

## SECTION 1 STRUCTURE AND RESPONSIBILITIES

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## **CHAPTER 1.1 – PURPOSE OF THE CONSTITUTION**

### **1.1.1 Powers of the Council**

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

### **1.1.2 The Constitution**

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

### **1.1.3 Purpose of the Constitution**

The Constitution sets out the legal and political framework through which the Council will achieve its objectives for maintaining and enhancing the services it provides, as enshrined in the Community Strategy and Corporate Plan.

Legally, the document and its appendices set out the rules and regulations to ensure the Council operates within the law and in an environment of sound corporate governance.

Politically, it explains the structure by which the Council develops policy, makes its decisions and is held accountable for these decisions, recognising that the future direction of policy is shaped by our stakeholders and by the aspirations of the political group in control.

Collectively, the document helps to ensure good corporate governance and outlines the key role Councillors, partners and residents play in shaping and monitoring Wokingham Borough Council's work.

### **1.1.4 Duty to Monitor and Review the Constitution**

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

### **1.1.5 Protocol for Monitoring and Review of Constitution by Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in [Rule 1.1.3](#)  
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 him/her by Members, 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.

### **1.1.6 Changes to the Constitution - Review and Approval**

The Council will be responsible for carrying out the on-going review of the Constitution, and may establish a politically balanced working group for this purpose. Changes to the Constitution will only be approved by the Council after consideration of a proposal by the Monitoring Officer and on his/her report to the Council, subject to amendments being

made to Chapter 1.3 by the Democratic Services Manager as a result of changes being made to the Council's Management Structure.

### **1.1.7 Change from a Leader and Executive Form of Executive to Alternative Arrangements, or Vice Versa.**

The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

### **1.1.8 Suspension of the Constitution**

- a) **Limit to suspension.** The procedures within this Constitution may not be suspended with the exception of the Council Rules of Procedure in Chapter 4.2, which may be suspended by the Council to the extent permitted within those Rules and the law.
- b) **Procedure to suspend.** A Motion to suspend any Council Procedure rule will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Rule 1.1.3.
- c) **Rules capable of suspension.** All the Council Rules of Procedure set out in Chapter 4.2 except Rules 4.2.15.5 and 4.2.16.2 may be suspended.

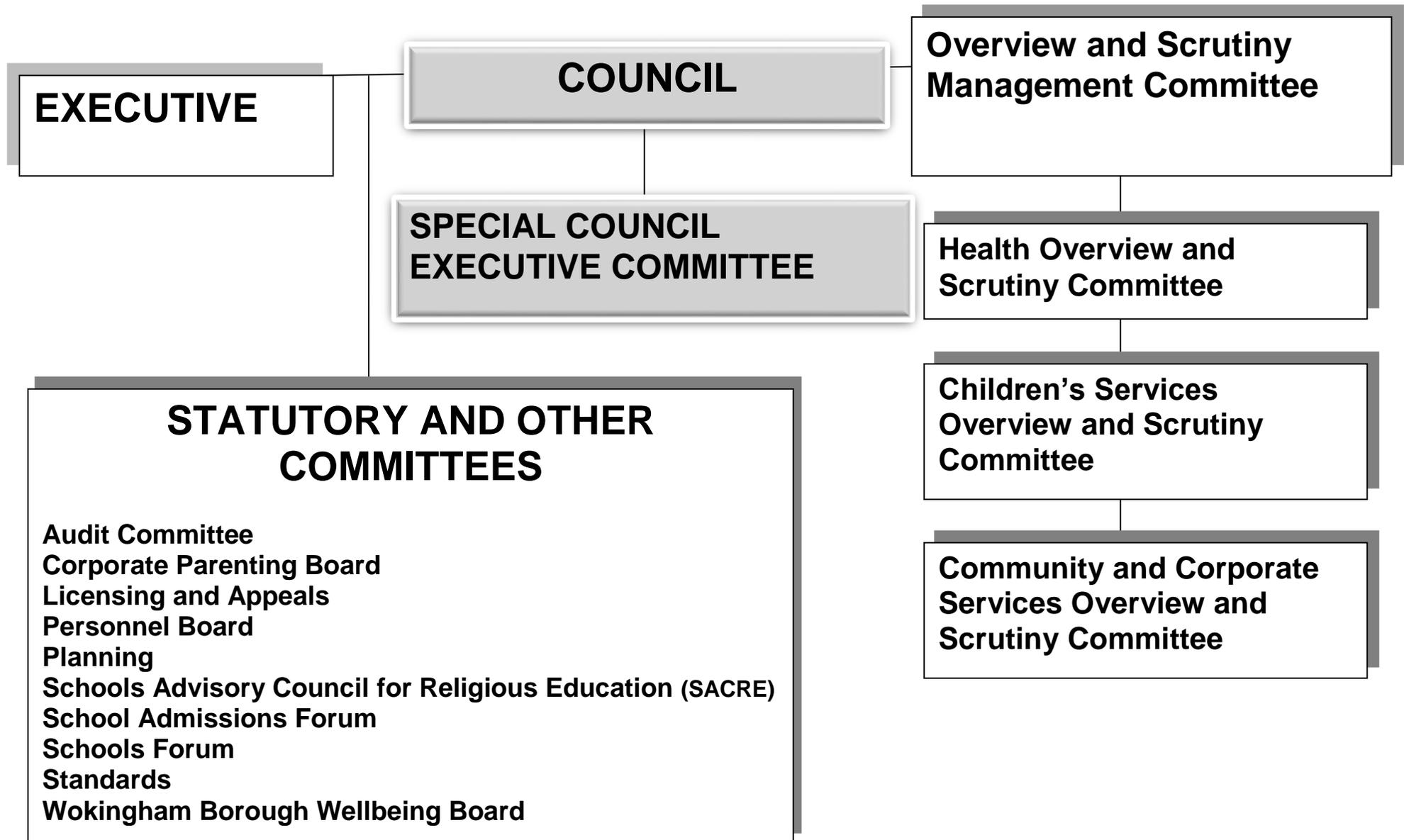
### **1.1.9 Interpretation**

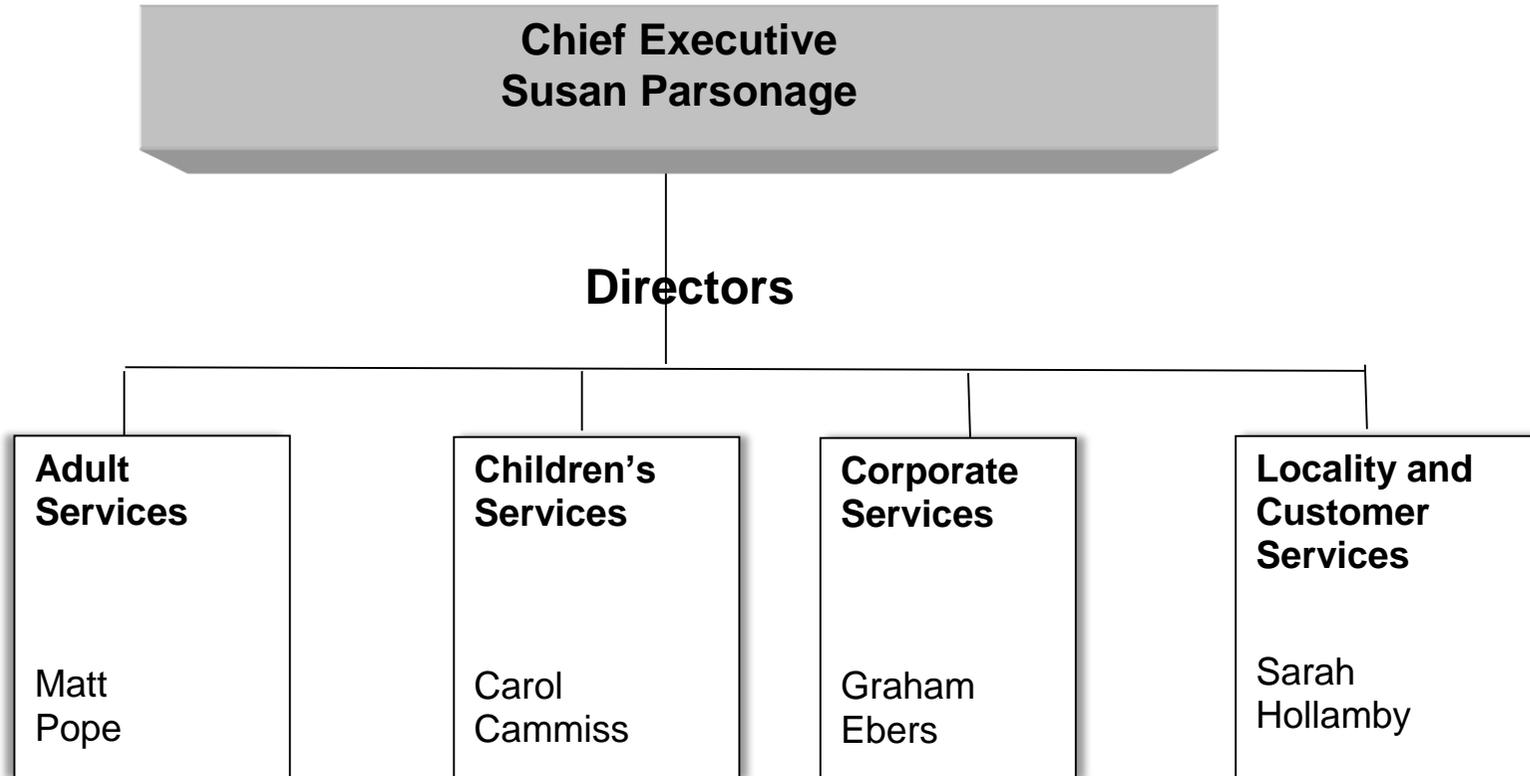
The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Rule 1.1.3.

### **1.1.10 Publication**

- a) The Monitoring Officer will provide either a printed or electronic copy of this Constitution to each member of the authority upon receipt of that individual's declaration of acceptance of office on the occasion when the member is first elected to the Council. The exact form of the document will be in accordance with the member's wishes;
- b) The Monitoring Officer will ensure that copies are available for inspection at Council offices, and can be purchased by members of the local press and the public on payment of a reasonable fee. The Constitution shall also be available on the Council's website [www.wokingham.gov.uk](http://www.wokingham.gov.uk)

# The Committee Structure





## **CHAPTER 1.4 - DECISION MAKING**

### **1.4.1 Responsibility for Decision Making**

This Constitution describes what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions.

### **1.4.2 Principles of Decision Making**

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

- a) proportionality (i.e. the action must be proportionate to the desired outcome);
- b) due consultation and the taking of professional advice from Officers;
- c) human rights will be respected and considered at an early stage in the decision making process;
- d) a presumption in favour of openness;
- e) clarity of aims and desired outcomes and
- f) when decisions are taken by the Executive, details of the options which were taken into account and the reasons for the decision will be recorded.

### **1.4.3 Decisions Reserved to the Council**

Decisions relating to the functions listed in Chapter 4.1 will be made by the Council or Special Council Executive Committee and not delegated.

### **1.4.4 Key Decisions by the Executive**

Key Decisions shall be taken by the Executive in accordance with the budget and policy framework agreed by Council. They are defined as decisions which:

- a) would result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates;
- b) are significant in terms of its effect on communities living or working in an area comprising two or more wards.
- c) involve requests for Supplementary Capital or Revenue Estimates up to £500,000;
- d) involve requests for virements over £300,000;
- e) involve the application of Section 106 developers' contributions over £100,000;
- f) involve the acquisition or sale of assets (other than the sale of housing stock) and the rationalisation of assets in the interests of the efficient working of the Council, above the limits delegated to individual Executive Members (see Chapter 5.5);
- g) involve the consideration of major schemes within the Capital Programme agreed by Council where there is significant discretion for options;

- h) involve the addition of a scheme to the Capital Programme not originally included or on a reserve list;
- i) involve the making of a Compulsory Purchase Order;
- j) involve the approval of Best Value or Service Improvement Plans.

#### **1.4.4.1**

Deciding which matters constitute Key Decisions will be a matter for the lead Officer to determine in consultation with the relevant Executive Member, having regard to the advice of the Monitoring Officer and Chief Finance Officer as appropriate.

#### **1.4.4.2**

Key Decisions due to be made by the Executive will normally be set out in the Forward Programme. Where an urgent decision is required, public notice shall be given at least three days in advance of the proposed decision date and the Chairman of the Overview and Scrutiny Management Committee will be advised.

A decision taker may only take a Key Decision in accordance with the requirements of the Executive and Access to Information Procedure Rules set out in Chapters 5.4 and 3.2 of this Constitution.

#### **1.4.5 Decision Making by the Council**

Subject to Paragraph 1.4.11 below, the Council meeting will follow the Council Procedures Rules set out in Chapter 4.2 of this Constitution when considering any matter.

#### **1.4.6 Decision Making by the Executive**

Subject to [Rule 1.4.11](#), the Executive will follow the Executive Procedures Rules set out in Chapter 5.4 of this Constitution when considering any matter.

#### **1.4.7 Decision Making by Individual Executive Members**

Subject to [Rule 1.4.11](#), decision-making by individual Members of the Executive will follow the process set out in Chapter 5.5.

#### **1.4.8 Decision Making by the Overview and Scrutiny Committees**

The Overview and Scrutiny Management Committee and its committees will follow the Procedure Rules set out in Chapter 6.2 of this Constitution when considering any matter.

#### **1.4.9 Decision Making by other Committees and Sub-Committees established by the Council**

Subject to [Rule 1.4.11](#), other Council Committees and Sub-Committees will follow those parts of the Procedures Rules set out in Section 8 of this Constitution as apply to them.

#### **1.4.10 Decision Making by Officers**

Subject to [Rule 1.4.9](#), decision-making by Officers shall follow the principles and procedures set out in the Scheme of Delegation to Officers set out in Chapter 11.3.

#### **1.4.11 Decision Making by Council Bodies Acting as Tribunals**

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

## **CHAPTER 1.5 - BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

### **1.5.1 Introduction**

Developing and agreeing the budget and policy framework is a key corporate process for the Council. It sets the context within which decision-making by the Executive takes place. The Council will be responsible for agreeing the budget and policy framework and the Executive is responsible for implementing it.

### **Budgetary Framework**

#### **1.5.2 Annual Budget Setting Process**

The annual Revenue and Capital budgets will be set by Council prior to the beginning of the financial year following a recommendation from the Executive. At this time the Council may also approve indicative budgets for future years, however these budgets do not provide authority to spend unless otherwise specified. Budgets will be formulated and presented in accordance with a timetable agreed by the Council's Chief Finance Officer in consultation with the Leader of the Council. The timetable and supporting guidance will include the role of Officers, Members and working groups, and will set out details of any public consultation. Details of the timetable and guidance will be available from the Chief Finance Officer.

#### **1.5.3 Procedure for Approval of the Budget by the Council**

Once the Executive has considered firm budgetary proposals, they will be referred, at the earliest opportunity, to the Council for decision. In reaching a decision, the Council may adopt the Executive's proposals, amend them, refer them back to the Executive for further consideration or substitute its own proposals in their place, in accordance with the provisions set out below.

##### **1.5.3.1**

The following procedure is required in accordance with provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014, and must be applied in a situation where the Council objects to the Executive's recommendations in respect of any item or items making up the annual budget.

##### **1.5.3.2**

Where the Council raises objections to the Executive's recommendation, it shall resolve to adjourn to allow the Leader of the Council and Lead Executive Member to consider these objections. Following this adjournment the Leader of the Council and Lead Executive Member may put forward amendments to the recommendation in order to address the Council's objections. Having considered these amendments, the Council may approve the recommendation as amended, or it shall resolve that the matter be reconsidered by the Executive within five working days.

##### **1.5.3.3**

Once the Executive has reconsidered the matter it shall submit a further report to another meeting of Council convened for the purpose by the Chief Executive, to be held within ten working days of the expiry of the five working day period. The Executive may submit a revised proposal to the Council, setting out reasons for the changes. Alternatively it may submit a proposal without amendment, in which case its report shall set out the reasons why it disagrees with the Council's objection.

When the report is reconsidered Council may approve the Executive's proposals, or take a different decision, having taken into account any amendments the Executive has made to its original proposals, the reasons for amendments, any disagreement the Executive has with the Council's original objections and the reasons for that disagreement.

#### **1.5.3.4**

Immediately after any vote is taken at a budget decision meeting regarding the budget, there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

### **1.5.4 In Year Budget Adjustments**

Budgets may be increased in year by way of a supplementary estimate that must be approved by the Executive. In addition, Council approval is required when a supplementary estimate exceeds £500,000 and/or the cumulative total of supplementary estimates for the year exceeds 2% of the Council's net budget. Expenditure of an urgent health and safety nature may be committed without budget in accordance with the Council's Financial Regulations.

#### **1.5.4.1**

Budget transfers between budget heads (virements) are authorised in accordance with the Council's Financial Regulations set out in Chapter 12.1.

### **1.5.5 Budget Monitoring**

Income and expenditure must be collected and incurred in accordance with the Council's Financial Regulations. Budget monitoring is undertaken in accordance with the budget monitoring protocol agreed by the Council's Chief Finance Officer. This will include the roles of Officers, Members and working groups.

#### **1.5.5.1**

The Executive will consider both revenue and capital budget monitoring reports on a quarterly basis. If the overall forecast variance exceeds 2% of the Council's net budget, the monitoring report shall be presented to Council, seeking action to address.

### **1.5.6 Enforcement**

Adherence to the budgetary framework shall be enforced, as appropriate, by: the Council's Chief Finance Officer; the Council's Monitoring Officer; the Audit Committee and the Overview and Scrutiny Management Committee.

## **POLICY FRAMEWORK**

### **1.5.7 Definition**

The Policy Framework means the key plans and strategies which underpin the way the Council will deliver services to its residents. A full list of the plans that comprise this framework is set out in Chapter 4.1. Broadly speaking, they include plans which encompass all of the Council's services to make up the Council's Corporate Planning Framework, for example the Community Strategy and Corporate Plan, as well as more service-specific documents required by Government such as the Local Transport Plan.

### **1.5.8 Procedure for the Approval of Policies Comprising the Policy Framework by Council**

Plans and strategies comprising the Policy Framework being brought forward for Council approval (either new or revisions to existing policies) shall be identified on the Executive Forward Programme (see Executive Rules of Procedure set out in Chapter 5.4.) The Forward Programme shall outline consultation arrangements in respect of the plan or strategy. A detailed timetable for the preparation of the plan or strategy shall be prepared and made available by the appropriate member of the Corporate Leadership Team, to include full details of consultation with partners and residents and the extent of Member involvement through the Lead (Executive) Member, the Overview and Scrutiny Committees and working groups as appropriate.

#### **1.5.8.1**

Once the draft plan or strategy has been finalised it shall be presented to the Executive in accordance with the Forward Programme and agreed timetable (see above.) The Executive shall consider and, once it is satisfied, refer the document to Council with a recommendation that it be approved.

#### **1.5.8.2**

Where the Council raises objections to a draft plan or strategy, it shall resolve to adjourn to allow the Leader of the Council and Lead Executive Member to consider these objections. Following this adjournment the Leader of the Council and Lead Executive Member may put forward amendments to the draft plan or strategy in order to address the Council's objections. Having considered these amendments, the Council may approve the plan or strategy as amended, or it shall resolve that the plan or strategy be reconsidered by the Executive.

#### **1.5.8.3**

The plan or strategy shall be reconsidered by the Executive within five working days of the Council Resolution in these terms. Once the Executive has reconsidered the matter it shall resubmit the plan or strategy to a further meeting of Council convened by the Chief Executive, to be held within ten working days of the expiry of the five working day period. The Executive may submit a revised plan or strategy to the Council, setting out reasons for the revisions. Alternatively it may submit the plan or strategy without amendment, setting out the reasons why it disagrees with the Council's objection. When the plan or strategy is reconsidered Council may approve the Executive's recommendation, or take a different decision, having taken into account any amendments the Executive has made to the plan or strategy, the reasons for the amendments, any disagreement the Executive has with the Council's original objections and the reasons for that disagreement.

### **1.5.9 Decisions Outside the Budget or Policy Framework**

Circumstances in which decisions may be taken by an individual or body other than the Council are set out within the Financial Regulations (see Chapter 12.1). In all other cases any body or person wishing to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by Council, must refer that decision to Council.

#### **1.5.9.1**

Any body or individual of the opinion that a decision on a particular matter would be contrary to, or not wholly in accordance with, the budget and policy framework, should seek the advice of the Monitoring Officer and Chief Finance Officer. These Officers shall decide whether the decision would be of this nature, and direct accordingly.

### **1.5.10 Procedure where a Decision has been Taken Outside the Budget or Policy Framework**

Where a body or individual is of the opinion that a decision taken in relation to any of the Council's Executive functions was contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, they should seek advice from the Monitoring Officer and Chief Finance Officer, setting out in writing, within seven working days of the decision, the grounds on which they consider it to have been contrary.

#### **1.5.10.1**

The Monitoring Officer and Chief Finance Officer may conclude that the decision did not constitute a departure, in which case they shall advise the body or individual in writing of the reasons for their conclusion. In these circumstances no further action will be necessary.

#### **1.5.10.2**

If the Monitoring Officer and Chief Finance Officer conclude that the decision was contrary, or not wholly in accordance with, the budget or policy framework, they shall inform the decision-taker in writing, setting out the reasons upon which their conclusion was based. They shall then require the decision-taking body or individual to prepare a report to Council, which shall meet within ten working days of this instruction. The report shall include the Monitoring Officer and Chief Finance Officer's advice as appropriate.

#### **1.5.10.3**

The Council may either:

- a) endorse the decision of the decision-taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- b) amend the Council's Financial Regulations or policy concerned to encompass the decision of the body or individual responsible for that Executive function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- c) accept that the decision or proposal was contrary to the policy framework or contrary to, or not wholly in accordance with the budget. If Council does not resolve to amend the existing framework to accommodate the decision or proposal, it shall require the decision-taking body or individual to reconsider the matter in accordance with the advice of either the Monitoring Officer / Chief Finance Officer.

## **CHAPTER 1.6 - FINANCE, CONTRACTS AND LEGAL MATTERS**

### **1.6.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Chapter 12.1 of this Constitution.

### **1.6.2 Contracts**

Every contract made by the Council will comply with the Procurement and Contract Regulations set out in Chapter 13 of this Constitution.

### **1.6.3 Legal Proceedings**

The Borough Solicitor 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 Borough Solicitor considers that such action is necessary to protect the Council's interests.

### **1.6.4 Authentication of Documents**

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

Any contract with a value exceeding £50,000 entered into on behalf of the local authority in the course of the discharge of an Executive function shall be made in writing. Contracts with a value of less than £1000,000 may either be signed by one authorised officer of the authority or made under the Common Seal of the Council attested by at least one officer.

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

The Common Seal of the Council will be kept in a safe place in the custody of the Borough Solicitor. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Borough Solicitor should be sealed. The affixing of the Common Seal will be attested by the Borough Solicitor or some other person authorised by him/her.