Part 1: Introduction

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1.1 The Council's Constitution

Cherwell District Council has agreed this Constitution which sets out how the Council operates, how decisions are made and the procedures that are followed. The processes are intended to make the Council transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose. In the case of any conflict between this Constitution and legislation, the legislation will prevail.

1.2 What is in the Constitution?

The Constitution sets out who has the power to take which decisions, how those decisions are taken and the Codes and Protocols that are followed when we make decisions.

The Scheme of Delegation and Committee Terms of Reference set out who does what; the Procedure Rules set out how they do it; and, the Codes and Protocols set out the expected standards of behaviour.

In addition there is annually updated information (such as a list of current Councillors and scheduled meetings for the year) that are not part of the Constitution but are available from our website, or in hard copy.

The following is a list of annually updated information that can always be found on our website (www.cherwell.gov.uk) or obtained in hard copy by contacting the

Democratic and Elections team:-

- Calendar of meetings (these are agreed for a whole municipal year ahead, that is from May to the following April). Exceptional or special meetings may be added to this. Meetings may be cancelled if there is no business or may be moved if there are deadlines to be met, for example, to ensure a response to government consultation is sent in time
- Agenda for all meetings
- Minutes of all meetings
- A list of wards in the district
- A list of district Councillors and contact details
- Details of who on the Executive is responsible for what (called "Portfolio Holders")
- Details of who is on which committee, joint committees and who represents the Council on which outside body.

1.3 How the Council Operates

1.3.1 Councillors – elections and terms of office

The Council is composed of 48 Councillors, who represent 16 wards. Each ward has three councillors. One councillor in each ward is elected three years in four.

Councillors serve a four year term. A Councillor elected at a by-election will serve the remainder of the four year term for the particular seat in question.

Councillors must be registered voters of the Cherwell district, or must own or lease land in the district for at least the last 12 months preceding their consent to be nominated, and must not otherwise be disqualified.

1.3.2 Role of councillors

Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them. Councillors represent their communities and act as advocates for individual constituents. They have to balance different interests and govern for the good of the area as a whole.

1.3.3 Rights and duties of councillors

The Council will give councillors the information and resources to fulfil their role, in so far as the law allows.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Code of Conduct is set out in this Constitution. The Council's Standards Committee is responsible for promoting and maintaining high standards of conduct by members.

1.3.4 Council

- All Councillors meet together as "the Council" (sometimes referred to as "Full Council").
- Meetings of the Council are open to the public and press, unless the Council has passed a resolution that they be excluded on the grounds that information deemed to be "exempt" i.e. personal or confidential, as defined by statute, is likely to be revealed.
- At Council meetings, Councillors decide the Council's overall policies and set the budget each year.
- The Council is responsible for appointing the leader and various committees, and for holding the Executive and the committees to account for the decisions they take.

1.4 Principles of Decision Making

Any decision made by the Council will be made in accordance with the following principles and in accordance with the procedure rules set out in this Constitution:-

- Proportionality: that is, the action taken will be proportionate to the desired outcome
- Decisions will be taken following due consultation and taking into consideration professional advice from officers
- 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
- Open transparent decision making
- Clarity in the aim and desired outcome of decisions
- Decisions will be taken that comply with the law and this constitution

When acting in a quasi-judicial role the Council will follow a proper procedure which complies with the rules of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

1.5 Access to information by Councillors

All Councillors are entitled to inspect any document (except those only available in draft) in the possession or under the control of the Council unless it contains exempt or confidential information (as defined and set out in this Introduction) in which case Councillors will be required to demonstrate a need to know. This does not preclude the Council from deciding to provide Councillors with information over and above this entitlement.

1.6 The Executive

a) Under the Local Government Act 2000, Cherwell District Council chooses to have an Executive with a Leader.

b) The Executive takes strategic key decisions. Individual Executive Members and officers are responsible for many day to day decisions.

c) The Executive is made up of a Leader and other Councillors. The Leader is appointed to the Executive by the Council. The Leader then appoints individual Councillors (called Portfolio Holders) to the other positions in the Executive.

d) When major (or "key") decisions are to be discussed or made, they must be published at least 28 clear days ahead of the decision being made.

e) All meetings of the Executive are open to the public and press except where "exempt" i.e. personal or confidential matters are being discussed.

f) The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council to decide.

g) Certain decisions, in particular non-key decisions, may be taken by individual members of the Executive (Portfolio Holders).

h) The Council has discretionary powers to set up area committees or forums but has decided not to do so at this time.

i) The Council may establish joint arrangements or joint committees in accordance with current legislation.

1.7 Overview and Scrutiny

The Overview and Scrutiny Committee carries out the overview and scrutiny functions and supports the work of the Executive and the Council as a whole.

The Overview and Scrutiny Committee allows residents to have a greater say in Council matters and may hold public inquiries into matters of local concern. This may include reviewing the work of the Council's partners and other public sector organisations.

Overview and Scrutiny Committee meetings are open to the public except where exempt matters are being discussed. The Committee publishes reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery.

The Overview and Scrutiny Committee also monitors the decisions and work of the Executive as published in the Executive work programme. The Overview and Scrutiny Committee can "call in" or challenge a decision that has been made but which has not yet been implemented.

The Council also appoints members to any countywide Joint Overview and Scrutiny Committee(s).

1.8 Non-Executive Decisions

Decisions on some matters (for example planning applications and Licensing) cannot, by law, be taken by the Executive and are either taken by full Council or delegated instead to "Regulatory Committees" or to officers.

Terms of Reference for committees are set out in part two of the Constitution.

Delegations to officer are set out in part three of this Constitution.

1.9 Council employees

The council employees are called Council officers. Officers give advice, implement decisions and manage the day-to-day delivery of the council's services.

Corporate Directors and the Chief Executive are appointed by the Personnel Committee. The authority to appoint Assistant Directors rests with the Head of Paid Service and below Assistant Director level, the responsibility to employ officers rests with the relevant Assistant Director.

There is a Code of Practice which governs the relationship between officers and Councillors, which is part sixteen of this Constitution.

Certain decisions are delegated to officers as set out in the Council's Scheme of Delegation in part three of this Constitution.

1.10 Statutory Posts

The Council has three statutory posts: Head of Paid Service, Chief Finance Officer, and Monitoring Officer, which are all appointed by Full Council.

The statutory posts of Chief Finance Officer and Monitoring Officer have the right by law to require adequate resources to be made available to them to carry out their role.

The specific responsibilities of these statutory posts are:

1.10.1 Head of Paid Service

(as required by section 4 of the Local Government and Housing Act 1989)

- Responsible for overall management and operation of the Council which includes management of officers who work for the Council.
- Must report to Council, Executive and all other committees when required to do so.
- Responsible for ensuring the proper use of evaluation systems for determining what officers are paid and reporting as and when required on the number and grade of officers required.
- Is appointed by Full Council

- The roles of Chief Executive and Head of Paid Service are separate. At Cherwell District Council, it is custom that the Chief Executive is appointed the Head of Paid Service

1.10.2 Section 151 Officer

(as required by section 151 of the Local Government Act 1972, also referred to as the "Chief Finance Officer")

- Responsible for the administration of the Council's finances.
- Has a specific duty to make a public report in specified cases of actual or anticipated financial misconduct (section 114 of the Local Government Finance Act 1988).
- Must nominate an appropriately qualified officer to deputise in their absence.

1.10.3 Monitoring Officer

(as required by section 5 of the Local Government and Housing Act 1989)

- Responsible for ensuring that the Council acts within the law
- Has a specific duty to make a public report if at any time they think that any proposal, decision or failure to act by the council may break the law or give rise to a finding of maladministration
- Must nominate an appropriately qualified officer to deputise in their absence.

1.11 Legal and Financial Procedures

The Council shall have Legal and Financial procedure rules as set out in this Constitution.

Financial Regulations will be reviewed regularly by the Chief Finance Officer to ensure they are fit for purpose. Council will approve all changes other than those required by the fact of a change in law which the Chief Finance Officer has delegated authority to make.

The Contract Rules of Procedure will be reviewed regularly by the Chief Finance Officer and the Monitoring Officer to ensure they are fit for purpose. Council will approve all changes other than those required by the fact of a change in the law which the Monitoring Officer has delegated authority to make.

The Scheme of Delegation sets out the authority to sign documents.

The Assistant Director Law and Governance will keep the Council's seal. All documents that should be sealed will be sealed in accordance with the Scheme of Delegation as set out in this Constitution. The Assistant Director Law and Governance, or nominated deputies within Legal Services, will seal all Council documents unless there are exceptional circumstances when a Corporate Director or

the Chief Executive has specific authority to do so.

1.12 Summary of the Rights of the Public

This summary of rights explains how members of the public can participate in the democratic decision making processes of the council and how they can access information relating to Council and committee meetings.

1.12.1 Voting and Petitions

If you are registered to vote in the district you have a right to vote and sign a petition to request a referendum for an elected mayor.

You may also present petitions to Council and committee meetings, providing that it meets the requirements set out in the meeting procedure rules and the procedure rules for that particular committee as set out in the Constitution.

1.12.2 Information

Members of the public have the right to inspect the Council's accounts and make their views known to the external auditor. The external auditor will visit the Council on a specified day so the public can make their views known. Fourteen days' notice of the visit will be given in at least one local newspaper. The accounts will be available for public inspection twenty working days before the auditor's visit.

1.12.3 Complaints

You have the right to complain about the actions of the Council, officers or Councillors to:

- The Council under its complaint scheme
- The Local Government and Social Care Ombudsman after exhausting the Council complaint scheme
- The Monitoring Officer about a breach of the Councillor code of conduct

1.12.4 Responsibilities of the Public

The Council expects the public to behave responsibly in exercising these rights. The Council will not tolerate violent, abusive or threatening behaviour to Councillors or officers working for, or on behalf of, the Council.

The public are required to comply with various laws, by-laws, rules and regulations which are enforced by the Council and may incur civil or criminal penalties if they do not do so.

1.13 The public have the right to:-

- Vote at local elections if they are registered
- Sign a petition for a local referendum for an elected mayor
- Contact their local Councillor about any matters of concern to them
- A copy of the Constitution
- Attend meetings of the Council, Executive and committees except where, for example, personal or confidential matters are being discussed
- See reports and background papers and any records of decisions made, except where confidential or personal information would be disclosed
- Address meetings of the Council, Executive, and various committees, subject to the Council's rules for public participation at meetings
- Find out, from the Executive Work Programme, what major (key) decisions are to be discussed or decided by the Executive and when
- Inspect the Council's accounts and make their views known to the external auditor (known as the district auditor)
- Complain to the Council about the standards of service, action or lack of action by the Council or its officers
- Complain to the Ombudsman if they think the Council has not followed its procedures properly (however, this can only be after using the Council's own complaints process)
- Complain to the Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct
- Film, record and broadcast meetings of the Council, the Executive and Committees which are open to the public subject to the efficient running of the meeting not being adversely affected.

The Council welcomes participation by its residents in its work and undertakes extensive consultation about its policies and services. For more specific advice on your rights, please contact the appropriate Council department, or if you are not sure which department to contact, ask for the Democratic and Elections team.

1.14 Rules about this Constitution

1.14.1 Suspension

The rules of procedure in part two of this constitution may be suspended where such a proposal is made and seconded at a formal meeting and the suspension is agreed upon by a majority of those present. The purpose of any suspension should be to enhance the democratic process rather than restrict it. The right of an individual councillor to request that details of their vote or abstention on any particular item is

recorded in the minutes of the meeting cannot be suspended.

1.14.2 Interpretation

This constitution will be interpreted in accordance with the advice given by the statutory officers at any formal meeting or their representatives at that meeting.

1.14.3 Publication

The Constitution will be made available on the Council's website and hard copies of the whole or any part will be available on request subject to the payment of a reasonable fee if anyone wishes to have their own copy.

1.14.4 Changes

The Monitoring Officer is responsible for assessing the effectiveness of the constitution and recommending changes in the light of legislation or best practice. The Monitoring Officer may make factual changes to the Constitution as necessary in order to ensure that the Constitution complies, and keeps up to date, with the law.

Any significant proposed amendments to this Constitution shall be agreed by Council. The Monitoring Officer shall ensure that, where appropriate, members of relevant Council committees are consulted on proposed amendments, prior to their consideration by Council and that the responses to the consultation are included in any subsequent report.