that Council has decided to reserve to itself as set out in Chapter 4 of this Constitution or other functions that are not the responsibility of Cabinet and/or have not been delegated to committees, sub- committees or officers;
- (vi) To elect the Chairman of the Council and appoint the Vice Chairman of the Council at the annual meeting of council;
- (vii) Appoint the Leader of the Council;
- (viii) Agreeing and/or amending the terms of reference for Council Committees, deciding on their composition and making appointments to them;
- (vix) Appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by Council;
- (x) Appoint and dismissal of the Head of Paid Service,, Monitoring Officer and the S.151 Officer;
- (xi) Consider reports of the Monitoring Officer and the S.151 Officer issued in pursuance of their respective statutory duties;
- (xii) To hold the Leader of the Council, Cabinet Members and Committee Chairmen to account
- (xiii) Make, amend, revoke, re-enact or adopt byelaws and promote or oppose the making of local legislation or private Bills;
- (xiv) Respond to appropriate bodies with regard to boundary reviews or other electoral issues including for example the designation of the acting or local returning officer for the purposes of a county, European, parliamentary or other form of election or referendum;
- (xv) all those functions detailed in Parts C,D,E,F,G,H and I of Schedule 1 of The

Local Authorities (Functions and Responsibilities)(England) Regulations 2000, (as amended); and

(xvi) All other matters which, by law, must be reserved to Council.

### **3. Responsibility for Functions**

3.1 The Council will maintain Chapter 4 of this Constitution which sets out the responsibilities for the Councils Functions which are not the responsibility of the Cabinet.

### **4. Council Meetings**

4.1 There are three types of Council Meetings:

- (i) The Annual meeting;
- (ii) Ordinary meetings; and
- (iii) Extraordinary meetings;

and they will be conducted in accordance with the Councils Procedure Orders set out in Chapter 2 of this Constitution.

### **5. The Policy Framework**

5.1 The Council is responsible for the approval of the Policy Framework and shall be refreshed at least every three years.

5.2 The Policy Framework is developed in line with the Budget and Policy Framework Procedure set out in Chapter 2 of this Constitution.

5.3 The Policy Framework means the following plans and strategies:

#### **Mandatory Plans and Strategies**

- (i) Crime and Disorder Annual Partnership Plan
- (ii) Local Transport Plan
- (iii) Licensing Policy Statement (Licensing Act 2003 and Gambling Act 2005)
- (iv) Plans with Development Plan Document Status;

#### **Plans and Strategies Adopted as part of the Policy Framework**

- (v) Sustainable Community Strategy
- (vi) Local Plan
- (vii) Corporate Strategy
- (viii) Medium Term Financial Strategy

### **6. The Budget**

6.1 The Budget means the Councils Budget as approved by Council.

- 6.2 The Budget 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 Councils borrowing requirements, the control of its capital expenditure and the setting of virement limits.

## **Article 6 – The Cabinet**

### **1. The Cabinet**

- 1.1 The Council has adopted executive arrangements as permitted by the Local Government Act 2000, as amended. The Cabinet is responsible for the day to day decision making process and for exercising all executive functions.
- 1.2 The Cabinet will lead the implementation of the Council's Policies within the Council's Budget and Policy Framework. In doing so the Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.
- 1.3 Executive functions can be exercised by the Cabinet, under joint arrangements or they can be delegated to individual Cabinet Members, Cabinet Committees or Officers and cannot be exercised by the Council
- 1.4 The Cabinet cannot take decisions on matters which they are prohibited from making by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and other subsequent legislation.

### **2. Composition of Cabinet**

- 2.1 The Cabinet will consist of the Leader of the Council together with at least two, but not more than nine, additional Councillors, known as Cabinet Members.
- 2.2 From time to time, the Leader may appoint Deputy Cabinet Members who may assist and work with the Cabinet Members in the exercising of the roles and responsibilities. They shall not have decision making powers (executive or otherwise) and will not be able to vote at Cabinet meetings. Any Councillor appointed to a Deputy Cabinet Member shall remain until they either resign the role, cease to be a Councillor or the Leader notifies the Chief Executive that their appointment ceases.
- 2.3 Subject to the legal minimum and maximum, the size and composition of the Cabinet is a matter solely for the Leader of the Council to decide.

### **3. Functions of the Cabinet**

- 3.1 The Cabinet shall exercise the following functions:
  - (i) To lead the Council's community planning process and has responsibility for ensuring best value;
  - (ii) Leads the preparation of the Council's Policies, Statutory Plans, Strategies (except where reserved to full Council) and Budget;
  - (iii) Take decisions on resources and priorities to deliver and implement the Council's policies and Budget;
  - (iv) Make recommendations to the Council on the formulation, adoption and revision of the Budget and the Policy Framework;

- (v) Review the use and allocation of assets and resources within the approved Budget;
- (vi) Make Key Decisions within the agreed Budget and Policy Framework;
- (vii) Performance monitoring and management; and
- (viii) So far as the responsibilities may arise under relevant legislation, the Cabinet may exercise the local choice functions set out in Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

3.2 All executive decisions will be taken in accordance with the Cabinet Procedure Rules contained in Chapter 2 of this Constitution.

#### **4 Excluded Functions**

4.1 Cabinet shall not exercise Council Functions as set out in Article 5; or any non-executive function retained by Council or which have been delegated to a Committee, sub-committee, joint committee or to an Officer as set out in this Constitution.

4.2 No Cabinet member, Cabinet Committee or Officer shall take a Key Decision. These are reserved for Cabinet only.

#### **5. The Cabinet Members**

##### **Appointment of Cabinet Members**

5.1 The Leader will appoint the Cabinet Members and will appoint one Cabinet Member to be the Deputy Leader.

5.2 Only Councillors who are Members of the Council may be appointed to become Cabinet Members.

5.3 The Leader shall give notice of their appointments or any changes to appointments to the Chief Executive immediately after they are made, and report those changes to the next meeting of the Council where practicable. Any removal of a Cabinet Member will take effect on the date specified in the notice or if no date is specified, immediately upon receipt of the notice by the Chief Executive.

5.4 Each Cabinet Member shall hold office for the duration of the Leaders term of office, unless within that period:

- (i) they resign from Cabinet by giving notice in writing to the Leader, copied to the Chief Executive; or
- (ii) They cease to be Members of the Council; or
- (iii) They are removed from Cabinet by the Leader.

5.5 Upon the occurrence of a vacancy in the office of a Cabinet Member the vacancy shall be filled by the Leader.

##### **Purpose**

- 5.6 In the performance of the role, Cabinet Members are required to:
- (i) to provide collective and individual leadership as part of the Cabinet;
  - (ii) to undertake lead responsibility for allocated portfolios contained in Chapter 4 of this Constitution; and
  - (iii) to Contribute effectively towards the strategic direction of the Council.

### **Duties and Responsibilities**

- 5.7 Cabinet Members shall be responsible for the following duties and responsibilities:

- (i) To work with the Leader of the Council and all other Cabinet Members to ensure coherent direction and action by the Council, acting in accordance with Council decisions and ensure that the Cabinet is informed of events, activities and proposals and involved in all decisions which should be taken collectively;
- (ii) Provide political leadership on the activities relating to the Cabinet Member's portfolio;
- (iii) Lead on policy development within their portfolio and make recommendations to the Cabinet;
- (iv) Exercise executive functions as set out in Chapter 4 of this Constitution;
- (v) Act as an ambassador for the Council, promoting its work (particularly in those areas relevant to their portfolio or where the Cabinet Member has been designated by the Leader of the Council to lead or take a special interest) and participating in consultation, listening to and taking account of the views of organisations, the public and businesses; and
- (vi) Provide information required by the any of the Councils Scrutiny Committees within the prescribed timescale and where requested to appear before such a committee in connection with any issues associated with the portfolio that are being scrutinised, or are the subject to Call In;
- (vii) To positively promote their respective portfolio and where appropriate act as the spokesperson with the media for that portfolio area only.
- (viii) In connection with their respective portfolios:
  - (a) Build good working relationships with appropriate Senior Officers and work with them in developing policy or strategic issues prior to formal reporting. Be supportive in dealing with problems at a strategic level.
  - (b) To keep abreast of related developments and policies at national, regional and a local level;
  - (c) To enhance the Councils reputation;
  - (d) Aim for the Council to be at the forefront of service development and provision where possible;
  - (e) Be aware and of key budgetary issues affecting the portfolio;

## **6 Delegation of Functions**

- 6.1 The Leader may delegate functions to a Cabinet Member, a sub-committee of Cabinet, the Chief Executive, a Senior Officer under whose managerial responsibility the executive function falls or any other Officer. Any matter not specifically delegated remains the responsibility of the Leader.
- 6.2 Even where an executive function has been delegated to a Cabinet Member, a sub-committee of Cabinet or Officer, the Leader of the Council has the right to take that decision or refer it to Cabinet where the circumstances are particularly sensitive or if the decision in question involves changes to policy or strategy.
- 6.3 A decision that is legally within the power of the Cabinet to make, that is not a Key Decision, can be taken by a Cabinet Member, a sub-committee of Cabinet or an Officer.
- 6.4 The Leader shall maintain Chapter 4 of this Constitution setting out which Cabinet Members, Officers or Joint arrangements are responsible for the exercise of particular executive functions.
- 6.5 The Leader may make in year changes to the scheme of delegation as set out in Chapter 4 of this Constitution, and shall inform the Chief Executive in writing in advance of making any change. Any change to the scheme of delegation must be reported to the next meeting of Cabinet.
- 6.6 The Leader may at their discretion establish sub-committees, Reference Groups or working group of Cabinet to discharge the executive functions delegated to them.
- 6.7 The Monitoring Officer shall maintain a list of all sub-committees, Reference Groups and working groups of Cabinet.
- 6.8 For the avoidance of doubt the following Sub-committees, reference groups and Working Groups have been established by the Leader:

#### **Sub-Committees**

- Local Plan Sub-Committee

#### **Working Groups**

- Developing Democracy Group
- Member Development Group

#### **Reference Groups**

- Strategic Investment Programme Group
- Horizon 120 Project Reference Group
- Housing Development Company Project Reference Group
- Town Centre Project Reference Group

## **Article 7 – Decision Making**

### **1. Principles of Decision Making**

- 1.1 In order that decision making is efficient, transparent and accountable, all decisions of the Council (whether taken by full Council, the Cabinet, Committees, Cabinet Members or Officers) will be based on the following principles and in accordance with the procedure rules set out in Chapter two of this Constitution:-
- (i) the action taken will be proportionate to the desired outcome;
  - (ii) decisions will be taken following due consultation and taking into consideration professional advice from Officers;
  - (iii) due regard will be shown for human rights and all decisions will be based on balancing the rights of the individual against the public good;
  - (iv) open transparent decision making;
  - (v) clarity in the aim and desired outcome of decisions;
  - (vi) explanations of the options considered and the giving of reasons for the choices made; and
  - (vii) decisions will be taken that comply with the law and this Constitution.

### **2. Responsibility for Decision Making**

- 2.1 The Council will issue and keep up to date a record of those Officers or parts of the Council that has responsibility for particular types of decisions. This record is contained in Chapter 4 of the Constitution.

### **3. Types of Decisions**

- 3.1 Decisions and the reasons for all decisions will be recorded.

#### **Decisions taken by Full Council**

- 3.2 Decisions relating to the functions listed in Article 5 will be made by full Council and shall not be delegated.
- 3.3. The meeting of full Council will follow the Council Procedure rules contained within Chapter 2 of this Constitution when considering any matter.

#### **Decisions taken by Cabinet**

- 3.4 The Cabinet will follow the Cabinet Procedure Rules contained within Chapter 2 of this Constitution when considering any matter.

#### **Decisions taken by the Scrutiny Committees**

- 3.5 The Scrutiny Committees will following the Scrutiny Procedure Rules contained within Chapter 2 of this Constitution when considering any matter.

### **Decisions by Committees**

- 3.6 All Committees, sub-committees, Reference Groups and working Groups will follow those parts of Chapter 2 of this Constitution as apply to them.

### **Decisions by Council bodies acting as tribunals**

- 3.7 The Council, a Member or an Officer acting as a tribunal or in a quasi-judicial manner or determining or 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 accounts with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

## **4. Decision Planner**

- 4.1 Details of all decisions to be taken by Cabinet shall be published in the Decision Planner, which incorporates the Forward Plan. The Decision Planner may also contain details of those decisions to be taken by Council and Committees.

- 4.2 The Decision Planner covers a four month period and is published on the Council's website on a monthly basis.

## **5 Key Decisions**

- 5.1 A "Key Decision", as set out in the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012, is a decision of Cabinet which is likely to either:

- (i) Result in the Council incurring expenditure or making savings which are in excess of £[150k – 250k], except as otherwise determined under financial regulations; or

- 5.1.1 to be significant in its effects on communities living or working in an area comprising two or more wards in the District of Braintree.

- 5.1 A Key Decisions will also include those decisions which will have a material effect on the Council's services, including but not limited to:

- (i) A significant number of users of the service in the ward(s) will be affected;
- (ii) An impact that will last for a number of years or be permanent;
- (iii) A significant impact on communities in terms of environmental and social well- being;
- (iv) An existing service or access to an existing service ceasing altogether;
- (v) A decision that involves any new policy or strategy or which forms part of the development of or a change to the Policy Framework or the Budget; or
- (vi) Consideration of any matter which will result in a recommendation to full Council.

## **6 Non-Key Decisions**

6.1 The following are examples of non-key decisions:-

- 6.1.1 Implementing approved budgets or policies and strategies where there is little or no further choice involved and the main decision has already been taken by the Council in agreeing the budget and policy framework;
- 6.1.2 Implementing approved actions and targets in annual service plans;
- 6.1.3 Decisions by the S.151. Officer which are part of the ordinary financial administration of the Authority, notably those relating to investments, within the agreed Treasury Management policy;
- 6.1.4 Implementing projects for which specific conditions have been attached by external funders, such as the Government or European Union;
- 6.1.5 The award of contracts for the provision of works, goods and services, within an agreed policy and budget and where a Key Decision has already been made; and
- 6.1.6 Changes arising from amendments to statute where there is little or no discretion.

## **Article 8 – Council Committees**

### **1. Introduction**

- 1.1 The Council has appointed the following committees to discharge the Councils functions delegated to them.
- 1.2 Each of the committees will conduct its business in accordance with the Council procedure Rules and Access to Information Procedure Rules as contained in Chapter 2 of this Constitution, and will meet in public unless the nature of the business is such that the press and public must be excluded or the Committee determined that the press and public should be excluded in accordance with the Access to Information Procedure Rules.

### **2. Planning Committee**

#### **Purpose of the Planning Committee**

- 2.1. The purpose of the Planning Committee is to act for the Council on matters involving the functions of a local planning authority.

#### **Composition of the Planning Committee**

- 2.2. It shall comprise 13 seats in total allocated in accordance with the political balance rules specified by the Local Government and Housing Act 1989.

#### **Functions of the Planning Committee**

- 2.3. The Planning Committee shall perform the following functions:-
  - 2.3.1. To determine and advise on all planning applications and any local development proposals;
  - 2.3.2. To authorise or determine:-
    - 2.3.2.1. Planning obligations;
    - 2.3.2.2. All matters concerning public path orders required as a result of planning legislation;
    - 2.3.2.3. Advertisement consents;
    - 2.3.2.4. Conservation area consents and notices;
    - 2.3.2.5. Revocation or modification of planning consents by order under planning legislation;
    - 2.3.2.6. Any enforcement action including in respect of advertisement contraventions;
    - 2.3.2.7. Tree preservation orders;
    - 2.3.2.8. Consent to carry out all work to protected trees;
    - 2.3.2.9. Listed building consents and notices;
    - 2.3.2.10. Direct action by execution of works, taking steps and/or carrying out operations by or on behalf of the Council under any planning legislation, including the recovery of any costs or expenses;

- 2.3.2.11. Legal proceedings in respect of any breach of planning obligations;
- 2.3.2.12. Any other notices, orders, certificates, demands, permissions, consents and grants under planning legislation;
- 2.3.2.13. Observations, comments and representations on development proposals being determined by other bodies and/or in adjoining or neighbouring administrative areas.
- 2.3.2.14. Matters relating to Highways in respect of planning matters.
- 2.3.2.15. Representation of the Council in any appeal against determination of a Planning application
- 3.1.3. To exercise the Council's statutory duties in respect of the Building Regulations and associated legislation.
- 3.1.4. To do anything which is incidental, conducive or calculated to facilitate any of the Committee's functions or which are necessary for the discharge of those functions.
- 3.1.5. To exercise all powers, duties and functions of the Council contained within or referred to in statutory provisions from time to time in force within the terms of reference of this Committee.
- 3.1.6. So far as the responsibilities may arise under the relevant legislation, functions set out in Part A of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended relating to other town and country planning and development control functions.

#### **4. The Licensing Committee**

##### **Purpose of the Licensing Committee**

- 1.1. The purpose of the Committee is to act for the Council in respect of licensing, registration, environmental protection functions and Animal Welfare legislation.
- 1.2. The Committee's powers include the power to:-
  - (i) discharge the licensing functions on behalf of the Licensing Authority, as determined under the Licensing Act 2003 and Gambling Act 2005; in practice this will normally be undertaken by a Sub-Committee known as the Licensing Sub- Committee Hearing;
  - (ii) determine licences for hackney carriages/private hire vehicles and their drivers and operators; in practice this will normally be undertaken by a Sub-Committee known as the Drivers' Panel; and
  - (iii) to determine licences for market and street trading etc.

##### **Composition of the Licensing Committee**

- 1.3. It shall comprise 14 seats in total allocated in accordance with the political balance rules specified by the Local Government and Housing Act 1989.

##### **Functions of the Licensing Committee**

- 1.4. The Licensing Committee will perform the following functions:-
  - (i) To deal with all matters which are the responsibility of the Council in relation to

hackney carriage and private hire vehicles, drivers and operators licensed by the Council;

- (ii) To deal with all matters which are the responsibility of the Council under the Licensing Act 2003, except where matters are statutory reserved to full Council;
- (iii) To deal with all matters which are the responsibility of the Council under the Gambling Act 2005;
- (iv) To deal with all matters and determined applications which are the responsibility of the Council in relation to street trading consents under Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, and Pavement Permits under the Highways Act 1980;
- (v) To deal with all matter which are the responsibility of the Council under the Local Government Miscellaneous Provisions) Act 1982 for the licensing of Sex Establishments;
- (vi)
- (vii) To set the charging policy, fees and tariffs in relation to functions which fall within their duties and Responsibilities;
- (viii) To approval operational policies in relation to functions which fall within their Duties and responsibilities; to deal with all matters relating to Animal Welfare legislation;
- (ix) To discharge any licensing and regulatory functions not reserved to Cabinet; and
- (x) So far as the responsibilities may arise under the relevant legislation, functions set out in Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended relating to other licensing, registration and environmental protection functions.

1.5. The Licensing Committee can:-

- (i) establish one or more Sub-Committees to deal with licensing hearings, consisting of three members of the Licensing Committee together with one reserve;
- (ii) establish one or more Sub-Committees to deal with Drivers Panel hearings, consisting of four members of the Licensing Committee; and
- (iii) arrange for all matters to be determined by way of a hearing to be determined by a sub-committee; and
- (iv) arrange for the discharge of any functions exercisable by it by either a sub-committee or an officer.

## **5. Other Committees**

### **Independent Remuneration Panel**

5.1 The Independent Remuneration Panel will perform the duties and responsibilities as described in the Local Authorities (Members' Allowances) (England) Regulations 2003.

5.2 The Panel will comprise of 5 members who will be recruited in accordance with the statutory requirements.

## **Article 9 –Scrutiny Arrangements**

### **1. Purpose of Scrutiny**

- 1.1. Effective overview and scrutiny is essential to enhance the accountability and transparency of the decision making process. The Scrutiny Committees have overall responsibility for the performance of all overview and scrutiny functions (under the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007 as amended) on behalf of the Council and ensuring its effectiveness.
- 1.2. The Councils Scrutiny arrangements shall comprise of:
  - (i) the Performance Management Board,
  - (ii) the Community Development Group
  - (iii) the Partnership Development Group and
  - (iv) the Corporate Governance Group

### **2. The Performance Management Board**

- 2.1. The Performance Management Board shall have 9 seats in total allocated in accordance with the political balance rules specified by the Local Government and Housing Act 1989.
- 2.2. The Performance Management Board will perform the following functions:-
  - (i) shall be responsible for the Councils formal statutory call in functions, including to consider and call in decisions relating to the discharge of Cabinet functions before those decisions are put into effect. The Performance Management Board can ask the Cabinet to reconsider any such decision;
  - (ii) To consider decisions relating to the discharge of Cabinet functions after they are put into effect;
  - (iii) To consider the Decision Planner and to comment as appropriate to the decision maker on Key Decisions before they are taken by the Cabinet;
  - (iv) To conduct reviews of policy, services and aspects of services where there is an identifiable need, by itself or through the establishing of a task and finish group;
  - (v) To make suggestions on the development of policies and suggest new policies where appropriate;
  - (vi) To work with or appoint representatives to work with other local authorities to carry out joint scrutiny;
  - (vii) To assist the Cabinet in the development of the Policy Framework and the Budget in accordance with the Budget and Policy Framework Procedure Rules;
  - (viii) To receive and consider recommendations on issues requiring scrutiny under the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007 as amended and where appropriate establishing Task and Finish groups for those purposes;

- (ix) To exercise the power assigned to a crime and disorder scrutiny committee under the Local Government and Public Involvement in Health Act 2007 and the Police and Justice Act 2006;
- (x) To receive reports, presentations and updates in order to scrutinise the Cabinet's priorities for and its performance in the year;
- (xi) To review and scrutinise the performance of the Cabinet, the Cabinet Members and appropriate officers in relation to individual decisions; and
- (xii) To approve an annual overview and scrutiny work programme.

### **3. The Community Development Group**

3.1 The Community Development Group shall have 9 seats in total allocated in accordance with the political balance rules specified by the Local Government and Housing Act 1989.

3.2 The Community Development Group functions shall carried out in relation to the following areas:

- (i) community priorities and solutions;
- (ii) engaging and identifying needs of other groups;
- (iii) building relationships to ensure policies are developed to empower and not constrain;
- (iv) reputation management through promotion, delivery and communication; and
- (v) town and parish council shared working (identifying opportunities whilst establishing priorities).

3.3 The Community Development Group will perform the following functions:-

- (i) To conduct reviews of policy, services and aspects of services where there is an identifiable need, by itself or through the establishing of a task and finish group;
- (ii) To make suggestions on the development of policies and suggest new policies where appropriate;
- (iii) To work with or appoint representatives to work with other local authorities to carry out joint scrutiny;

### **4. The Partnership Development Group**

4.1 The Partnership Delivery Group shall have 9 seats in total allocated in accordance with the political balance rules specified by the Local Government and Housing Act 1989.

4.2 The Partnership Development Group functions shall carried out in relation to the following areas:

- (i) driving forward existing partnerships
- (ii) helping to bring partnership working into the Council's mainstream work

- (iii) bringing together partners within the public sector for the benefit of the community
- (iv) developing an approach to future partnership working with both the public and the private sector.
- (v) To receive the annual report of the Community Safety Partnership.

4.3 The Partnership Development Group will perform the following functions:-

- (i) To conduct reviews of policy, services and aspects of services where there is an identifiable need, by itself or through the establishing of a task and finish group;
- (ii) To make suggestions on the development of policies and suggest new policies where appropriate; and
- (iii) To work with or appoint representatives to work with other local authorities to carry out joint scrutiny.

## 5. The Corporate Governance Group

5.1 The Corporate Governance Group shall comprise 9 seats in total allocated in accordance with the political balance rules specified by the Local Government and Housing Act 1989.

5.2 Where required the Corporate Governance Group may appoint an independent member to its membership in order to provide specific tailored advice on the matters before them.

5.3 The purpose of the Corporate Governance Group is to provide independent assurance to Members of the adequacy of the risk management framework and the associated control environment, to provide independent scrutiny of the Council's financial performance, to the extent that it affects the authority's exposure to risk and weakens the control environment and to oversee the financial reporting and annual governance processes. The Corporate Governance Group oversees internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.

5.3 The Corporate Governance Group is also responsible in promoting and maintain high standards Member conduct.

5.4 The Corporate Governance Group will perform the following functions:-

### **Governance, Risk and Control**

- (i) To review the Council's corporate governance arrangements against the good governance framework, including the ethical framework, and to consider the local code of governance ensuring arrangements are adequate and operating effectively in practice;
- (ii) To review the Annual Governance Statement before approval by the Cabinet, and consider whether it properly reflects the risk environment and supporting assurances, taking into account internal audit's opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and control;

- (iii) To consider the Council's arrangements to secure value for money and review assurances and assessments on the effectiveness of these arrangements;
- (iv) To consider the Council's framework of assurance and ensure that it adequately addresses the risks and priorities of the Council
- (v) To monitor the effective development and operation of risk management in the Council, including the progress in addressing risk-related issues reported to the Committee
- (vi) To endorse the annual Risk Management Strategy and recommend it to the Cabinet for adoption;
- (vii) To consider reports on the effectiveness of the internal control environment and monitor the implementation of agreed actions;
- (viii) To review the assessment of fraud risks and potential harm to the Council from fraud and corruption
- (ix) To monitor the Counter Fraud Strategy, actions and resources;
- (x) To review the governance arrangements for significant partnerships or collaborations.

#### **Internal Audit**

- (xi) To approve the Internal Audit Charter;
- (xii) To approve the risk-based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon those other sources;
- (xiii) To approve significant interim changes to the risk-based internal audit plan and resource requirements;
- (xiv) To make appropriate enquiries of management and the Internal Audit Manager (as Head of Audit) to determine if there are any inappropriate scope or resource limitations;
- (xv) To consider any impairments to independence or objectivity arising from additional roles or responsibilities outside of internal auditing of the Audit Manager (as Head of Audit), and to approve and periodically review safeguards to limit such impairments;
- (xvi) To consider reports from the Audit Manager (Head of Audit) on internal audit performance, including key findings from audit work, issues of concern, the results of the Quality Assurance and Improvement Programme (QAIP), conformance to the Public Sector Internal Audit Standards (PSIAS) and any areas to include in the Annual Governance Statement;
- (xvii) To consider the Audit Manager (Head of Audit) Annual Report, including the conformance with PSIAS and the results of the QAIP as indicators of the reliability of internal audit conclusions, and the overall adequacy and effectiveness of the Council's framework of governance, risk management and control together with a summary of the work

supporting the opinion;

- (xviii) To consider summaries of internal audit findings, including those where the Audit Manager (Head of Audit) has concluded that management has accepted a level of risk which may be unacceptable to the Authority, or where there are concerns about the implementation of agreed actions;
- (xix) To contribute to the QAIP, in particular to the external quality assessment of internal audit which takes place at least once every five years;
- (xx) To consider a report on the effectiveness of Internal Audit to support the AGS
- (xxi) To provide free and unfettered access to the Audit Committee Chair for the Audit Manager (Head of Audit), including the opportunity for a private meeting with the Committee

### **External Audit**

- (xxii) To support the independence of external audit through consideration of the external auditor's annual assessment of its independence and review of any issues raised by Public Sector Audit Appointments or the Authority's auditor panel
- (xxiii) To consider the external auditor's annual letter, relevant reports and the report to those charged with governance, and other specific reports as agreed with the external auditor;
- (xxiv) To comment on the scope and depth of external audit work and to ensure it gives value for money;
- (xxv) To commission work from internal and external audit;
- (xxvi) To advise and recommend on the effectiveness of relationships between external and internal audit and other inspection agencies or relevant bodies

### **Financial Reporting**

- (xxvii) To review the annual Statement of Accounts, specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that require to be brought to the attention of the Council;
- (xxviii) To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts;

### **Accountability Arrangements**

- (xxix) To report to the Council on the Group's findings, conclusions and recommendations concerning the adequacy and effectiveness of their governance, risk management and internal control frameworks, financial reporting arrangements, and internal and external audit functions;
- (xxx) To report to full Council on a regular basis on the Committee's performance in relation to the terms of reference and the effectiveness of the committee in meeting its purpose;

(xxxi) To publish an annual report on the work of the Committee.

### **Governance Arrangements**

- (vi) Promoting and maintaining high standards of conduct by Members and Co-opted Members of the authority;
- (vii) Advising and assisting Parish Council(s) and Councillors to maintain high standards of conduct and to make recommendation to Parish Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with the Code of Conduct.
- (viii) Advising the Council on the adoption or revision of the Members' Code of Conduct;
- (ix) Receiving reports from the Monitoring Officer and assessing the operation and effectiveness of the Members' Code of Conduct;
- (x) Advising, training or arranging to train Members and Co-Opted Members on matters relating to the Members' Code of Conduct;
- (xi) Assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- (xii) Advising the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council
- (xiii) Maintaining oversight of the Council's arrangements for dealing with complaints
- (xiv) Informing Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints.
- (xx) Granting exemptions to politically restricted posts.
- (xxi) To set the allowances and expenses of the Independent Person and Reserve Independent Person.
- (xxii) To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the authority assessment criteria;
- (xxiii) Hearing and determining complaints about Members and Co-opted Members referred to it by the Monitoring Officer;
- (xxiv) To grant dispensations after consultation with the Independent Person pursuant to S33(2) (b), (c) and (e) of the Localism Act 2011;
- (xxv) Hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to S33(2)(a) and (d) of the Localism Act 2011; and
- (xxvi) To consider and report on any matter relating to the Councils Functions not reserved to any other Scrutiny Committee.

## **6. The Standards Sub-committee**

- 6.1 The Corporate Governance Group may establish one or more Standards Sub-Committees consisting of at least 3 Members drawn from the Membership of the Corporate Governance Group and 3 substitute Members, not including more than 1 Member of the Cabinet.

- 6.2 Further to Minute 16a of the meeting of Full Council held on 11 June 2012, the rules of political balance are not applied to the sub-committees.
- 6.3 The Sub-Committee shall be supported by 2 co-opted non-voting parish/town council representatives nominated by the Braintree Association of Local Councils and one Independent Person.
- 6.4 The Chair shall be appointed by the Sub-Committee at each meeting and requires at least 3 or more voting members to be quorate.
- 6.5 The duties and responsibilities of the Standards Sub-Committee are:
- (i) To promote and maintain high standards of conduct
  - (ii) To conduct a Hearing into an allegation that a Member or Co-opted Member has breached the Authority's Code of Conduct.

## **7. Excluded Functions**

- 7.1. The functions and the work programme of the Scrutiny Committees will not include the following matters:-
- (i) Any matter relating to a decision on a specific planning application;
  - (ii) Any matter relating to a decision on a specific licensing application;
  - (iii) Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment, including but not limited to:-
  - (iv) Standards decisions and items which may be brought for decision;
  - (v) Breaches of the Constitution;
  - (vi) Matters relating to the terms and conditions of employment or conduct of individual or groups of staff or Members
  - (vii) Any matter which is vexatious, discriminatory or not reasonable to be included in the agenda
  - (viii) Audit process and items which are likely to be considered by the audit process;
  - (ix) Matters within the proper remit of the Monitoring or S.151 Officers;
  - (x) Matters relating to a particular identifiable service recipient or potential service recipient;
  - (xi) Complaints or matters before the courts or Local Government and Social Care Ombudsman; and
  - (xii) Contractual matters, other than performance monitoring and review, except with the agreement of the Cabinet.

## **Article 10 – Joint Arrangements**

### **1. Arrangements to promote well being**

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

### **2. Joint Arrangements**

- 2.1. The Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not Cabinet functions, in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- 2.2. 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.
- 2.3. 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 local authority as a whole.
- 2.4. Where the joint committee has functions for only part of the District and that area is smaller than two-fifths by area or population, the Cabinet may appoint members to sit on the joint committee from outside the membership of Cabinet. In such cases, the Cabinet 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 this case the political balance requirements do not apply to such appointments.
- 2.5. Details of any formal joint committee arrangements will be maintained by the Head of Governance and contained in Chapter 4 of this Constitution.

### **3. Access to information**

- 3.1. The Access to Information Rules in Chapter 2 of this Constitution apply.
- 3.2. If all the members of a joint committee are Members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.
- 3.3. If the joint committee contains Members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

### **4. Delegation to and from other Local Authorities**

- 4.1. The Council may delegate non-Cabinet functions to another Local Authority or, in certain circumstances, the Cabinet of another Local Authority.
- 4.2. The Cabinet may delegate Cabinet functions to another Local Authority or the Cabinet of another Local Authority in certain circumstances.
- 4.3. The decision whether or not to accept such a delegation from another Local Authority shall be reserved to the Council.

## **5. Contracting out**

- 5.1. The Council, for functions which are not those of the Cabinet, and the Cabinet 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 11 – Finance, Contracts and Legal Matters**

## **1. Financial Management**

- 1.1. The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules contained in Chapter 2 of this Constitution.

## **2. Contracts**

- 2.1. Every contract made by the Council shall:-

- (i) be in writing;
- (ii) be signed by a Corporate Director or an individual authorised by the Head of Governance, where a Contract needs to be executed as a deed; and
- (iii) comply with the Contract Procedure Rules.

## **3. Legal Proceedings**

- 3.1. The Head of Governance 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 Governance considers that such action is necessary to protect the Council's interests. They may designate nominated officers to carry out this function on their behalf.

## **4. Authentication of Documents**

- 4.1. Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it shall be signed by the Head of Governance or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.
- 4.2. The Head of Governance or such person authorised by them shall be the authorised officer to authenticate any document as being an official Council document or an official copy.
- 4.3. Any contract with a value exceeding £[150k – 250k] entered into on behalf of the Council in the course or the discharge of an executive function shall be made in writing. Such Contracts must either be signed by a Senior Officer or made under Common Seal of the Council attested by at least 1 authorised officer.

## **5. The Common Seal of the Council**

- 5.1. The Common Seal of the Council shall be kept in a safe place in the custody of the Head of Governance.
- 5.2. 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.
- 5.3. The Common Seal shall be affixed to those documents which in the opinion of the Head of Governance should be sealed.

- 5.4. The affixing of the Common Seal will be attested by the Head of Governance or some other person authorised by them.
- 5.5. Deeds to be executed under hand shall be attested by the Head of Governance or some other person authorised by them.

<b>Review of Scheme of Delegation</b>		<b>Agenda No: 6</b>
<b>Portfolio</b>	<b>Planning</b>	
<b>Corporate Outcome:</b>	<b>Connecting People and Places Delivering and Innovating</b>	
<b>Report presented by:</b>	<b>Christopher Paggi, Planning Development Manager</b>	
<b>Report prepared by:</b>	<b>Christopher Paggi, Planning Development Manager</b>	
<b>Background Papers:</b>	<b>Public Report</b>	
The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017 Neighbourhood Planning Act 2017 Town and Country Planning (Development Management Procedure) Order (2015) General Data Protection Regulations National Planning Policy Framework (2019) National Planning Policy Guidance Planning for the Future, White Paper, August 2020 Braintree District Council Constitution	<b>Key Decision: No</b>	
<b>Executive Summary:</b>		
<u>Background</u>		
<p>Members are integral to the decision making process and have an important role to play within the wider planning process. The Council's Planning Committee operates as a 'shop window' for the Council in a public arena, where decisions are made in an open and transparent manner. However at present, Planning Committee is under significant pressure due to the volume of applications which it is required to consider.</p> <p>The last review of the Scheme of Delegation was undertaken in 2015. As part of that review, it was agreed that the scheme should be subject to regular review. Following consultation with Senior Officers within the Planning team, it is considered that the current Scheme of Delegation should be revised as it has not led to Planning Committee being able to concentrate on the most significant planning applications in the District and is considered to be unduly complex. It is also considered that the current Scheme of Delegation is contributing to delays in decision-making and impacting upon Service delivery.</p>		

## Objectives

The review is being undertaken for three main reasons:

1. To ensure that Members of the Council's Planning Committee are focused on the determination on the most significant and complex applications, namely those which affect the way the District will grow; and have a higher level of public interest;
2. To ensure the Council is able to discharge its Development Management function in an efficient, cost effective, and timely manner so we are able to meet Government and BDC performance targets;
3. To introduce a mechanism to allow for meaningful engagement with Members of the Council's Planning Committee at the pre-application and application stage, prior to the determination of the application.

## Revised Scheme of Delegation

A revised Scheme of Delegation is included within **Appendix 1** of this report. This seeks to achieve the following key outcomes:

- A prescriptive, unambiguous and transparent Scheme of Delegation that is easy to understand for all users of the planning system.
- Ensures Members of the Planning Committee are focused on the most significant and complex applications.
- An efficient and timely procedure for determining planning applications.

By adjusting the Scheme of Delegation in this way, it would also be possible to enable proposals to be introduced to enhance Member engagement in the planning process. Specifically, the creation of a 'Members Forum' where applicants and agents would have the ability to present their proposals to Members of the Planning Committee at pre-application, pre-submission and application stage of the process. There would also be an opportunity to extend invitations to attend the Members Forum to Local Ward Members and Parish/Town Councils. It should be noted that this forum would be a way for members to enhance their understanding of the proposals they have before them. It is not a decision making forum. This aspect of the proposal seeks to achieve the following key outcomes:

- Ensures meaningful engagement with Members, Local Ward Members and Parish/Town Councils in applications prior to their determination.
- Would enable applicants, agents, and Officers to understand issues of concern and how the proposals could be improved to address them.
- Strengthens Officers ability to negotiate positive changes to proposals.
- Members would have a greater level of confidence in how the proposal has evolved.

**Recommended Decision:**

That Members of the Planning Committee:

- a) Note the proposed Revised Scheme of Delegation and proposals for Member Engagement as set out within Appendix 1;
- b) Note the commencement of a 21 day consultation period on the proposals with stakeholders;
- c) Note that the final Scheme of Delegation will be submitted for approval at Full Council on 7th December 2020 as set out in Appendix 1, and as modified as a result of the consultation.

**Purpose of Decision:**

To provide the Planning Committee with details on the proposed review of the Scheme of Delegation and Member Engagement in the planning process.

**Any Corporate implications in relation to the following should be explained in detail.**

<b>Financial:</b>	Officer time and resources required to carry out the public and stakeholder consultation will be met from existing budgets. The Revised Scheme of Delegation is likely to deliver efficiency savings and reduce the costs currently associated with the determination of planning applications by Planning Committee.
<b>Legal:</b>	<p>The proposed revised Scheme of Delegation would involve amendments to the Council's Constitution and therefore will require formal approval by Full Council before they can be implemented.</p> <p>There is no obligation to carry out a formal consultation on the changes, however, having previous done so for planning delegations, there is an expectation that consultation will be undertaken on this occasion.</p>
<b>Safeguarding:</b>	No matters arising out of this report.
<b>Equalities/Diversity:</b>	An Equality Impact Assessment will be undertaken to support the final Scheme of Delegations submitted to full Council on 7th December 2020.
<b>Customer Impact:</b>	Increased delegation would result in more timely decision-making which would be beneficial to customers. The revised Scheme of Delegation would be more prescriptive and would therefore provide applicants, agents and

	members of the public with greater clarity on which planning applications need to be reported to Planning Committee for determination.
<b>Environment and Climate Change:</b>	No matters arising out of this report.
<b>Consultation/Community Engagement:</b>	There will be a 3 week consultation period to enable stakeholders to comment on the proposals.
<b>Risks:</b>	That the changes to the Scheme of Delegation do not lead to the anticipated outcomes. The developers and agents or Members do not want to get involved in the Members Forum.
<b>Officer Contact:</b>	Christopher Paggi
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## **Review of Scheme of Delegation**

### 1. **Objective**

1.1. The review of the Scheme of Delegation is being undertaken for three main reasons:

1. To ensure that Members of the Council's Planning Committee are focused on the determination of the most significant planning applications, namely those which will affect how the District will grow and develop and which have a higher level of public interest. These applications are usually more complex and benefit from the additional scrutiny at Planning Committee where Members can add most value to the decision making process in balancing conflicting pressures.
2. To ensure an effective and efficient delegation arrangement for the determination of 'Minor' and 'Other' planning applications that raise no significant planning issues, in order to discharge the Council's Development Management function in an efficient, cost effective, and timely manner, which includes meeting relevant Government and BDC performance targets, without compromising the quality of the decisions made.
3. To introduce a mechanism to allow for meaningful engagement with Members of the Council's Planning Committee at the pre-application and planning application stage over development proposals which meet the criteria for being referable to the Council's Planning Committee for determination.

### 2. **Background**

2.1 The last review of the Scheme of Delegation was undertaken in 2015. A report was considered by the Council's Planning Committee in January 2015. Subsequently, the proposals were subject to public consultation before being considered and approved at Full Council in April 2015.

### 3. **Old Scheme of Delegation**

3.1 The previous Scheme of Delegation, which was described as a 'Prescribed Approach', set out the criteria where, in certain specified scenarios, applications had to be referred to Planning Committee for determination. The old scheme was considered to be complicated and cumbersome, particularly as it included the requirement for any application, where 1 (or more) letters of representation, which were received contrary to the Officer recommendation, to be referred to Planning Committee.

3.2 Concern was also raised that the delegation rate (the proportion of applications determined at Officer Level) was relatively low in comparison with other District LPAs in Essex (the Delegation Rate for Braintree were specified as 91% for 2013-14 and 88.7% for first half of the financial year 2014-15),

which meant that Braintree had one of the lowest delegation rates in the County at the time.

- 3.3 A further factor considered as part of the last review was the associated cost of reporting an application to Planning Committee, compared to the application being considered under Delegated Powers. It was previously highlighted that research undertaken by the Governments Planning Advisory Service (PAS) reveals that a decision on a delegated case was around 10 times less than if the application was reported to Planning Committee. At the time, this was assessed to be approximately £1,500 on average per case, which was the additional cost attributed to the report and decision making process, not the cost of dealing with the application before that stage.

#### 4. Current Scheme of Delegation

- 4.1 The current Scheme of Delegation, which was introduced in 2015, sought a widening of delegated powers to achieve efficiency savings and more timely decision-making. The Scheme of Delegation outlines a set of three criteria which sets out how applications have to be determined:

**A. Applications which have to be referred to Planning Committee:**

- BDC Applications / Application Site owned by BDC
- Applications 'Called In' by a Member
- Parish Council [for the purposes of this report the term Parish Council includes the Town Councils] view is contrary to Officer Recommendation
- Applicant/Agent related to a BDC Officer or BDC Member
- Applications considered to be 'Significant' by the Planning Development Manager

**B. Applications which can be determined under Delegated Powers:**

- Applications for sites within development limits with fewer than 6 valid planning representations
- Householder applications anywhere in the District with fewer than 6 valid planning representations
- Applications for replacement dwellings in the countryside with fewer than 6 valid planning representations
- Applications for Advertisement Consent for sites outside Conservation Areas

**C. Applications subject to referral to Chair's Briefing** – those applications which need to be referred to Chair/Vice Chair of the Planning Committee to determine whether the application should be referred to Planning Committee for consideration, under the 'significance' test:

- All applications for new dwellings in the countryside, including agricultural workers dwellings and barn conversions
- All S.73 applications (i.e. to vary or remove a planning condition)
- Proposals which seek a minor variation to the terms of a Section 106 Agreement
- All other applications that fall outside the categories listed in 'B' above

## 5. Reflection on Current Scheme of Delegation

- 5.1 When the scheme of delegation was last reviewed in 2015, it was agreed that the scheme should be subject to regular review. As part of the review process therefore, Officers have considered feedback provided by applicants and agents as well as the experiences of the team in dealing with the current arrangements.
- 5.2 Although the removal of the 'contrary representation trigger' was a positive introduction within the last review, on reflection and following additional analysis, it is considered that there are a number of issues with the current Scheme of Delegation which are detailed in turn below.
- 5.3 While the previous review was undertaken with the best of intentions and sought to address criticisms that the old Scheme of Delegation was complicated and cumbersome, the current Scheme of Delegation has failed to allow the Planning Committee to concentrate on the most complex applications with the greatest impact on the District and is now universally considered by Officers (particularly new Officers that have joined the team from other planning authorities and from the private sector) to be unduly complex.
- 5.4 The introduction of the Chair's Briefing process has facilitated positive engagement with the Chair and Vice Chair of the Planning Committee. Whilst this engagement with Members works well, the administration of the process adds to the workload of Senior Officers and Case Officers (325 applications were considered at Chairs briefing in 2019). This does result in a delay in the determination of applications, particularly 'Minor' applications.
- 5.5 The above delays are a consequence of the Chair's Briefing meeting taking place post-consultation on the application (to enable a meaningful discussion about the application with the Chair and Vice Chair). As the consultation process for these applications can take up to 5 weeks to complete, and depending on the date of Chair's Briefing (scheduled every two weeks), this can lead to a delay in determination (even if it is determined that the application can be delegated). If the Chair/Vice Chair decide that a particular application needs to be referred to the Planning Committee for determination, it is very unlikely that the application will be determined within the statutory 8 week period. Although Development Management performance continues to improve, 'Minor' application performance lags behind 'Other' and 'Major' application performance. This leaves Officers more reliant on securing Extensions of Time with applicants/agents. This can be particularly difficult where applicants and agents perceive that their application has been unnecessarily delayed by the Council's scheme of delegation.
- 5.6 Consultation with current Development Management Officers revealed a clear preference for a more prescriptive Scheme of Delegation, which set out which planning applications need to be reported to Planning Committee for determination. It was also considered that greater clarity would significantly

benefit applicants, agents and members of the public who also struggle to understand the current process.

- 5.7 Concern was also raised by Officers and Members at the number of applications which have to be reported to Planning Committee due to the fact that the Parish/Town Council view is contrary to the Officer recommendation. These concerns are further compounded by the fact that a large number of Parish/Town Council's still fail to attend Planning Committee to substantiate their concerns to Members. Analysis of the last 25 Planning Committee meetings shows that there was a total of 53 Part B Items on agendas, comprising: 14 where the applicant/agent were either BDC staff/BDC Members, or were related to BDC staff; 8 where BDC was the applicant; 4 where the application had been 'Called In' for determined by a Member; and 27 where the Town/Parish view was contrary to Officer recommendation. The relevant Parish/Town Council only attended the Planning Committee meeting on 6 of the 27 occasions (22%) where it was their referral that led to the application being determined at Planning Committee.
- 5.8 During discussions, Officers also raised concern at the number of 'Part B' applications considered at Committee. While many of these are determined 'en-bloc', and while Officers welcome this positive approach by Members, a significant amount of Officer time and resource goes into reporting Part B applications to Planning Committee. This is because Officers must still write reports and prepare presentations in advance of Planning Committee. The reporting of these applications also consumes Member time spent reading Committee Reports and visiting sites. It can also be bewildering for members of the public who see an application referred to Planning Committee for determination, only to see the item moved en-bloc with no discussion of the proposal. The fact that many of these applications are considered en-bloc, raises the question as to whether these applications could or should be considered under Delegated Powers instead.
- 5.9 Officers also questioned why recommendations of refusal are referred to Planning Committee for determination. While this prompted debate amongst Officers, there was a general consensus that referring applications, which are recommended for refusal (particularly for speculative development), is healthy for the planning process as a whole and ensures the public can see a balanced decision-making process. It also ensures that (subject to Members agreeing the Officer recommendation to refuse) that all issues are captured (including any new issues raised by Members), ensuring that these can be considered within any subsequent planning application.
- 5.10 Lastly, and although the Service receive very few requests, there was a general concern about the current Member 'Call In' procedure for planning applications. Under the current scheme of delegation Members are required to give a planning reason for calling an application in, but there is no assessment of the issue(s) raised. Whilst the ability for Members to advocate for their constituents is acknowledged, there was a general consensus that this aspect of the Scheme of Delegation would benefit from a clearer process and a greater level of oversight.

## 6. Delegation Rates

- 6.1 Analysis of delegation rates (i.e. the proportion of applications determined at Officer Level) shows that current delegation arrangements are resulting in a relatively low level of delegation to Officers in comparison within other District LPAs in Essex.
- 6.2 Table 1 below highlights that Braintree ranked joint second lowest in the number of planning applications determined under delegated powers (joint with Harlow), with only Maldon recording a lower rate of delegation, whilst also determining the fifth highest number of applications during 2019.

**Table 1: Performance for Year ending December 2019**

<b>LPA</b>	<b>Total Decisions*</b>	<b>Delegation Rate*</b>
Chelmsford	1,709	99%
Brentwood	951	99%
Colchester	1,450	97%
Castle Point	575	97%
Tendring	1,091	96%
Basildon	1,026	96%
Rochford	718	96%
Uttlesford	1,646	95%
Epping Forest	1,484	94%
<b>Braintree</b>	<b>1,380</b>	<b>92%</b>
Harlow	318	92%
Maldon	809	86%

*\*Based on Year ending December 2019 MHCLG Returns (Table 134: District Planning Authorities)*

- 6.3 The low delegation rate of decisions is a consequence of the current Scheme of Delegation which is contributing to delays in decision-making and impacting upon Service delivery. While it is anticipated that the revised the Scheme of Delegation as set out in **Appendix 1** would increase the number and percentage of decisions made under Delegated Powers, the motivation for seeking this change is to achieve the right balance between democratic oversight and accountability with the need for an efficient decision-making process which ensures the Council is able to consistently achieve against Government performance targets.
- 6.4 As highlighted earlier within the report, revising the Scheme of Delegation in this way would ensure that Members are able to focus on the determination of the most significant and complex applications, namely those which affect the way the District will grow; and have a higher level of public interest. Similarly, this would have a beneficial impact upon Officer capacity and particularly Senior Officers within the Development Management team. In addition to the costs associated with reporting applications to Planning Committee, a significant amount of Officer resource is consumed by the current process. A further motivation in advancing the proposed revised Scheme of Delegation is

therefore to ensure there is enough team capacity reserved to focus the Planning Committee on major and strategic planning applications.

## 7. Revised Scheme of Delegation

7.1 It is considered that any revised Scheme of Delegation should be based around the following principles:

- Discard the 'Part A' and 'Part B' split for Planning Committee Agendas. All planning applications referred to Planning Committee should be considered and debated by Members.
- Members of the Planning Committee should be able to focus on the determination of the most significant planning applications, namely those which will affect how the District will grow and develop and which have a higher level of public interest.
- The Scheme of Delegation should be prescriptive, clear and unambiguous so it is easy to understand and transparent for applicants, agents, Members, and members of the public.
- Members of the Planning Committee should not become 'bogged down' with the determination of 'Minor' and 'Other' applications which do not raise any significant planning issues.
- Greater oversight of the Member 'Call In' process is required to ensure that applications are referred to the Planning Committee on planning merit.
- Similarly, greater oversight is required to assess the arguments advanced by Parish/Town Councils on applications where their view is contrary to the Officer recommendation, to decide whether the application is reported to Planning Committee for determination.
- Applications, where a previous application for the same or substantially the same application site has been refused planning permission under Delegated Powers or by Planning Committee and where the new proposal is 'similar' to the previously determined application, should be able to be determined under delegated powers.

7.2 Having regard to the above principles, a revised Scheme of Delegation has been drafted and is set out in full in **Appendix 1** to this report. The proposed Revised Scheme of Delegation would achieve the following:

- Ensure all applications reported to Planning Committee are debated by Members.
- All 'Major' planning applications would be reported to Members for determination. These would include applications for outline and full planning permission as well as applications for the approval of reserved

matters. These applications are more complex and will directly shape the way in which the District grows in the future.

- A prescriptive unambiguous and transparent Scheme of Delegation that is easy to understand and transparent for Applicants/Agents, and Members of the Public.
- 'Minor' applications which raise no significant planning issues, and 'Other' applications should be determined under delegated powers to ensure the Council can discharge its Development Management function and meet relevant Government and BDC performance targets.
- Retains the Chair's Briefing process but repurposes this to provide an oversight on whether the larger 'Minor' applications, which have been subject to a Member 'Call In', or which have generated representations from the Parish/Town Council which are contrary to the recommendation of Officers, should be referred to Planning Committee for determination.

7.3 It is recognised that some Members may be concerned that more applications are being considered by Officers, rather than Members at Planning Committee. Whilst this will be true in terms of the number of applications, it will ensure that Members have the time to properly consider the most complex applications which require a planning judgement, rather than those which are a more straightforward application of local and national policy.

7.4 However in order to further enhance member engagement in the more significant and complex proposals a Member Forum is proposed. The ability to resource this forum is met by the expected reduction in the number of applications being prepared for Planning Committee.

## 8. Member Engagement in the Planning Process

8.1 Members are integral to the decision making process and have an important role to play within the wider planning process. The Council's Planning Committee operates as a 'shop window' for the Council in a public arena, where decisions are made in an open and transparent manner. However at present Planning Committee is under significant pressure due to the volume of applications which is required to consider.

8.2 Members are currently responsible for making decisions on applications, including major planning applications of a large or strategic scale, based on a report and recommendation from Officers published in advance of the Planning Committee meeting, and an Officer presentation on the night. They must also take into account any material considerations raised within representations and consultation responses received during the process. Some of the applications determined by Members have been subject to lengthy discussion and negotiation between Officers and the applicants. For a large scale or strategic major application, this process could easily take over a year from the initial pre-application discussion to the application being referred to Planning Committee. However, Members, who will have the final

say on the determination of the application, are not involved in any part of that process and do not have the ability to influence the proposals, except of course, for making a final decision on the application.

- 8.3 This lack of engagement currently generates significant risk for both Officers and Applicants and Agents who are investing significant time and resources in working up proposals. Member involvement in the process earlier on will mean that issues can be identified, including any significant principle concerns, so that the applicant can address these or make a decision as to whether to progress any further work on the proposal. The risk and more importantly the consequence of a Member overturn or deferral is significant, both in terms of delay but also in terms of the Officer resource and the abortive cost of this, and the potential additional costs to the Council arising from a subsequent appeal. The Council remains under significant pressure in terms of housing land supply, and it is increasingly important that strategic sites which are supported are able to be advanced through the planning process to facilitate housing delivery in the District. This will ensure that the District grows in the right way and unsustainable development can be resisted.
- 8.4 Developers are keen to understand the particular issues and concerns that Members have about proposed developments so that they can explore ways to address those concerns through their planning application. Developers who have been able to engage with Members on their proposals in advance of determined in other authorities have said they found this to be a useful way of understanding local issues and sentiment and helps produce better quality applications and developments. However, the current process does not include a formal mechanism to facilitate Member engagement as part of the pre-application and planning process.
- 8.5 The Localism Act 2011 (s25) changed rules around pre-determination, to enable Members to express a view, meet with people and still be involved in the decision, providing that an open mind is retained.
- 8.6 The proposed revised Scheme of Delegation offers a unique opportunity to introduce a 'Members Forum' where applicants and agents would have the ability during the pre-application, pre-submission and application stage of the planning process, to present their proposals to Members of the Planning Committee. Members would be able to ask questions and express a view (providing an open mind is retained) within a structured and safe forum. This engagement would enable applicants, agents and Officers to get a better understanding of particular issues of concern and how the proposals could be improved further. This would also offer the potential to significantly strengthen Officers ability to negotiate with developers and seek improvements to the scheme during the process. Moreover, where an application has been subject to consultation through the Members Forum, when the application is finally reported to Planning Committee for determination, Members would have a greater level of confidence in how the proposal has evolved.

- 8.7 Planning is a public process, and whilst Officers already encourage applicants to engage with local representatives prior to submitting a planning application, there is no reason why invitations to attend a Members Forum meeting couldn't be extended to Local Ward Members and a representative of the Town or Parish Council. This would significantly enhance engagement with Town and Parish Council's at the pre-application stage of the process. The meetings of the Members Forum would need clear governance arrangements in place and would need to be minuted.
- 8.8 The introduction of this new process, would significantly enhance the Council's current pre-application process. The costs associated with the introduction of this new process, would be met by developers ensuring that this process operated on a cost neutral basis (for both Planning and Governance).
- 8.9 Critically, the proposed revised Scheme of Delegation is designed to increase the rate of delegated decisions and reduce the number of applications that need to be determined at Planning Committee. This would facilitate the ability to create a Members Forum either in addition or in lieu of a scheduled Planning Committee meeting.

## 9. Next Steps

- 9.1 Prior to commencement of public and stakeholder consultation, the views of the Planning Committee are sought. Stakeholder and public consultation is scheduled to commence on 26<sup>th</sup> October 2020 for a period of 3 weeks, ending on 13<sup>th</sup> November 2020.
- 9.2 Subject to the consultation, it is proposed to seek approval for the revised Scheme of Delegation and Member Engagement proposals at Full Council on 7<sup>th</sup> December 2020.

## 10. **Recommendation**

- 10.1 That Members of the Planning Committee:
- a) Note the proposed Revised Scheme of Delegation and proposals for Member Engagement as set out within Appendix 1;
  - b) Note the commencement of a 21 day consultation period on the proposals with stakeholders;
  - c) Note that the final Scheme of Delegation will be submitted for approval at Full Council on 7<sup>th</sup> December 2020 as set out in Appendix 1, and as modified as a result of the consultation.

## **APPENDIX 1: PROPOSED REVISED SCHEME OF DELEGATION**

### **A. Applications to be referred to Planning Committee for determination (to be presented by Officers and debated by Members at Planning Committee):**

- Major Planning Applications (Application for Outline Planning Permission, Reserved Matters Approval or Full Planning Permission) for residential development comprising 10 or more proposed houses or commercial development comprising floorspace of 1,000sq.m, including any linked application for Listed Building Consent<sup>1</sup>.
- Major or Minor Planning Applications for Renewable Energy Schemes, including solar, wind and bioenergy projects, and proposals for Anaerobic Digestion Plants.
- Where the Applicant is Braintree District Council.
- Where the Applicant is an employee or Member of Braintree District Council.
- Where the Applicant or Agent is related to an employee within the Planning Department (Development Management or Planning Policy) (change from Braintree District Council<sup>2</sup>) or a Member of Braintree District Council.
- Any application which is deemed to be 'significant' by the Planning Development Manager.

### **B. Applications which can be determined under Delegated Powers which may be subject to referral to Chair's Briefing:**

- Minor Planning Applications (Application for Outline Planning Permission, Reserved Matters Approval or Full Planning Permission) for residential development comprising 3-9 proposed houses, including any linked application for Listed Building Consent, **Unless**:
  - Either the Town or Parish Council's view is contrary to the Officer Recommendation;
  - Or the application has been 'Called In' for determination by a BDC Councillor by the end of the specified consultation period and is accompanied by planning reasons for why the application should be referred to Planning Committee for determination.

#### **Then:**

The application shall be referred to Chair's Briefing, with the Chair and Vice Chair of the Planning Committee, who will consider whether the application should be referred to the Planning Committee for determination, except if a previous application for the same or substantially the same application site has been refused planning permission under Delegated Powers or by the Planning Committee where the proposal is deemed to be 'similar' to the previously determined application by the Planning Development Manager.

<sup>1</sup> For Members information only, currently the Government define a major residential development to be 10 units or more or sites 0.5ha or more and for non-residential development is where additional floorspace of 1,000sq.m or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015, **however for the purposes of the Scheme of Delegation only the 10 units or more and 1000sq.m floorspace thresholds will be utilised to define a Major Planning Application and not the site area definitions.**

<sup>2</sup> We currently have one agent who is related to a Member of BDC staff and as a result, all of his applications are reported to Planning Committee.

### **C. Applications which can be determined under Delegated Powers**

- Minor Planning Applications (Application for Outline Planning Permission, Reserved Matters Approval or Full Planning Permission) for residential development comprising 1-2 proposed houses, including any linked application for Listed Building Consent.
- All Section 73 applications to vary or remove planning conditions, including seeking minor material amendments, associated with any previous consent (Application for Outline Planning Permission, Reserved Matters Approval or Full Planning Permission) for 'Major', 'Minor', or 'Other' Planning Applications.
- Minor Planning Applications for replacement dwellings.
- Minor Planning Applications for agricultural workers dwellings (temporary or permanent).
- Minor Planning Applications for any other commercial development or change of use.
- All of the following Application Types:

<b>Application Type</b>	<b>Description</b>
<b>ADV</b>	Applications for Advertisement Consent
<b>AGR</b>	Agricultural Prior Approval
<b>ALT</b>	Certificate of Alternative Appropriate Development
<b>AREM</b>	Agricultural Reserved Matters
<b>CLPLB</b>	Certificate of Lawfulness for Works to a Listed Building
<b>COMPA</b>	Commercial Extensions Prior Approval
<b>COUPA</b>	Applications for Prior Approval (All)
<b>DAC</b>	Application for Approval of Details reserved by condition following grant of planning permission or a listed building consent
<b>ECCDAC</b>	Consultation on Essex County Council Discharge of Conditions Applications
<b>ELD</b>	Application for a Certificate of Lawfulness for an Existing Use or Development
<b>FPO</b>	Footpath Order
<b>GOV</b>	Development by Government Department
<b>HDG</b>	Hedges
<b>HH</b>	Householder Application for Planning Permission
<b>HHPA</b>	Householder Extensions Prior Approval
<b>LBC</b>	Application for Listed Building Consent for alterations, extensions or demolition of a listed building
<b>LDOCC</b>	Local Development Order Compliance Checklist
<b>NMA</b>	Application for a Non-Materials Amendment following a grant of planning permission
<b>OHL</b>	Overhead Electricity Lines
<b>P14JPA</b>	Prior Approval – Part 14, Class J
<b>P3RNOT</b>	Notification – Part 3, Class R
<b>PDEM</b>	Prior Approval for Demolition

<b>PIP</b>	Permission In Principle
<b>PLD</b>	Application for a Certificates of Lawfulness for a Proposed Use or Development
<b>S106A</b>	S106A to modify or discharge S106
<b>SCO</b>	EIA Scoping Opinion
<b>SCR</b>	EIA Screening Opinion
<b>T56</b>	Telecoms 56 Day Notification
<b>TDC</b>	Technical Details Consent
<b>TEL</b>	Telecommunications General
<b>TMPCOU</b>	Temporary Change of Use
<b>TPO</b>	Works to Protected Trees (subject to a TPO)
<b>TPOCON</b>	Works to Trees within a Conservation Area

- Consultation Responses which can be determined under Delegated Powers, following referral to the Cabinet Member for Planning:

<b>Application Type</b>	<b>Description</b>
<b>ECC</b>	Consultation on Essex County Council Applications <sup>3</sup>
<b>ODC</b>	Out of District Consultation

<sup>3</sup> As the majority of these applications are for smaller scale development, Development Management could notify the Cabinet Member for Planning on receipt of the consultation and await confirmation of whether a response could be issued by Officers, or if a draft response should be prepared for review and approval, prior to issue.