

PART 2

SECTIONS OF THE CONSTITUTION

SECTION 1 – The Constitution

1.1 The Constitution

Legislation requires the Council to prepare a document known as the Constitution which explains how the Council acts. This is the Constitution of the Borough Council of Newcastle-under-Lyme and the Council will act in accordance with the law and this Constitution.

1.2 Purpose of the Constitution

The Council has a Corporate Plan, which contains details of its aims, objectives and targets. The objective of this Constitution is to support the intentions of the Corporate Plan in the most efficient, effective, inclusive, open and accountable manner.

1.3 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

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

SECTION 2 – Members of the Council

Composition and eligibility

2.1 Composition

The Council will comprise 44 elected Members, otherwise called Councillors. Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.

2.2 Eligibility

Only registered voters of the Borough or those living or working there will be eligible to stand for the office of Councillor.

Election and terms of Councillors

2.3 Councillors are elected every four years with elections normally held in May. The terms of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later. Where there is a by-election the term of office will be that of the Councillor replaced.

Roles and functions of all Councillors

2.4 Key roles

All Councillors will:

- (i) collectively set the Council's major plans, strategies and policies and the budget. They will take decisions together where required by law or where the Council considers collective decisions should be taken;
- (ii) individually contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (iii) effectively represent the interests of their ward and of individual constituents;
- (iv) respond to constituents' enquiries and representations, fairly and impartially;
- (v) participate in the governance and management of the Council; and
- (vi) maintain the highest standards of conduct and ethics.

(b) Rights and duties

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law
- (ii) Councillors will not make public information which is confidential or exempt other than in accordance with the rules of the Council which require prior consultation with the Head of Legal and Governance, or divulge information given in confidence to anyone other than a councillor or officer entitled to know it. For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in **Appendix 11** of this Constitution
- (iii) The Borough Council has agreed role descriptions for Councillors and the various office holders in the Borough Council and will keep these under review (see **Appendix 17**).

Conduct

Classification: NULBC **UNCLASSIFIED**

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in **Appendices 18 and 20** of this Constitution.

Allowances

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

Mayor and Deputy Mayor

2.5 At the Annual Council meeting in May of each year the Council elects a Councillor to serve as the Council's Mayor. It also appoints a Deputy Mayor.

Where either office becomes vacant the Council will appoint a successor at its next meeting. A Member of the Cabinet cannot hold either office.

Where both the Mayor and Deputy Mayor are absent from a meeting of the Council, the Council will appoint one of its non-executive Members to preside.

The Deputy Mayor will normally succeed to the Mayoralty in the following year.

Classification: NULBC **UNCLASSIFIED**

SECTION 3 – Citizens and the Council

Citizens' rights

3.1 Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Appendix 11 of this Constitution.

3.2 Voting and petitions: Citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an Elected Mayor form of Constitution.

3.3 Information

Citizens have the right to:

- (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- (ii) attend meetings of the Cabinet when key decisions are being considered;
- (iii) find out from the Forward Plan what key decisions will be taken by the Cabinet and when;
- (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet;
- (v) see reports and background papers, and any records of decisions made by the Council and the Cabinet;
- (vi) inspect the Council's accounts and make their views known to the external auditor;
- (vii) submit petitions in accordance with the Council's petition scheme set out in **Appendix 27** of this Constitution.

3.4 Complaints

Citizens have the right to complain to:

- (i) the Council itself under its complaints scheme
- (ii) the Local Government Ombudsman after the Council's corporate complaints scheme has been exhausted;
- (iii) the Council's Monitoring Officer about a perceived breach of the Members' Code of Conduct (**see Appendix 18**).

Citizens' responsibilities

3.5 Citizens must not be violent, abusive or threatening to Council Members or officers and must not wilfully harm property owned by the Council, Members or officers.

SECTION 4 – The Full Council

Meanings:

4.1 Policy Framework

The policy framework means the following plans and strategies:

- Sustainable Community Strategy
- Corporate Plan and Annual Performance Report
- Treasury Management Strategy
- Investment Strategy
- Commercial Strategy
- Capital Strategy
- Flexible Use of Capital Receipts Strategy
- Licensing Policy Statement
- Enforcement Strategy
- Food Law Enforcement Service Plan
- Gambling Statement of Principles
- Homelessness Strategy
- Development Plan documents (including the Local Plan and Interim Documents)
- Asset Management Plans
- Any other plan or strategy where the Council determines that any decision on its adoption or approval should be taken by it rather than the Cabinet

4.2 Budget

The budget includes the allocation of financial resources to various services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

4.3 Housing Land Transfer

Under the Leasehold Reform, Housing and Urban Development Act 1993 or the Housing Act 1985.

4.4 Functions of the Full Council

Only the Council will exercise the following functions:

- (i) adopting and changing the Constitution except as has been delegated by the Council save for Executive functions, where the Cabinet may amend the Scheme of Delegation of Executive Powers and the Cabinet Procedure Rules;
- (ii) adopting and approving the policy framework and any of the policies in it and the budget;
- (iii) subject to the urgency procedure contained in the Access to Information Procedure Rules in Appendix 11 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (iv) appointing the Leader and the Mayor and Deputy Mayor;
- (v) agreeing and/or amending the responsibilities of committees, deciding on their composition and making the initial appointment in each Council year to them in

accordance with the statutory rules requiring political proportionality and compliance with the wishes of the political groups;

(vi) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;

(vii) adopting a Members' allowances scheme;

(viii) changing the name of the area, conferring the title of Honorary Alderman or Freedom of the Borough

(ix) confirming the appointment of the Head of Paid Service, the Monitoring Officer and the Section 151 Officer and if appropriate, their dismissal;

(x) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;

(xi) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet;

(xii) adopting the Code of Conduct for Members;

(xiii) all other matters which, by law, must be reserved to Council.

4.5 Council meetings

There are three types of Council meeting:

(i) the annual meeting;

(ii) ordinary meetings;

(iii) extraordinary meetings

which will be conducted in accordance with the Council's Procedure Rules which are set out in Part 4 Appendix 7 of this Constitution.

4.6 Responsibility for functions

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

SECTION 5 – Chairing the Council

Roles and functions of the Mayor

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

(a) Ceremonial Role

The Mayor is the first citizen of the Borough and shall take precedence in the Borough. The Mayor will represent the Borough at civic functions both locally and nationally and will fulfil all the traditional ceremonial functions of the Mayor of this 'Loyal and Ancient Borough'.

(b) Chairing the Council Meeting

The Mayor and Deputy Mayor will be elected by the Council annually. The Mayor (and in his or her absence the Deputy Mayor) will have the following responsibilities:

- (i) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (ii) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (iii) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the Cabinet and do not hold committee chairs are able to hold the Cabinet and committee chairs to account;
- (iv) to promote public involvement in the Council's activities;
- (v) to attend such civic and ceremonial functions as the Council and he/she consider to be appropriate;
- (vi) to determine any matter referred to him/her requiring an urgent decision under the Urgency procedures set out in this Constitution
- (vii) to be consulted on any matter where consultation with the Mayor is required under this Constitution.

SECTION 6 –Scrutiny Committees

6.1 Terms of reference

The Council will appoint the scrutiny committees set out in **Part 4 Appendix 3** of this Constitution to discharge the functions conferred by section 21 of the Local Government Act 2000 or regulations under section 32 of the Local Government Act 2000.

These committees are collectively referred to in this Constitution as scrutiny committees. The scrutiny committees will have the right to form such panels and sub-committees to carry out these functions as they consider appropriate.

6.2 General role

Within their terms of reference, the scrutiny committees will:

- (i) assist and advise on the development of new policy or reviewing current policy;
- (ii) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (iii) make reports and/or recommendations to the Full Council and/or the Cabinet and/or any policy, joint or area committee in connection with the discharge of any functions;
- (iv) consider any matter affecting the area or its inhabitants; and
- (v) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet and/or any policy or area committees.

6.3 Specific Functions

Within their terms of reference the scrutiny committees may:

- (i) Ensure that overview and scrutiny activity focuses on the Council's corporate priorities as set out in the Corporate Plan.
- (ii) Achieve an understanding of the relevant policy framework documents to enable them to become involved in policy development
- (iii) Conduct research, and consult with the community, on the analysis of policy issues and options available to the Council; consider and implement mechanisms to encourage and enhance community participation and a user focus in overview and scrutiny. They may, for example, wish to hear from residents, stakeholders and members and officers in other parts of the public sector and may wish to invite such people to attend;
- (iv) Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions within their terms of reference. This will include assessing the effectiveness of decisions and activities in these areas and scrutinising performance;
- (v) In accordance with agreed protocols and procedures, consult or question members of the Cabinet, the Chief Executive, Executive Directors and senior officers (accompanied by other officers as appropriate), and others with a 'duty to co-operate' about their views on specified issues and proposals affecting the area and their decisions and performance, whether generally in comparison with service plans and targets over a period of time or in relation to particular decisions, initiatives or projects;
- (vi) Make reports and/or recommendations to Full Council and/or the Cabinet in connection with the discharge of any Council functions;
- (vii) review and scrutinise the performance of other bodies in the area and invite reports from them by requesting them to address the scrutiny committees about their initiatives and performance, to ensure that the interests of local people are enhanced by

collaborative working. Make reports and/or recommendations to public service providers, including those with a duty to cooperate. Insofar as their actions relate to functions or service delivery connected with the Authority;

(viii) question and gather relevant evidence from any person (with their consent) with knowledge of the topic under investigation, including appointing advisers and assessors to assist them in the overview and scrutiny process. They may pay any advisers, assessors and witnesses a reasonable fee;

(ix) establish ad hoc scrutiny working parties to investigate specific topics on behalf of the Committee on a time limited basis;

6.4 Proceedings of scrutiny committees

The scrutiny committees will conduct their proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4 Appendix 10 of this Constitution.

SECTION 7 – the Executive (the Cabinet)

7.1 Role

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

7.2 Form and composition

The Executive will be called the Cabinet and will consist of the Leader appointed by the Council together with at least two, but not more than nine, Councillors as the Leader may determine. Within these limits, the exact size of the Cabinet will be decided by the Leader.

Only Borough Councillors may be appointed to the Executive and there may be no co-optees and no deputies or substitutes for Executive members.

7.3 Leader and Cabinet Members

- (1) The Leader will be a Councillor elected to the position of Leader by the Council, normally at its annual meeting. The Leader shall hold office for a period of 4 years starting on the day of his/her election and ending on the day of the post-election annual meeting.
- (2) The Leader shall appoint a Deputy Leader and such other members of the Cabinet as he/she thinks fit (subject to paragraph 7.2 above).
- (3) The Leader, Deputy Leader and Cabinet Members shall continue to hold office:
 - (a) (In the case of the Deputy Leader and Cabinet Members) at the discretion of the Leader
 - (b) (In the case of the Leader) unless he/she is removed by a resolution of full Council (and the Leader may not be removed from office except by such resolution);
 - (c) Unless they resign from the office; or
 - (d) Unless they are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
 - (e) Unless they are no longer a Councillor.

7.4 Deputy Leader

The Deputy Leader (or in his/her absence the remaining Cabinet Members) may act if the Leader is unable to act or if the post of the Leader is vacant.

7.5 Proceedings of the Cabinet

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

7.6 Responsibility for functions

All Cabinet decisions will be taken by the Cabinet acting collectively except:

- (a) when the Cabinet has made a decision in principle it may authorise the Leader or the Portfolio Holder with responsibility to finalise outstanding details in agreements with the appropriate Executive Director;

(b) when a decision regarding a Cabinet function requires attention as a matter of such urgency that formal reporting to Cabinet is not possible, the Leader or the Chief Executive or the Section 151 Officer or the Monitoring Officer or the appropriate Executive Director may take that decision in consultation with a member of Cabinet (not being the Leader in the case of a Leader decision)

(c) when the Leader has arranged for a Cabinet function to be discharged by a Cabinet committee consisting of Members of the Cabinet or a single Member or an officer or by way of joint or local arrangements. Advisory panels may have more Cabinet members but do not exercise Executive power.

The Leader will maintain a list in **Part 3** of this Constitution (Scheme of Delegation) setting out which Cabinet committees, Cabinet members, officers or joint or local arrangements are responsible for the exercise of particular Cabinet functions.

SECTION 8 – Regulatory and other committees

The Council will appoint the committees set out in **Part 3 Appendix 1 (Annex 2)** of this Constitution to discharge the functions described in the table.

The Council will appoint such other committees as it considers are needed to exercise any of its functions and take those decisions which are not the responsibility of the Cabinet.

SECTION 9 – The Audit and Standards Committee

9.1 Composition

The independent standards persons do not normally attend meetings of the Committee. If any business of the Committee relates to a Parish matter, then a representative from the relevant Parish Council will be invited to attend.

9.2 Role and Function

The Audit and Standards Committee will have the following roles and functions relating to standards matters:

- promoting and maintaining high standards of conduct by Members
- monitoring the operation of the Members' Code of Conduct;
- advising the Council on the adoption or revision of the Members' Code of Conduct
- to oversee the effectiveness of the Council's procedures for investigating and responding to complaints of breaches of the Members' Code of Conduct
- to interview and make recommendations to Council on the appointment of Independent Person(s) in accordance with the requirements of the Localism Act 2011
- to deal with complaints of alleged breaches of the Code of Conduct which the Monitoring Officer, in consultation with the Independent Person(s), considers warrant detailed consideration and to make final recommendations thereon
- to advise, train or arrange to train Members and Independent Person(s) on matters relating to the Members' Code of Conduct;
- to consider requests from Members to grant dispensations from being precluded from participation in a meeting (see form annexed to Appendix 18)
- to oversee, review and make any recommendations on the effectiveness and operation of the Constitution and any of the provisions of it
- an overview of complaints handling and Local Government Ombudsman investigations.

SECTION 10 – Locality working

Newcastle Partnership and Locality Action Partnerships (LAPs)

Newcastle-under-Lyme Borough Council is committed to working in partnership with local communities and has agreed the establishment of the Newcastle Partnership and 11 Locality Action Partnerships. Newcastle-under-Lyme Borough Council is the accountable body for the Newcastle Partnership and Locality Action Partnerships.

Newcastle Partnership – Better Together

The Newcastle Partnership is the overarching strategic partnership for the Borough of Newcastle-under-Lyme in Staffordshire.

The Newcastle Partnership Strategic Board will act as the Responsible Authority as defined by the Crime and Disorder Act 1998.

Locality Action Partnerships

The Newcastle Partnership introduced LAPs to increase the involvement of local people and communities with their partners in issues that affect their local area and impact on their quality of life.

Working arrangements currently in draft include:

Newcastle Partnership (including LAPs)	Constitution	(and appendices)
Newcastle Partnership Strategic	Board	Responsibilities
Newcastle Partnership	Structure	Diagram
Newcastle Partnership Roles	and	Responsibilities
Locality Action Partnership Definition and Responsibilities		

A number of additional working arrangements will be developed to ensure effective accountability and governance processes are in place.

SECTION 11 - Joint Arrangements

11.1 Arrangements to promote well-being

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

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

11.2 Joint arrangements

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 advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.

The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Cabinet functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

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.

The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstances:

- (a) the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet may appoint to the joint committee any councillor who is a member for an [electoral division] [ward] which is wholly or partly contained within the area;
- (b) in this case the political balance requirements do not apply to such an appointment.

Details of any joint arrangements including any delegations to joint committees will be found in **Part 3** of this Constitution.

11.3 Access to information

The Access to Information Rules in **Appendix 11** of this Constitution shall apply.

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.

If the joint committee contains members who are not on the Cabinet of any participating authority then the Access to Information Rules in the Local Government Act 1972 will apply.

11.4 Delegation to and from other local authorities

The Council may delegate non-Cabinet functions to another local authority or, in certain circumstances, the Cabinet of another local authority.

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

SECTION 12 – Officers

Management structure

12.1 General

The Borough Council may engage such staff (called officers) as it considers necessary to carry out its functions.

12.2 Chief Officers

The Borough Council may engage such Chief Officers with departmental or service responsibilities as it considers necessary and may from time to time vary the number, designation and areas of responsibility of the posts of Chief Officer.

NOTE: The following officers are currently the Chief Officers of the Borough Council:
Chief Executive

Executive Director (Resources and Support Services)
Executive Director (Operational Services)
Executive Director (Commercial Development and Economic Growth)
Head of Paid Service, Monitoring Officer and Chief Financial Officer - the Council designates these posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Head of Legal and Governance	Monitoring Officer
Executive Director (Resources and Support Services)	Chief Finance Officer

Such posts will have the functions described below.

12.3 Structure

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at **Part 7** of this Constitution.

12.4 Functions of the Head of Paid Service

Discharge of functions by the Council:

The Head of Paid Service will report to Full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

Restrictions on functions

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if he/she is a qualified accountant.

12.5 Functions of the Monitoring Officer

Maintaining the Constitution

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.

Ensuring lawfulness and fairness of decision making

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

Supporting the Audit and Standards Committee

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Audit and Standards Committee.

Receiving Reports

The Monitoring Officer will receive and act on reports made by investigating officers and decisions on Standards matters.

Conducting investigations

The Monitoring Officer will conduct investigations into matters in accordance with the adopted Arrangements and make reports or recommendations in respect of them to the Standards Committee.

Proper Officer for access to information

The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

Advising whether Cabinet decisions are within the budget and policy framework

The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

Providing advice

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.

Restrictions on posts

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service. The Monitoring Officer may appoint in writing deputies as he or she considers appropriate.

12.6 Functions of the Chief Finance Officer

Ensuring lawfulness and financial prudence of decision making

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council (or to the Cabinet in relation to a Cabinet function) and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

Administration of financial affairs

The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.

Contributing to corporate management

The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

Providing advice

The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise Councillors and officers in their respective roles.

Give financial information

The Chief Finance Officer will provide financial information to the media, members of the public and the community.

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

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

Conduct

Officers will comply with the Council's policies including the Protocol on Officer/Member Relations set out in this Constitution.

Employment

The recruitment, selection and dismissal of officers will comply with the Rules set out in the Recruitment and Selection Policy and the Disciplinary Procedure.

12.7 Returning Officer

The Chief Executive has been appointed by the Council as the Returning Officer for Council Elections. The Returning Officer has the power to appoint deputies who may act in his absence.

SECTION 13 - Principles of Decision Making

13.1 Principles of decision making

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

- (i) Having due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- (ii) Where appropriate, the realistic evaluation of alternatives;
- (iii) Proportionality (i.e. the action must be proportionate to the desired outcome or any perceived harm)
- (iv) Due consultation and the taking of professional advice from officers;
- (v) Respect for human rights and equalities;
- (vi) A presumption in favour of openness;
- (vii) Clarity of aims and desired outcomes; and
- (viii) Reasons being given for the decision.

13.2 Types of decision

Decisions reserved to Full Council

Decisions relating to the functions listed in **Section 4** of this Constitution as functions of the Full Council will be made by the Full Council and not delegated.

Key decisions

A key decision is a decision by or on behalf of the Cabinet which is likely:

- (a) To result in the Borough Council incurring expenditure or making savings of an amount which is significant having regard to the Council's budget for the service or function to which the decision relates; or
- (b) To be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in the Borough.

It is for the Authority to determine what is significant. For the Borough of Newcastle-under-Lyme the definition is that it will result in the Council incurring expenditure or making a saving to the value of £100,000 or more revenue expenditure, or £250,000 capital expenditure.

But a decision will not be a key decision if it is:

- (a) to give effect to a provision of the Council's Budget or Policy Framework and, where appropriate, for which financial provision has been made; or
- (b) to implement nationally or locally agreed pay awards for officers in accordance with the terms of such award; or
- (c) expenditure incurred by the Section 151 Officer in the exercise of Treasury Management powers delegated to him or her; or
- (d) expenditure incurred by the Chief Executive in the exercise of powers delegated to him or her relating to an emergency or a disaster to which Section 138 of the Local Government Act 1972 applies; or
- (e) The making of savings by way of the closure or discontinuance of a Council service, or part of a service, to meet a budgetary constraint.

The Cabinet or an officer acting under delegated powers may only make a key decision in accordance with the requirements of the Council Procedure Rules set out in **Part 4** of this Constitution.

13.3 Decision making by the Full Council

The Council meeting will follow the Council Procedures Rules set out in Part 4 Appendix 7 of this Constitution when considering any matter.

13.4 Decision making by the Cabinet

The Cabinet will follow the Council Procedures Rules set out in Part 4 Appendix 8 of this Constitution, which apply to the Cabinet when considering any matter.

13.5 Decision making by scrutiny committees

Scrutiny committees will follow the Scrutiny Procedure Rules set out in Part 4 Appendix 10 of this Constitution when considering any matter.

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

Other Council committees and sub-committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution which apply to them.

13.7 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.

SECTION 14 – Finance, Contracts and Legal Matters

14.1 Financial management

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in **Part 4** of this Constitution.

14.2 Contracts

Every contract made by the Council will comply with the Procurement Policy and Contract Standing Orders and Financial Regulations set out in **Part 4 Appendices 12 and 13** of this Constitution.

14.3 Legal proceedings

The Head of Legal and 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 he/she considers that such action is necessary to protect the Council's interests or to take other action where this is necessary to give effect to decisions of the Council or in any case where he/she considers that it is necessary to protect or further the Council's interests.

14.4 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 Chief Executive, the Executive Director (Resources and Support Services) or the Head of Legal and Governance or other person duly authorised by one of these, unless any enactment otherwise authorises or requires, or the Council has given sole 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 its functions shall be made in writing. Such contracts must either be signed by the Chief Executive, the Executive Director (Resources and Support Services) or the Head of Legal and Governance (the authorised officers) or made under the Common Seal of the Council attested by (a) the Mayor or another elected Councillor and (b) one of the authorised officers.

14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal and Governance. A decision of the Council, a Committee, the Cabinet, or an officer acting under delegated powers, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal and Governance should be sealed. The affixing of the Common Seal will be attested by the Mayor or another elected Councillor and the Head of Legal and Governance or some other person authorised by him/her.

SECTION 15 - Review and Revision of the Constitution

15.1 Duty to monitor and review the Constitution

The Chief Executive and the Monitoring Officer will monitor and report to the Council from time to time on the Constitution adopted by the Council and will make recommendations of ways in which it could be amended in order better to achieve the purposes set out in Section 1.

In undertaking this task the Monitoring Officer may:

- (i) observe meetings of different parts of the member and officer structure;
- (ii) undertake an audit trail of a sample of decisions;
- (iii) record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
- (iv) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

Before making any recommendations or suggesting amendments to the Constitution, the Monitoring Officer will consult the Constitution and Member Services Working Group and the Executive.

15.2 Changes to the Constitution

Approval

Changes to the Constitution will only be approved by the Full Council after consideration of the proposal by the Monitoring Officer, save that the Monitoring Officer may make consequential changes to the Constitution to reflect resolutions of the Council or Cabinet or decisions properly made under delegated powers and changes of fact and law subject to regular notification of Members to such changes.

Change from a Leader and Cabinet form of Executive to another form of governance

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

Changes to the Appendices

Changes to the appendices to this Constitution and to any of their provisions may be made as provided for in the Appendices or at any time by the Full Council.

SECTION 16 – Suspension, Interpretation and Publication of the Constitution

16.1 Suspension of the Constitution

Limit to suspension

The Sections of this Constitution may not be suspended. Any provision of the Appendices may be suspended to the extent permitted therein and by the law.

Procedure to suspend

The suspension of any provision of the Appendices shall be effective as set out therein. 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 Section 1.

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 Section 1. Any reference to words denoting the masculine or feminine gender shall be deemed also to include reference to the feminine.

Publication

The Head of Legal and Governance will provide a link to each Member of the authority upon delivery to him/her of that individual's Declaration of Acceptance of Office on the Member first being elected to the Council.

The Head of Legal and Governance will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.