



Constitution

FOLKESTONE AND HYTHE DISTRICT COUNCIL

:

1. **Title Page and Contents**
2. **Part 1 - Summary and Explanation**
3. **Part 2 - Articles of the Constitution**
4. **Part 3 - Responsibility for Functions: General Statement and Local Choice Functions**
5. **Part 4 - Council Functions, Rules and Procedures**
6. **Part 5 - Committees of the Council - Functions, Rules and Procedures**
7. **Part 6 - Executive Functions, Rules and Procedures**
8. **Part 7 - Overview and Scrutiny Rules and Procedures**
9. **Part 8 - Officers' Rules and Procedures, including Delegation to Officers**
10. **Part 9 - Councillors**
11. **Part 10 - Financial Procedure Rules, Contract Standing Orders and Auditing the Council**
12. **Part 11 - Other Bodies, Including Panels and Boards**
13. **Part 12 - Joint Arrangements**
14. **Appendix 1 - Register of Members and Ward Map**
15. **Appendix 2 - Membership of Committees, Advisory Bodies and Diagrammatic Representation of the Council's Structure**
16. **Appendix 3 - Management Structure**
17. **Appendix 4 - Change Log**

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CONSTITUTION OF THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

CONTENTS

| PART | SUBJECT |
|-------------------|--|
| Part 1 | Summary and Explanation |
| Part 2 | Articles of the Constitution |
| Part 3 | Responsibility for Functions – General Statement and Local Choice Functions |
| Part 4 | Council Functions, Rules and Procedures |
| Part 5 | Committees of the Council - Functions, Rules and Procedures |
| Part 6 | The Executive Functions, Rules and Procedures |
| Part 7 | Overview and Scrutiny Rules and Procedures |
| Part 8 | Officers Rules and Procedures Including Delegation to Officers |
| Part 9 | Councillors |
| Part 10 | Financial Procedure Rules, Contract Standing Orders and Auditing the Council |
| Part 11 | Other Bodies, Including Panels and Boards |
| Part 12 | Joint Arrangements |
| | |
| APPENDICES | SUBJECT |
| 1 | Register of Members and Ward Map |
| 2 | Membership of Committees, Advisory Bodies and Diagrammatic Representation of the Council's Structure |
| 3 | Management Structure |
| 4 | Change Log |

FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 1 - SUMMARY AND EXPLANATION

| CONTENTS | Page Ref |
|------------------------------|-------------------|
| The Council's Constitution | 'Part 1/2' |
| What is in the Constitution? | 'Part 1/2' |
| How the Council Operates | 'Part 1/3' |
| How Decisions are Made | 'Part 1/3' |
| Overview and Scrutiny | 'Part 1/3' |
| The Council's Staff | 'Part 1/4' |
| Citizens' Rights | 'Part 1/4' |

1. THE COUNCIL'S CONSTITUTION

The District Council of Folkestone and Hythe has agreed this Constitution, which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to citizens. Some of these processes are required by the law, while others are a matter for the Council to choose. The Constitution is divided into 15 articles, which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided, in separate rules and protocols, in the relevant parts of this Constitution.

2. WHAT IS IN THE CONSTITUTION?

Article 1 of the Constitution commits the Council to provide clear, just, effective community leadership and to a decision-making process that is inclusive, transparent, lawful, fair and rational. Articles 2-15 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council – the councillors (Article 2)
- Citizens and the Council (Article 3)
- The Council meeting (Article 4)
- Chairing the Council. (Article 5)
- The Overview and Scrutiny Committee (Article 6)
- The Cabinet (Article 7)
- Regulatory and other committees (Article 8)
- Area committees and forums (Article 9)
- Joint arrangements (Article 10)
- Officers (Article 11)
- Decision-making (Article 12)
- Finance, contracts and legal matters (Article 13)
- Review and revision of the Constitution (Article 14)
- Suspension, interpretation and publication of the Constitution (Article 15)

3. HOW THE COUNCIL OPERATES

- 3.1** The Council is composed of 30 councillors, elected every four years. Councillors are democratically accountable to residents of their ward. A register of the current councillors, and ward map, are shown in Appendix 1. 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.
- 3.2** Councillors have to agree to follow codes of conduct, to ensure high standards in the way they undertake their duties. The Audit and Governance Committee trains and advises them on these codes of conduct.
- 3.3** All councillors meet together as the Council. Meetings of the Council are normally open to the public. Here, councillors decide the Council's overall policies and set the budget each year. The Council is responsible for electing the Leader of the Council and arranging for non-executive functions to be discharged. It also provides a forum for public participation and enables councillors to question the executive about its activities, and chairmen of committees about the decisions of those committees.

4. HOW DECISIONS ARE MADE

The Cabinet (or executive) is the part of the Council which is responsible for most day-to-day decisions. The Cabinet is made up of the Leader, who is elected by the Council, and a Cabinet of councillors, whom he/she appoints. When major decisions (known as 'key decisions') are to be discussed or made, these are published in a notice, prior to the meeting. If these major decisions are to be discussed with Council officers, at a meeting of the Cabinet, this will generally be open for the public to attend, except where personal or confidential matters are being discussed. The Cabinet 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, as a whole, to decide.

5. OVERVIEW AND SCRUTINY

An overview and scrutiny committee supports the work of the Cabinet, and the Council, as a whole. The committee allows citizens to have a greater say in Council matters, by holding public inquiries into matters of local concern. These lead to 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 of the Cabinet. It can 'call-in' a decision which has been made by the Cabinet but not yet implemented. This enables the Cabinet to reconsider the decision. The committee may also be consulted by the Cabinet, or the Council, on forthcoming decisions and the development of policy.

6. THE COUNCIL'S STAFF

The Council has people working for it (called 'officers') to 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. A protocol governs the relationships between officers and councillors.

7. CITIZENS' RIGHTS

7.1 Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

7.2 Where members of the public use specific Council services, for example, as a Council tenant, they have additional rights. These are not covered in this Constitution.

7.3 Citizens have the right to:

- a) Vote at local elections, if they are registered;
- b) Contact their local councillor about any matters of concern to them;
- c) Obtain a copy of the Constitution;
- d) Attend meetings of the Council and its committees, except where, for example, personal or confidential matters are being discussed;
- e) Speak at a meeting of the Planning and Licensing Committee, when it is considering applications for planning permission, in accordance with the procedure set out in Part 5;
- f) Speak and ask questions when licensing and registration matters are being considered at a committee meeting, in accordance with the procedure set out in Part 5;
- g) Petition to request a referendum on a mayoral form of executive or a committee system;
- h) Petition to initiate a community governance review;
- i) Present petitions in accordance with the Petition Scheme in Part 4;
- j) Participate in the Council's question time and contribute to investigations by the Overview and Scrutiny Committee;
- k) Find out, from the notice of key decisions, what major decisions are to be discussed by the Cabinet, or decided by the executive, or officers, and when;

- l) Attend meetings of the Cabinet, except where, for example, personal or confidential matters are being discussed;
- m) See reports and background papers, and any record of decisions made by the Council / its committees and Cabinet;
- n) Complain to the Council about failures in service of any action, or lack of action, by the Council. Complaints should be made under the Council's Corporate Complaints Procedure;
- o) Complain to the Ombudsman, if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints' process;
- p) 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; and
- q) Inspect the Council's accounts and make their views known to the external auditor;
- r) See material available to the public, under the Council's publication scheme, made under the Freedom of Information Act 2000;
- s) Be informed, in writing, whether the Council holds any information under the Freedom of Information Act 2000, the Data Protection Act 2018 or the Environmental Information Regulations 2004 and to have that information communicated to them, except where the information is the subject of an exemption under the legislation.

7.4 The Council welcomes participation, by its citizens, in its work.

7.5 A statement of the right of citizens to inspect agendas and reports, and attending meetings, is set out in Parts 4, 5, 6 and 7 of this constitution.

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FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 2 - ARTICLES OF THE CONSTITUTION

| ARTICLE | SUBJECT | Page Ref |
|----------|--|-------------|
| 1 | The Constitution | ‘Part 2/2’ |
| 2 | Councillors | ‘Part 2/4’ |
| 3 | Citizens and the Council | ‘Part 2/6’ |
| 4 | The Full Council | ‘Part 2/9’ |
| 5 | Chairing the Council | ‘Part 2/13’ |
| 6 | Overview and Scrutiny Committee and Finance and Performance Scrutiny Sub-Committee | ‘Part 2/15’ |
| 7 | The Cabinet | ‘Part 2/19’ |
| 8 | Regulatory and Other Committees | ‘Part 2/22’ |
| 9 | Area Committees and Forums | ‘Part 2/23’ |
| 10 | Joint Arrangements | ‘Part 2/24’ |
| 11 | Officers | ‘Part 2/26’ |
| 12 | Decision-making | ‘Part 2/31’ |
| 13 | Finance, Contracts and Legal Matters | ‘Part 2/34’ |
| 14 | Review and Revision of the Constitution | ‘Part 2/35’ |
| 15 | Suspension, Interpretation and Publication of the Constitution | ‘Part 2/37’ |
| Schedule | Description of Executive Arrangements | ‘Part 2/38’ |

ARTICLE 1 - THE CONSTITUTION

1.1 Powers of the Council

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

1.2 The Constitution

The articles and the various parts are the Constitution of the District Council of Folkestone and Hythe.

1.3 Purposes of the Constitution

The purposes of the Constitution are to:

- 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 Council decision-making;
- c) Help councillors represent their constituents more effectively;
- d) Enable decisions to be taken efficiently, effectively and fairly;
- e) Create a powerful and effective means of holding decision-makers to public account;
- f) Ensure that councillors will not 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;
- h) Provide a means of improving the delivery of services to the community;
- i) Provide certain and clear procedures;
- j) Set out the role of councillors;
- k) Ensure that decisions are made and proceedings conducted lawfully and in accordance with the highest ethical standards;
- l) Ensure that citizens are not discriminated against by virtue of their sex, race (including colour, nationality, ethnic and national origin), disability, religion, belief, or lack of religion/belief, age, or sexual orientation, being or becoming a transsexual person, being married or in a civil partnership, or being pregnant or having a child.

1.4 Interpretation and review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the 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 Articles 14 and 15.

ARTICLE 2 – COUNCILLORS

2.1 Composition and Eligibility

2.1.1 Composition

The Council will comprise 30 members, otherwise called councillors. One or more councillors will be elected by the voters of each ward, in accordance with a scheme drawn up by the Local Government Boundary Commission for England and approved by the Secretary of State. The Secretary of State may alter the number of councillors, after considering a scheme drawn up by the Local Government Boundary Commission for England.

2.1.2 Eligibility

A person shall be qualified to be elected, as a member of the Council, if he or she is at least 18 years old, meets citizenship requirements and:

- a) He or she is a local government elector for the area of the authority;
- b) During the whole of the twelve months preceding election day, he or she has occupied, as owner or tenant, any land or other premises in the area of the Authority; or
- c) His or her principal, or only place of work, during that twelve months, has been in the area of the Authority; or
- d) During the whole of the twelve months preceding the election, he or she has resided in the area of the Authority.

2.2 Elections and term of office

The regular election of councillors will be held on the first Thursday in May, every four years, beginning in 2015. 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.

2.3 Roles and functions of councillors

2.3.1 Key roles:

- a) To act collectively as the ultimate policy-makers and carry out strategic and corporate management functions, including contributing to the formation and examination of the Council's policies, Budget, strategies and service delivery;
- b) To contribute to the good governance of the District and encourage community participation and citizen involvement in decision-making;
- c) To represent, effectively, the interests of their ward and of individual constituents; to champion the causes which best relate to the interests

and sustainability of the community and campaign for the improvement of the quality of life of the community, acting in the overall public interest;

- d) To respond to constituents' enquiries and representations, fairly and impartially;
- e) To participate, constructively, in the governance of the Council;
- f) To maintain the highest standards of conduct and ethics; and
- g) To be available to represent the Council on other bodies.

2.3.2 Rights and duties

- a) Councillors will have 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. These rights are set out in more detail in the Protocol on Councillor and Employee Relations in Part 9 of this Constitution.
- b) Councillors will not release confidential or exempt information, to the public, without the consent of the Council; or divulge information, given in confidence, to anyone other than a councillor or officer entitled to know it, except where such disclosure is:
 - Reasonable;
 - In the public interest;
 - Made in good faith; and
 - Does not breach any other reasonable requirements of the Authority.

The advice of the Monitoring Officer should be sought prior to any disclosure of exempt or confidential information.

- c) For these purposes, 'confidential' and 'exempt' information are defined in the Access to Information Rules, in Part 4 of this Constitution.

2.4 Conduct

Councillors will, at all times, observe the councillors' Code of Conduct (set out in Part 9 of this Constitution) and any local protocols agreed by the Authority.

2.5 Allowances

Councillors will be entitled to receive allowances, in accordance with the Members' Allowances' Scheme, set out in Part 9 of this Constitution.

ARTICLE 3 - CITIZENS AND THE COUNCIL

3.1 Citizens' rights

Citizens have the following rights (their rights to information, and to participate, are explained in more detail in the Access to Information Rules in Parts 4, 6 and 7 of this Constitution):

3.1.1 Voting and petitions

Citizens, on the electoral roll for the District, have the right to vote at elections and to sign a petition to request a referendum for an elected mayor or committee system. Citizens can also present petitions, in accordance with the petitions scheme in Part 4 of this Constitution.

3.1.2 Information

Citizens have the right to:

- a) Observe meetings of the Council and its committees, except where confidential or exempt information is likely to be disclosed and the meeting decides to hold that discussion in private;
- b) Observe meetings of the Cabinet, when key decisions are being considered, except where confidential or exempt information is likely to be disclosed and the meeting decides to hold that session in private;
- c) Find out, from the notice of key decisions, what such decisions will be taken by the Cabinet and when;
- d) See reports and background papers, and any records of decisions made by the Council and the Cabinet; and
- e) Inspect the Council's accounts and make their views known to the external auditor.
- f) Be informed, in writing, whether the Council holds any information, as requested, under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. (If the information is held by the Council, citizens have the right to have that information communicated to them, except where the information is the subject of an exemption under the legislation.)

3.1.3 Participation

The Council is committed to helping people contribute to how decisions are made about local services and will; therefore, support a wide range of consultations to hear citizens' views. The Council also aims to develop more ways of working with local people and communities, particularly hard to reach groups. In addition, individual citizens have the following rights under this Constitution:

- a) The right to participate in any question times or public sessions, arranged by the Council or Cabinet, to consult with, or answer questions from, citizens;
- b) The right to contribute to reviews and investigations by the Overview and Scrutiny Committee;
- c) The right to participate in the proceedings of the Planning and Licensing Committee, where planning applications are being considered, and at committees where licensing and registration issues are being determined, as set out in Part 5 of this Constitution;
- d) The right to present petitions in accordance with the petition scheme in Part 4.

3.1.4 Representations and complaints

Citizens wishing to complain have the right to:

- a) Make representations to their ward councillors, in the first instance, or to any other councillor, or to members of the Cabinet;
- b) Make a formal complaint about a council service, to the Council itself, under its complaints' procedure.
- c) Complain to the Ombudsman after using the Council's own complaints' procedure;
- d) Complain to the Information Commissioner, if they think the Council has wrongfully withheld information or breached the Data Protection Act, the Freedom of Information Act or the Environmental Information Regulations;
- e) Complain to the Council about a possible breach of the councillors' Code of Conduct.

3.2 Citizens' responsibilities

3.2.1 There are a number of ways that citizens can contribute to a flourishing democratic local authority and civic culture, which this Constitution is intended to support:

- a) Assisting the Council with the compilation of the electoral register (including meeting their obligations to provide information about themselves and members of their household) and respecting any requirements for proper use of this information;
- b) Exercising their right to vote in local, regional, national and referenda;
- c) Respecting and valuing the diversity of communities and their views;

- d) Behaving in socially and morally responsible ways, towards those in authority and towards each other;
- e) Meeting their obligations in relation to the Council, such as paying their council tax.

3.2.2 Citizens must not be violent, abusive or threatening to councillors or officers, and must not wilfully harm property owned by the Council, councillors or officers. The Council, the Cabinet and committees have the right to exclude, from a meeting, anyone whose behaviour is disruptive and disorderly, and to prevent those likely to disrupt the meeting from entering the meeting.

ARTICLE 4 – THE FULL COUNCIL

4.1 Meanings

4.1.1 Policy Framework

4.1.1(a) The Policy Framework is the following set of plans and strategies that the Council must approve by law, or has decided should be reserved to the full Council for approval (the Policy Framework is also shown in Part 4):

- Local Transport Plan;
- Core documents of the Local Plan;
- Community Safety Partnership Plan;
- Statement of Licensing Policy under the Licensing Act 2003 (for Council decision, acting as the Licensing Authority);
- Statement of Gambling Licensing Policy under the Gambling Act 2005 (for Council decision, acting as the Licensing Authority);
- The Medium Term Financial Strategy;
- Any plan or strategy for the control of the Council's borrowing, investments or capital expenditure;
- Corporate Plan;
- The Housing Investment Programme;
- Customer Access Strategy
- Regulation of Investigatory Powers Act 2000 – Policy
- Homelessness Prevention Strategy
- Investment Strategy
- Housing Operations Policies (specifically: Tenant Policy, Housing Management Policy, Housing Community Safety Policy, Home Ownership Policy, Shared Ownership Policy and Right to Buy Policy).
- Equality and Diversity Policy
- Tenant Engagement Strategy
- Kent Joint Municipal Waste Management Strategy Refresh.
- Places and Policies Local Plan (PPLP) - Gypsy and Traveller allocation site

- Dungeness Sustainable Access and Recreational Management Strategy (SARMS)
- Children, Young People and Vulnerable Adults Safeguarding Policy
- The Play Area Strategy
- Housing Revenue Account Business Plan Update
- Capital Strategy
- Corporate Complaints Policy.
- Housing Compliance Policies (specifically: Asbestos; Electrical Safety; Fire Safety; Gas and heating Safety; Lift Safety; Water Safety).
- Housing Compensation Policy.
- Contaminated Land Strategy.
- Housing Asset Management Strategy.
- Risk Management Policy.
- Street naming and numbering policy.
- Such other plans and strategies that the Council decides should be reserved to full Council.

4.1.1(b) Changing or revoking any of these is also a function of the full Council, unless the change just gives effect to a ministerial direction. The Cabinet cannot take a decision contrary to the Policy Framework, except under any urgency powers contained in this Constitution. The full Council can only make such decisions.

4.1.1(c) Cabinet shall submit an annual report to Council, detailing the policies that have been approved in the previous year, which are not those mentioned in article 4.1.1(a), and Council shall have the option of including any of the policies in the Policy Framework.

4.1.2 Budget

The Budget includes the allocation of financial resources to different services and projects; proposed contingency funds; setting the council tax; decisions relating to the control of the Council's borrowing requirement; the setting of rents for tenants of its housing stock; the control of its capital expenditure; a review of the appropriateness of the Council's reserves and the setting of virement limits.

4.1.3 Housing land transfer

Housing land transfer means the approval, or adoption, of applications (whether in draft form or not) to the Secretary of State, for approval of a programme of disposal of 500 or more properties, to a person, under the Leasehold Reform, Housing and Urban Development Act 1993, or to dispose of land, used for residential purposes, where approval is required under sections 32 or 43 of the Housing Act 1985.

4.2 Functions of the full Council

Only the Council will exercise the following functions:

- a) Changing governance arrangements and adopting, and changing, the Constitution;
- b) Approving or adopting the Policy Framework, the Budget and any application, to the Secretary of State, in respect of any housing land transfer;
- c) Subject to the urgency procedure contained in the Cabinet Access to Information Procedure Rules, making decisions about the discharge of a Cabinet function, 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;
- d) Electing the Leader;
- e) Electing the Chair and Vice Chair of the Council;
- f) Agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- g) Appointing representatives to outside bodies, unless the appointment is a Cabinet function or has been delegated by the Council;
- h) Agreeing recommendations arising from scrutiny reviews of non-Cabinet functions;
- i) Considering recommendations, arising from scrutiny reviews, not accepted by the Cabinet and referred by the Chair of the relevant committee;
- j) Adopting a Members' Allowances' Scheme;
- k) Changing the name of the District or of a parish;
- l) Conferring the title of Honorary Alderman or admitting to honorary freedom;
- m) Petitioning for a charter to confer borough status;
- n) Confirming the appointment or dismissal of the Head of Paid Service;

- o) Promoting or opposing the making of local legislation or personal bills;
- p) All local choice functions which the Council decides should be undertaken by itself, rather than the Cabinet, and which have not been delegated by the Council;
- q) Entering into, or confirming existing, or extending joint arrangements with other local authorities, under the provisions of the Local Government Act 1972 and the Local Government and Public Involvement in Health Act 2007;
- r) Making any decisions in respect of non-Cabinet functions, which have not been expressly delegated elsewhere;
- s) Adopting the members' Code of Conduct;
- t) Subject to the powers of the Head of Paid Service to make interim designations of the Monitoring Officer and Section 151 Officer; confirming the designation of the Monitoring Officer, Section 151 Officer, Electoral Registration Officer and Returning Officer;
- u) Making, amending, revoking and re-enacting byelaws and promoting or opposing the making of local legislation or personal Bills;
- v) In relation to non-executive functions, deciding whether or not to accept the delegation of a function by another local authority;
- w) In relation to non-executive functions, the function of authorising a person to exercise a function to which Section 70 of the Deregulation and Contracting Out Act 1994 applies, and revoking any such authorisation;
- x) Passing of a resolution not to issue casino premises licences, under the Gambling Act 2005, and any revocation of such resolution;
- y) Functions relating to community governance, unless delegated to officers;
- z) Approving or revising the Petition Scheme;
- aa) Approving the Council's Pay Policy Statement, under section 39 of the Localism Act 2011.

4.3 Council meetings

There are three types of Council meetings:

- a) The Annual Meeting;
- b) Ordinary meetings;
- c) Extraordinary meetings.

They will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

ARTICLE 5 – CHAIRING THE COUNCIL

5.1 Role and function of the Chair

The Chair of Council will have the following roles and functions:

5.1.1 Ceremonial role

The Chair is the first citizen of the District. He or she represents the citizens of the District, and the councillors, at civic and ceremonial occasions. The Chair will perform all the duties of the civic head of the Council and will attend such civic and ceremonial functions as the Council and s/he determines appropriate. S/he will also sign documents, on behalf of the Council, which require the signature of the civic head of the Council.

5.1.2 Chairing the Council meeting.

5.1.2(a) The Council will elect the Chair and the Vice-Chair, annually. In the absence of the Chair, the Vice-Chair will assume the roles, functions and responsibilities of the Chair.

5.1.2(b) The Chair will have the following responsibilities:

- i. To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- ii. To chair 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 promote and safeguard the independence of the office of Chair of the Council;
- iv. To comply with the law and procedure rules, as they apply to Council meetings, having regard to the advice of the statutory officers;
- v. To ensure that the Council meeting is a forum for the debate of matters of concern to the local community and a place at which members, who are not members of the Cabinet or do not hold committee chairs, are able to hold the Cabinet and committee chairs to account;
- vi. To promote public involvement in the Council's activities;
- vii. To be the conscience of the Council; and
- viii. To cancel meetings, in exceptional circumstances, in consultation with the Head of Paid Service and the Monitoring Officer.

5.1.2(c) Following advice from the Monitoring Officer (or his/her representative), the Chair's ruling, on any matter of order or procedure, will be final. If the Chair thinks it is necessary to do so, he or she may interrupt business, change the

order of business or suspend, or adjourn, the meeting for a period of time he or she considers appropriate.

ARTICLE 6 - OVERVIEW AND SCRUTINY COMMITTEE

6.1 Terms of Reference and composition

6.1.1 The Overview and Scrutiny Committee is responsible for holding the Cabinet to account and for scrutinising Cabinet decisions before, or after, they have been implemented. The Overview and Scrutiny Committee is also responsible for making recommendations on future policy options and for reviewing the general policy and service delivery of the Council.

6.1.2 The Council will appoint overview and scrutiny committees 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 (in relation to health scrutiny) and the Local Government and Public Involvement in Health Act 2007, including the councillor 'call for action' and local improvement targets. The committee will be responsible for setting its own work programme, will consult widely in formulating the programme and will take into account the wishes of members of the committee who are not part of the largest political group.

6.1.3 The Council has appointed one overview and scrutiny committee:

OVERVIEW AND SCRUTINY COMMITTEE AND FINANCE AND PERFORMANCE SCRUTINY SUB-COMMITTEE

6.1.4 Terms of Reference

- a) To contribute to the development, and review, of the Council's community plan, including the review of performance against targets.
- b) To examine how the Council engages with the community, including reviewing and monitoring the effectiveness of the Council's communication and consultation strategy, and other strategies that have an impact on relationships with the public.
- c) To consider how the Council develops relationships with its partners and review the effectiveness of those partnerships in contributing to the Council's vision and objectives.
- d) To scrutinise the work and decisions of the partnerships that the Council is involved in.
- e) To prepare responses to consultation, for consideration by the executive, on any matter that affects community services in the District, including education and health.
- f) To act as the Council's Crime and Disorder Committee and to meet for that purpose at least once a year.
- g) To co-opt members and determine whether they are entitled to vote on any matter, in accordance with the Crime and Disorder (Overview and Scrutiny) Regulations 2009.

- h) To review and scrutinise the executive's decisions, including prior scrutiny of proposed executive decisions, and decisions made by committees and officers.
- i) To contribute to the development of the Budget and other financial strategies, and review the performance of the executive against the Budget and other financial targets.
- j) To contribute to, and review, the development of the Council's corporate management policies, including risk management and corporate governance policies and strategies, and to review the performance against targets, and review the effectiveness of the policies and strategies over time.
- k) To contribute to, and review, the Council's performance plan and performance management system.
- l) To exercise the right, set out in the 'Call-in' Rules of Procedure, contained in Part 6 and 7 of this Constitution, to call-in for review, and recommend for re-consideration, any decisions made by the executive but not implemented.

6.1.5 Composition

Must be politically balanced. No member of the executive may be a member of the Overview and Scrutiny Committee.

6.2 General role

Within its terms of reference, the Overview and Scrutiny Committee will:

- a) Hold the Cabinet to account, through investigations and questioning;
- b) Exercise an overview of the key decision notice;
- c) Receive and deal with 'call to action' notices from councillors, under the provisions of the Local Government and Public Involvement in Health Act 2007;
- d) Review and/or scrutinise decisions made, or actions taken, in connection with the discharge of any of the Council's functions;
- e) Make reports and/or recommendations to the full Council and/or the Cabinet, and/or any joint committee, in connection with the discharge of any functions;
- f) Consider any matter affecting the District or its inhabitants;
- g) Exercise the right to call-in, for reconsideration of decisions made, but not yet implemented, by the Cabinet and/or committees, in accordance with the Call-in Rules of Procedure in Part 7 of the Constitution; and

- h) Receive reports and recommendations of any commissioned review panels.

6.3 Specific functions

6.3.1 Policy development and review

The Overview and Scrutiny Committee may, as appropriate to its terms of reference:

- a) Assist the Council and the Cabinet in the development of its Budget and Policy Framework by in-depth analysis of policy issues, by conducting research, conducting community and other consultation and bringing forward possible options;
- b) Consider and implement ways to encourage and enhance community participation in the development of policy options and the scrutiny of council performance;
- c) Question members of the Cabinet and/or committees and chief officers, and representatives of organisations or companies providing services on behalf of the Council, about their views on issues and proposals affecting the District; and
- d) Liaise with other external organisations operating in the District, whether national, regional or local, to ensure that collaborative working enhances the interests of local people.

6.3.2 Scrutiny

The Overview and Scrutiny Committee may:

- a) Review and scrutinise decisions made by, and the performance of, the Cabinet and/or committees and council officers, both in relation to individual decisions and over time;
- b) Review and scrutinise the performance of the Council, in relation to its policy objectives, performance targets and/or particular service areas;
- c) Question members of the Cabinet and/or committees, councillors and chief officers, other local public bodies and partner authorities, and representatives of organisations or companies providing services on behalf of the Council, about their decisions and performance, whether generally, in comparison with service plans and targets, over a period of time, or in relation to particular decisions, initiatives or projects; (including, where acting as the Crime and Disorder Committee, reports and recommendations relating to the discharge of crime and disorder functions and local crime and disorder matters, and copying such reports to responsible authorities or co-operating bodies and persons);
- d) Make recommendations to the Cabinet and/or appropriate committee, and/or Council, arising from the outcome of the scrutiny process

(including, where acting as the Crime and Disorder Committee, reports and recommendations relating to the discharge of crime and disorder functions and local crime and disorder matters, and copying such reports to responsible authorities or co-operating bodies and persons);

- e) Review and scrutinise the performance of other public bodies in the District and invite reports from them by requesting them to address the Overview and Scrutiny Committee, and local people, about their activities and performance; and
- f) Question and gather evidence from any person (with his/her consent).

6.3.3 Finance

The Overview and Scrutiny Committee:

- a) Will exercise overall responsibility for any finances made available to it;
- b) May each year be given a budget, in order to carry out its functions;
- c) Will account to the Council, on how it has used its budget, in its annual report.

6.3.4 Annual report

- 6.3.4(a)** The Overview and Scrutiny Committee must report, annually, to full Council on its work and make recommendations for future work programmes and amended working methods, if appropriate.
- 6.3.4(b)** The annual report shall contain a statement on how it intends to consult and involve the citizens, in the year ahead, and commenting on the effectiveness of citizen participation in the previous year.

6.3.5 Officers

The Overview and Scrutiny Committee may exercise overall responsibility for the work programme of the officers employed to support its work.

6.3.6 Proceedings of the Overview and Scrutiny Committee

The Overview and Scrutiny Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 7 of this Constitution.

6.4 FINANCE AND PERFORMANCE SCRUTINY SUB-COMMITTEE

6.4.1 Terms of Reference

- 1. To scrutinise the Council's performance against KPIs and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
 - the proposed performance targets for the coming year;
 - the in-year performance management data; and

- the annual performance report.
- 2. To scrutinise the Council's financial monitoring data against budget and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
 - the annual Budget Strategy; and
 - the quarterly budget monitoring data for GF Revenue & Capital and HRA Rev & Capital.

6.4.2 Composition

Must be politically balanced. Comprised of five Members, drawn from the main Overview and Scrutiny Committee. The Chair will be appointed by Overview and Scrutiny Committee at their first meeting of the municipal year, until the next annual meeting of the Council.

ARTICLE 7 – THE CABINET

7.1 Role

The Cabinet is responsible for proposing the Policy Framework, and the Budget, to full Council, and for discharging its functions, in accordance with the agreed framework. The Cabinet will carry out all of the Council's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

7.2 Form and composition

The Cabinet will consist of the Leader of the Council, together with at least two, but not more than nine councillors, appointed to the Cabinet by the Leader.

7.3 Delegation of executive functions to the Head of Paid Service

If neither the Leader, nor the Deputy Leader or Cabinet, can act, the executive functions devolve to the Head of Paid Service, for a month, or until the next meeting of the Council at which a new Leader is elected, whichever is the shorter. If the Council meeting fails to elect a new Leader, then the powers of the Head of Paid Service will continue for another month, on the same terms.

7.4 Proceedings of the Cabinet

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules, set out in Part 6 of this Constitution.

7.5 Responsibility for functions

The Leader will maintain a list, in Part 6 of this Constitution, setting out which individual members of the Cabinet, committees of the Cabinet, officers, or joint arrangements, are responsible for the exercise of particular Cabinet functions.

7.6 Leader

7.6.1 The Leader will be a councillor elected to the position of Leader by the Council.

7.6.2 The Leader's term of office will end on the day when the Council holds its first Annual Meeting after the Leader's normal day of retirement as a councillor, unless:

- a) He/she resigns from the office;
- b) He/she is no longer a councillor; or
- c) He/she is removed by resolution of Council, provided that no such resolution may be moved unless notice of it is delivered to the Head of

the Paid Service, under Rule 13 of the Council Procedure Rules, in Part 4 of this Constitution.

7.7 Deputy Leader

7.7.1 The Leader will appoint one of the members of the Cabinet to act as Deputy Leader. The Leader must give written notice of such appointment to both the person who he/she is appointing as Deputy Leader and the Head of Paid Service.

7.7.2 The appointment of the Deputy Leader will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report the appointment to Council, at the earliest opportunity.

7.7.3 The Deputy Leader will hold office until the end of the Leader's term of office unless:

- a) He/she resigns from the office; or
- b) He/she is no longer a councillor; or
- c) He/she is no longer a member of the executive; or
- d) He/she is removed by the Leader, who must give written notice of such removal to both the Deputy Leader and to the Head of Paid Service. The removal of the Deputy Leader will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report any such removal to the Council, at the earliest opportunity.

7.7.4 Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his/her place. The Leader must give written notice of such appointment to both the person he/she is appointing as Deputy Leader and to the Head of Paid Service.

7.7.5 The appointment of the Deputy Leader will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report the appointment to Council, at the earliest opportunity.

7.7.6 If for any reason:

- a) The Leader is unable to act; or
- b) The office of Leader is vacant;

the Deputy Leader will act in his/her place.

- c) The Deputy Leader is unable to act, or the office of Deputy Leader is vacant;

the Cabinet must act in the Leader's place, or arrange for a Cabinet member to act in his/her place.

7.8 Other Cabinet members

- 7.8.1** In addition to the Deputy Leader, the Leader will appoint between one and eight further Cabinet members to hold such portfolios as the Leader shall determine.
- 7.8.2** When appointing a Cabinet member, the Leader must give written notice of the appointment, and of the portfolio, to both the person who he/she is appointing as an executive member and to the Head of Paid Service.
- 7.8.3** The appointment of the Cabinet member will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report the appointment of a Cabinet member and his / her portfolio, to Council, at the earliest opportunity.
- 7.8.4** A Cabinet member will hold office until the end of the Leader's term of office, unless:
- a) He/she resigns from the office; or
 - b) He/she is no longer a councillor; or
 - c) He/she is removed by the Leader, who must give written notice of such removal to both the Cabinet member and to the Head of Paid Service. The removal of a Cabinet member will take effect on receipt of the Leader's written notice by the Head of Paid Service. The Leader will report any such removal to Council, at the earliest opportunity.

ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

- 8.1** A number of functions, such as, planning control, licensing, health and safety regulation, electoral matters, local act powers and pensions are not Cabinet functions. These matters are excluded from the Cabinet by law, regulations or the provisions of this Constitution, as set out in Parts 3 and 5 of this Constitution.
- 8.2** The Council will appoint committees with responsibility for the discharge of those non-Cabinet functions that are not reserved to full Council, or any other body, or individual. These committees are set out in Part 5 of this Constitution.
- 8.3** The committees will be established at the Annual Meeting of the Council.
- 8.4** Proceedings of the committees, and any sub-committees, will take place in accordance with the Committee Procedure Rules, in Part 5 of this Constitution.

ARTICLE 9 – AREA COMMITTEES AND FORUMS

9.1 Area committees and/or forums

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

9.2 Form, composition and function

- 9.2.1** Composition – As area committees/forums are advisory only, there is no requirement to apply the rules relating to political balance on committees.
- 9.2.2** Terms of Reference - To reflect their consultative role, any area body appointed will have an advisory capacity. They may submit reports on matters of concern, locally, to the Cabinet, or the Overview and Scrutiny Committee, or the Council, on, for example, an annual or half-yearly basis.

9.3 Access to Information

Area committees/forums will comply with the Access to Information Procedure Rules, in Part 5 of this Constitution.

9.4 Cabinet Members on area committees/forums

A member of the Cabinet may serve on the area committee, or forum, if otherwise eligible to do so as a councillor.

ARTICLE 10 - JOINT ARRANGEMENTS

10.1 Arrangements to promote well-being

In order to promote the economic, social or environmental well-being of the District, the Leader may:

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

10.2 Joint arrangements

10.2.1 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.

10.2.2 The Leader 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.

10.2.3 Except as set out below, the Leader may only appoint Cabinet members to a joint committee.

10.2.4 The Leader may appoint councillors, to a joint committee, from outside the Cabinet, in the following circumstances:

- a) The joint committee has functions for only part of the District, and that area is smaller than two-fifths of the Council, by area or population. In such cases, the Leader may appoint, to the joint committee, any councillor who is a member for a ward which is wholly or partly contained within the relevant part of the District;
- b) The joint committee is between the Kent County Council and the Council alone, and relates to functions of the Cabinet of the County Council. In such cases, the Cabinet of the County Council may appoint, to the joint committee, any councillor who is a member for an electoral division which is wholly, or partly, contained within the District.

In both of these cases the political balance requirements do not apply to such appointments.

10.2.5 Details of any joint arrangements will be found in Part 12 of this Constitution.

10.3 Access to information

- 10.3.1** The Access to Information Rules, in Part 5 of this Constitution, apply to joint committees.
- 10.3.2** 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.
- 10.3.3** If the joint committee contains councillors who are not on the Cabinet of any participating authority, then the access to information rules, in Part 5A of the Local Government Act 1972, will apply.

10.4 Delegation to and from other local authorities

- 10.4.1** The Council may delegate non-Cabinet functions, and the Cabinet may delegate Cabinet functions, to another local authority or, in certain circumstances, the Cabinet of another local authority.
- 10.4.2** The decision whether or not to accept such a delegation, from another local authority, shall be reserved to the Council.

10.5 Delegation to and from other organisations

- 10.5.1** The Council may delegate non-Cabinet functions, and the Cabinet may delegate Cabinet functions, to other organisations or boards, where legislation allows.
- 10.5.2** The decision whether or not to accept such a delegation, from another organisation or board, shall be reserved to the Council.

10.6 Contracting out

The Council (for functions which are not Cabinet functions) and the Cabinet (for functions which are Cabinet 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 - OFFICERS

11.1 Management structure

11.1.1 General

The full Council may engage such staff (referred to as officers), as it considers necessary to carry out its functions.

11.1.2 Chief officers

- 11.1.2(a)** The Council has designated the following, as chief officers, for the purposes of this Constitution (different statutory definitions apply for other purposes, for example, in the Officer Employment Procedure Rules in Part 8 of this Constitution):

The Chief Executive

Director – Corporate Services

Director – Housing and Operations

Director – Place

- 11.1.2(b)** The names of the chief officers, assistant directors and other officers, who report to the chief officers, are set out in Appendix 3 of the Constitution.

11.1.3 Head of Paid Service, Monitoring Officer and Chief Finance Officer

- 11.1.3(a)** The Council will designate the following posts ('the statutory officers'):

- Head of Paid Service
- Monitoring Officer
- Chief Finance Officer

- 11.1.3(b)** These officers are individually and collectively responsible for promoting good governance, within the authority, and ensuring proper arrangements are in place so that the authority carries out its business in compliance with law and best practice. Such posts will have functions described in paragraphs 11.2 to 11.4, below. The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer, if a qualified accountant. The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service. The Chief Finance Officer cannot also be the Monitoring Officer.

11.1.4 Structure

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. This is set out at Appendix 3 of this Constitution.

The Scheme of Delegation to Officers is set out in Part 8 of this Constitution.

11.2 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 coordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

11.3 Functions of the Monitoring Officer

11.3.1 Maintaining and interpreting the Constitution

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for reference by councillors, staff and the public. The Monitoring Officer will advise the Chair of the Council on interpretation of the Constitution, arising at meetings of the Council. Between council meetings, the Monitoring Officer will be responsible for adjudicating interpretation of the Constitution.

11.3.2 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 s/he 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.

11.3.3 Contributing to corporate management

The Monitoring Officer will contribute to the corporate management of the Council.

11.3.4 Supporting the Audit and Governance Committee

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

11.3.5 Receiving reports

The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.

11.3.6 Conducting investigations

The Monitoring Officer will conduct investigations, or arrange for investigations to be conducted, into complaints concerning alleged breaches of the councillor's Code of Conduct, and make reports or recommendations, in respect of them, to the Audit and Governance Committee.

11.3.7 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.

11.3.8 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. (Note that the Head of Paid Service and the Chief Finance Officer also have this role).

11.3.9 Providing advice

The Monitoring Officer will provide advice, to all councillors, on the scope of powers and authority to take decisions; maladministration; financial impropriety; probity; and Budget and Policy Framework issues.

11.4 Functions of the Chief Finance Officer

11.4.1 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, 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 unlawfully enter an item of account.

11.4.2 Administration of financial affairs

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

11.4.3 Contributing to corporate management

The Chief Finance Officer will contribute to the corporate management of the Council.

11.4.4 Providing advice

The Chief Finance Officer will provide advice, to all councillors, on the

scope of powers and authority to take decisions; maladministration; financial impropriety; probity; and budget and policy framework issues; and will support and advise councillors and officers in their respective roles.

11.4.5 Give financial information

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

11.4.6 Internal audit

The Chief Finance Officer shall be responsible for ensuring that an effective system of internal audit is maintained.

11.4.7 Advising whether Cabinet decisions are within the Budget and Policy Framework

The Chief Finance Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework. (Note that the Head of Paid Service and the Monitoring Officer also have this role).

11.5 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.

11.6 Functions of chief officers

11.6.1 Provide advice

Chief officers will provide advice on the professional and technical functions, within their areas of responsibility, to all councillors, to the Council and its committees and to the Cabinet, and will support and advise councillors in their respective roles.

11.6.2 Contribute to corporate management

Every chief officer will contribute to the corporate management of the Council; in particular, through the provision of professional advice.

11.6.3 Operational activities

Chief Officers are responsible for ensuring that the operational activities of the Council, in respect of the functions for which they are responsible, are carried out efficiently and effectively and in accordance with the Policy Framework, the Budget and this Constitution.

11.6.4 Management of resources

Chief officers will manage resources entrusted to them, including the staff that directly reports to them.

11.6.5 Assistance to statutory officers

Chief officers will assist the Head of Paid Service, the Monitoring Officer, and the Chief Finance Officer, in their respective functions.

11.7 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Councillor and Employee Relations, set out in Part 8 of this Constitution.

11.8 Employment

The selection and dismissal of officers will comply with the Officer Employment Procedure Rules, set out in Part 8 of this Constitution.

ARTICLE 12 - DECISION-MAKING

12.1 Responsibility for decision-making

The Council will issue, and keep up-to-date, a record of what part of the Council or individual has responsibility for particular types of decisions, or decisions relating to particular areas or functions. This record is set out in Parts 3-11 of this Constitution.

12.2 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) Respect for human rights (see below for further details);
- d) A presumption in favour of openness;
- e) Clarity of aims and desired outcomes; and
- f) Reasonableness and basing decisions only on relevant information.

Furthermore, the Council will explain what options were considered and give reasons for the decision.

12.3 Types of decision

12.3.1 Decisions reserved to full Council.

The full Council will make decisions relating to the functions listed in Article 4.

12.3.2 Key decisions

12.3.2(a) A key decision is any decision:

- i. Relating to the approval of, or variation to, the Council's Budget or Policy Framework, which is reserved in the Council's Constitution for determination by full Council, on a recommendation from Cabinet; or
- ii. Which involves the incurring of expenditure, or the making of savings, by the Council, which are anticipated to be in excess of £300,000, with the exception of items previously included in the relevant approved budget; or

- iii. Where the Council is entering into a contractual obligation with a value in excess of £500,000; or
- iv. For the acquisition or disposal of land or property with a value of over £500,000; or
- v. Which is likely to be significant in terms of its effects on communities, living or working in an area comprising two or more wards, in the Council's area.

12.3.2(b) A decision will not be a key decision if it relates to expenditure, income or savings that:

- i. Has been approved previously by full Council; or
- ii. Has been approved previously, following compliance with the key decision procedure or;
- iii. Is in accordance with the current treasury management and investment policy of the Council.

12.3.2(c) A decision-taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules, and the Access to Information Procedure Rules, set out in Part 6 of this Constitution.

12.4 Decision-making by the full Council

Subject to Article 4, the Council meeting will follow the Council Procedure Rules, set out in Part 4 of this Constitution, when considering any matter.

12.5 Decision-making by the Cabinet

The Cabinet will follow the Cabinet Procedures Rules, set out in Part 6 of this Constitution, and Article 12.8, if appropriate, when considering any matter.

12.6 Decision-making by the Overview and Scrutiny Committee

Subject to Article 6, the Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules, set out in Part 7 of this Constitution, when considering any matter.

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

Subject to Article 8, and Article 12.8 below, other Council committees and sub-committees will follow the Committee Procedure Rules, set out in Part 5 of this Constitution.

12.8 Decision-making by council bodies acting as tribunals

12.8.1 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 Article 6 of the European Convention on Human Rights (the right to a fair hearing).

12.8.2 The Committee Procedure Rules are set out in part 5 of this Constitution and will be followed by committees or sub-committees, when determining applications and other matters relating to licensing, subject to special procedures, relating to the quasi-judicial processes of particular committees, found in Part 9 of the Constitution, and the procedures regarding the determination of planning applications, also found in Part 9.

12.9 Decisions by officers

Decisions by officers are subject to Articles 12.2, 12.3 and 12.8.

ARTICLE 13 - FINANCE, CONTRACTS AND LEGAL MATTERS

13.1 Financial management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules, set out in Part 10 of this Constitution.

13.2 Contracts

Every contract made by the Council will comply with the Contract Standing Orders, set out in Part 10 of this Constitution.

13.3 Legal proceedings

The Head of Legal Services and Solicitor to the Council is authorised to institute, defend, settle 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 Legal Services and Solicitor to the Council considers that such action is necessary to protect the Council's interests.

13.4 Authentication of documents

13.4.1 Where any document is necessary to any legal procedure, or proceedings, on behalf of the Council, it will be signed by the Head of Legal Services and Solicitor to the Council 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.

13.4.2 Any contract shall comply with the Council's Contract Standing Orders, as outlined in Part 10 of this Constitution.

13.5 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 Services and Solicitor to the Council. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents, which, in the opinion of the Head of Legal Services and Solicitor to the Council should be sealed. Head of Legal Services and Solicitor to the Council will attest the affixing of the Common Seal, or some other person authorised by him/her.

ARTICLE 14 - REVIEW AND REVISION OF THE CONSTITUTION

14.1 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.

14.2 Protocol for monitoring and review of Constitution by Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended, in order better to achieve the purposes set out in Article 1. In undertaking this task, the Monitoring Officer may:

- a) Observe meetings of different parts of the councillor and officer structure;
- b) Undertake an audit trail of a sample of decisions;
- c) Record and analyse issues raised with him/her by councillors, officers, the public and other relevant stakeholders; and
- d) Compare practices in the Council with those in other comparable authorities or national examples of best practice.

14.3 Changes to the Constitution

14.3.1 Approval

Other than the power, of the Monitoring Officer, of amendment, set out in Article 14.4 below, changes to the Constitution will only be approved by the full Council, after consideration of the proposal by the Audit and Governance Committee, and after consultation with the Cabinet and other appropriate bodies.

14.3.2 Change in form of governance

The Council must take reasonable steps to consult with local electors, and other interested persons, in the District, when drawing up proposals to change to another form of executive.

14.4 Amendments to the Constitution

The Monitoring Officer will amend the Constitution, from time to time, so that it reflects any statutory changes; any factual and minor changes and incidental and consequential changes. These changes will not require prior approval of the full Council but will be notified to all councillors, as soon as is practicable.

14.5 Review of the Constitution

- 14.5.1** The Monitoring Officer will commission a review of the entire Constitution, at intervals, to be determined by the Audit and Governance Committee.
- 14.5.2** The Monitoring Officer will arrange for broad consultation to be carried out, as part of the review process, and will seek views from (but not limited to) the Cabinet, the Overview and Scrutiny Committee, the Audit and Governance Committee, the Head of Paid Service and Chief Finance Officer.
- 14.5.3** Following consultation, draft changes will be subject to further broad consultation before being presented to the Audit and Governance Committee, for consideration, and the Council, for approval.

ARTICLE 15 - SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

15.1 Suspension of the Constitution

15.1.1 Limit to suspension of articles

The articles of this Constitution may not be suspended.

15.1.2 Procedure to suspend

A motion to suspend any rules will not be moved, without notice, unless at least one half of the whole number of councillors is present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution, set out in Article 1.

15.1.3 Rules capable of suspension

The procedure rules may be suspended, in accordance with the provisions contained in those rules.

15.2 Interpretation

The ruling of the Chair of the Council, after consulting with the Monitoring Officer as to the construction or application of this Constitution, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution, contained in Article 1.

15.3 Publication

15.3.1 The Monitoring Officer will give a printed or electronic copy of this Constitution to each councillor, upon delivery to him/her of that individual's Declaration of Acceptance of Office, on the councillor first being elected to the Council.

15.3.2 The Monitoring Officer will ensure that copies are available for inspection at Council offices, libraries, on the Council's website and other appropriate locations, and can be purchased by members of the local press, and the public, on payment of a reasonable fee.

15.3.3 The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the District and is updated, as necessary.

15.3.4 The Monitoring Officer will ensure that all parties, in receipt of a copy of the Constitution, will receive notification of any amendments to the Constitution.

SCHEDULE TO THE ARTICLES

Description of executive arrangements

The following parts of this Constitution constitute the executive arrangements:

- a) Article 6 (Overview and Scrutiny Committee) and Overview and Scrutiny Procedure Rules in Part 7;
- b) Article 7 (The Cabinet) and the Cabinet Procedure Rules in Part 6;
- c) Article 9 (Area Committees and Forums);
- d) Article 10 (Joint arrangements);
- e) Article 12 (Decision-making) and the Access to Information Procedure Rules in Part 6;
- f) Part 3 (which sets out, collectively, the responsibility for functions).

FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 3 – RESPONSIBILITY FOR FUNCTIONS – GENERAL STATEMENT AND LOCAL CHOICE FUNCTIONS

| CONTENTS | Page Ref |
|---|-------------------|
| Introduction | ‘Part 3/2’ |
| Responsibility for Local Choice Functions | ‘Part 3/2’ |
| Non-Executive Functions | ‘Part 3/5’ |

PART 3 - RESPONSIBILITY FOR FUNCTIONS - GENERAL STATEMENT AND LOCAL CHOICE FUNCTIONS

1 INTRODUCTION

1.1 Parts 1-12 of the Constitution set out which body or individual, within the Council, is responsible for exercising the Council's functions.

1.2 Under Section 13 of the Local Government Act 2000, functions are either executive functions or non-executive functions. Executive functions are exercised by Cabinet, Cabinet members and officers, under delegated powers (together called 'the executive'). Non-executive functions are exercised by full Council, committees or sub-committees and officers, under delegated powers.

1.3 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (referred to as 'the functions regulations') list:

- a) Certain functions which must be non-executive functions;
- b) Other functions which must be partly executive and partly non-executive; for example, plans and strategies which are prepared by the Cabinet and recommended to full Council for adoption;
- c) Local choice functions which the Council can decide to treat as either executive or non-executive.

1.4 All other functions are executive functions.

2. RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

The following table shows how local choice functions have been allocated:

| Function | Decision-making body |
|--|----------------------------------|
| a) Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1 of the functions regulations, or other than a licensing, consent, permission or registration function (including development control functions) | The Cabinet |
| b) Any function under a local act in respect of a licensing, consent, permission or registration | Planning and Licensing Committee |

| | |
|---|----------------------------------|
| function (including development control functions) | |
| c) The determination of an appeal against any decision made by or on behalf of the authority relating to housing allocations and homelessness determinations. | Audit and Governance Committee. |
| d) The determination of an appeal against any decision made by or on behalf of the authority in respect of matters relating to disciplinary and other employment matters. | Personnel Committee |
| e) The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under Section 5 (best value reviews) of the Local Government Act 1999. | The Cabinet |
| f) Any function relating to contaminated land other than a function involving the determination of an application for a licence, approval, consent, permission or registration or the direct regulation of a person or the enforcement of any of the above. | Audit and Governance Committee |
| g) Any function relating to contaminated land involving the determination of an application for a licence, approval, consent, permission or registration or the direct regulation of any person or the enforcement of any of the above. | Planning and Licensing Committee |
| h) The discharge of any function relating to the control of pollution or the management of air quality other than a function involving the determination of an application for a licence, approval, consent, permission or registration or the direct regulation of any person or the enforcement of any of the | Audit and Governance Committee |

| | |
|--|--|
| above. | |
| i) The discharge of any function relating to the control of pollution or the management of air quality involving the determination of an application for a licence, approval, consent, permission or registration or the direct regulation of any person or the enforcement of any of the above. | Planning and Licensing Committee |
| j) The service of an abatement notice in respect of a statutory nuisance. | Audit and Governance Committee |
| k) The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area. | Audit and Governance Committee |
| l) The inspection of the authority's area to detect any statutory nuisance and the investigation of any complaint as to the existence of a statutory nuisance involving the determination of an application for a licence, approval, consent, permission or registration or the direct regulation of any person or the enforcement of any of the above. | Planning and Licensing Committee |
| m) Matters relating to the inspection of the authority's area to detect any statutory nuisance and the investigation of any complaint as to the existence of a statutory nuisance other than matters involving the determination of an application for a licence, approval, consent, permission or registration or the direct regulation of any person or the enforcement of any of the above. | Audit and Governance Committee |
| n) The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land. | Planning and Licensing Committee and, in respect of actions which are preliminary to the exercise of powers to make compulsory purchase orders only, |

| | |
|--|--|
| | the executive. |
| o) The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 | The Cabinet (in respect of actions which are preliminary to the exercise of powers to make compulsory purchase orders only) and the Planning and Licensing Committee, and the Audit and Governance Committee, in connection with each of their respective functions. |
| p) The appointment or revocation of the appointment of any individual to any office (other than an office in which he is employed by the authority) or to any body (other than the authority or a joint committee of two or more authorities) or to any committee or sub-committee of such a body. | The Cabinet |
| q) The making of agreements, with other local authorities for the placing of staff at the disposal of those other authorities. | The Cabinet, except to the extent that the staff are being placed at the disposal of the other authority in relation to the discharge of functions which are not the responsibility of the Cabinet, where the function will be the responsibility of the Council. |

3 NON - EXECUTIVE FUNCTIONS

Non - executive functions are exercised by:

- a) The whole Council (Part 4);
- b) Committees (Part 5);
- c) Officers under delegated powers (Scheme of Delegation, Part 8);
- d) Joint Committees (Part 12).

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FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 4 – COUNCIL FUNCTIONS, RULES AND PROCEDURES

| CONTENTS | | Page Ref |
|-----------------|---|--------------------|
| 4.1 | Council Functions | ‘Part 4/2’ |
| 4.2 | Council Rules of Procedure | ‘Part 4/5’ |
| 4.3 | Non-Executive Access to Information Procedure Rules | ‘Part 4/25’ |
| 4.4 | Budget and Policy Framework Procedure Rules | ‘Part 4/31’ |
| 4.5 | Petition Scheme | ‘Part 4/35’ |

PART 4 – COUNCIL FUNCTIONS, RULES AND PROCEDURES

PART 4.1 - COUNCIL FUNCTIONS

1. FUNCTIONS OF THE COUNCIL

1.1 The Council has responsibility for all the authority's non-executive functions. Functions, which have not been delegated, remain the sole responsibility of the whole or full Council. These are set out in Article 4:

- a) Changing governance arrangements and adopting, and changing, the Constitution;
- b) Approving or adopting the Policy Framework, the Budget and any application, to the Secretary of State, in respect of any housing land transfer;
- c) Subject to the urgency procedure contained in the Cabinet Access to Information Procedure Rules, making decisions about the discharge of a Cabinet function, 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;
- d) Electing the Leader;
- e) Electing the Chair and Vice-Chair of the Council;
- f) Agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- g) Appointing representatives to outside bodies, unless the appointment is a Cabinet function or has been delegated by the Council;
- h) Agreeing recommendations arising from scrutiny reviews of non-Cabinet functions;
- i) Considering recommendations, arising from scrutiny reviews, not accepted by the Cabinet and referred by the Chair of the relevant committee;
- j) Adopting a Members' Allowances' Scheme;
- k) Changing the name of the District or of a parish;
- l) Conferring the title of Honorary Alderman or admitting to honorary freedom;
- m) Petitioning for a charter to confer borough status;
- n) Confirming the appointment or dismissal of the Head of Paid Service;

- o) Promoting or opposing the making of local legislation or personal bills;
- p) All local choice functions which the Council decides should be undertaken by itself, rather than the Cabinet, and which have not been delegated by the Council;
- q) Entering into, or confirming existing, or extending joint arrangements with other local authorities, under the provisions of the Local Government Act 1972 and the Local Government and Public Involvement in Health Act 2007;
- r) Making any decisions in respect of non-Cabinet functions, which have not been expressly delegated elsewhere;
- s) Adopting the members' Code of Conduct;
- t) Subject to the powers of the Head of Paid Service to make interim designations of the Monitoring Officer and Section 151 Officer; confirming the designation of the Monitoring Officer, Section 151 Officer, Electoral Registration Officer and Returning Officer;
- u) Making, amending, revoking and re-enacting byelaws and promoting or opposing the making of local legislation or personal Bills;
- v) In relation to non-executive functions, deciding whether or not to accept the delegation of a function by another local authority;
- w) In relation to non-executive functions, the function of authorising a person to exercise a function to which Section 70 of the Deregulation and Contracting Out Act 1994 applies, and revoking any such authorisation;
- x) Passing of a resolution not to issue casino premises licences, under the Gambling Act 2005, and any revocation of such resolution;
- y) Functions relating to community governance, unless delegated to officers;
- z) Approving or revising the Petition Scheme;
- aa) Approving the Council's Pay Policy Statement, under Section 39 of the Localism Act 2011.

1.2 The Policy Framework

- 1.2.1** Approving or adopting the Policy Framework is a function of the whole Council.

1.2.2 The Policy Framework is the following set of plans and strategies that the Council must approve by law, or has decided should be reserved to the full Council for approval:

- Local Transport Plan;
- Core documents of the Local Plan;
- Community Safety Partnership Plan;
- Statement of Licensing Policy, under the Licensing Act 2003 (for Council decision, acting as the Licensing Authority);
- Statement of Gambling Licensing Policy, under the Gambling Act 2005 (for Council decision, acting as the Licensing Authority);
- The Medium Term Financial Strategy;
- Any plan or strategy for the control of the Council's borrowing, investments or capital expenditure;
- Corporate Plan;
- The Housing Investment Programme;
- Customer Access Strategy
- Regulation of Investigatory Powers Act 2000 – Policy
- Homelessness Prevention Strategy
- Investment Strategy
- Housing Operations Policies (specifically: Tenant Policy, Housing Management Policy, Housing Community Safety Policy, Home Ownership Policy, Shared Ownership Policy and Right to Buy Policy).
- Equality and Diversity Policy
- Tenant Engagement Strategy
- Kent Joint Municipal Waste Management Strategy Refresh.
- Places and Policies Local Plan (PPLP) - Gypsy and Traveller allocation site
- Dungeness Sustainable Access and Recreational Management Strategy (SARMS)

- Children, Young People and Vulnerable Adults Safeguarding Policy
- The Play Area Strategy
- Housing Revenue Account Business Plan Update
- Capital Strategy
- Corporate Complaints Policy.
- Housing Compliance Policies (specifically: Asbestos; Electrical Safety; Fire Safety; Gas and heating Safety; Lift Safety; Water Safety).
- Housing Compensation Policy.
- Contaminated Land Strategy.
- Housing Asset Management Strategy.
- Risk Management Policy.
- Street naming and numbering policy.
- Such other plans and strategies that the Council decides should be reserved to full Council.

1.2.3 Changing or revoking any of these is also a function of the full Council, unless the change just gives effect to a ministerial direction. The Cabinet cannot take a decision contrary to the Policy Framework, except under any urgency powers contained in this Constitution. The full Council can only make such decisions.

1.2.4 Cabinet shall submit an annual report to Council, detailing the policies that have been approved in the previous year, which are not those mentioned above and in Article 4, and Council shall have the option of including any of the policies in the Policy Framework.

1.3 The Budget

Approval or adoption of the Budget is a full Council function. The executive cannot take a decision which is contrary to, or not wholly in accordance with the Budget. The full Council can only make such decisions.

PART 4.2 - COUNCIL RULES OF PROCEDURE

1. ANNUAL MEETING OF THE COUNCIL

1.1 Timing and business

1.1.1 In a year when there is an ordinary election of councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing councillors. In any other year, the Annual Meeting will take place in March, April or May.

1.1.2 The Annual Meeting will:

- a) Elect a person to preside if the Chair of the Council is not present;
- b) Elect the Chair of the Council;
- c) Elect the Vice-Chair of the Council;
- d) Approve the minutes of the last Annual Meeting;
- e) Receive any announcements from the Chair and/or Head of Paid Service;
- f) Elect the Leader (only at post-election Annual Meeting);
- g) Appoint at least one overview and scrutiny committee, a committee to carry out the statutory licensing committee functions and such other committees, as the Council considers appropriate, to deal with matters which are neither reserved to the Council nor executive functions;
- h) Agree a scheme of delegation for non-executive functions;
- i) Approve a programme of ordinary meetings of the Council, for the year, and a timetable of meetings of committees and, if appropriate, sub-committees, for the year, including, for the purposes of committee and sub-committee meeting dates, for the whole of May in which the next Annual Meeting falls; and
- j) Consider any business set out in the notice convening the meeting.

1.2 Selection of councillors on committees and outside bodies

At the Annual Meeting, the Council will, subject to rule 1.1 (g) above:

- a) Decide which committees to establish for the municipal year;
- b) Decide the size and terms of reference for those committees;
- c) Decide the allocation of seats to political groups, in accordance with the political balance rules;

- d) Receive nominations of councillors to serve on each committee and outside body; and
- e) Appoint to those committees and outside bodies, except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet.

1.3 Committee chairmen

1.3.1 The chairmen of committees (other than the Chair of the Overview and Scrutiny Committee) will be elected by the Council at the Annual Meeting or at the first meeting following a vacancy. The vice-chairmen of committees (other than the Vice-Chair of the Overview and Scrutiny Committee) will also be elected by the Council, in the same way.

1.3.2 The relevant committee may remove the Chair or vice-Chair of a committee or sub-committee, at any time, by resolution of the committee or sub-committee, on notice of motion moved under Rule 16 of the Committee Procedure Rules in Part 5 of this Constitution.

2. ORDINARY MEETINGS

2.1 Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's Annual Meeting. Ordinary meetings will:

- a) Elect a person to preside, if the Chair and Vice Chair are not present;
- b) Elect a Chair and/or Vice-Chair if either of those offices have become vacant;
- c) Deal with any business considered by the Chair to be urgent;
- d) Approve the minutes of the last meeting;
- e) Receive any declarations of interest from councillors;
- f) Receive any announcements from the Chair, Leader, members of the Cabinet or the Head of Paid Service;
- g) Receive questions from, and provide answers to, the public, in relation to matters which, in the opinion of the person presiding at the meeting, are relevant to the business of the meeting;
- h) Receive petitions;
- i) Deal with any relevant business held over from the last Council meeting;
- j) Consider opposition business submitted under Rule 12;

- k) Receive reports from the Cabinet and the Council's committees and receive questions and answers on any of those reports;
- l) Receive reports about, and receive questions and answers on, the business of joint arrangements and external organisations;
- m) Consider motions;
- n) Consider questions from councillors and;
- o) Consider any other business specified in the summons to the meeting, including consideration of, and debate on, proposals from the Cabinet, in relation to the Council's Budget and Policy Framework and reports of the Overview and Scrutiny Committee.

2.2 The order of items (a), (b), (c), (d) and (e) of paragraph 2.1 shall not be varied.

2.3 The order of other business may be varied:

- a) At the discretion of the Chair, prior to the meeting, following consultation with the Leader;
- b) Or at the meeting, by a resolution passed on a motion (which need not be in writing) duly moved and seconded, and put without discussion.

3. EXTRAORDINARY MEETINGS

3.1 Calling extraordinary meetings

3.1.1 Those listed below may request the Head of Paid Service to call Council meetings, in addition to ordinary meetings:

- a) The Council by resolution;
- b) The Chair of the Council;
- c) The Monitoring Officer;
- d) The Chief Finance Officer; and
- e) Any five members of the Council if they have signed a requisition, presented to the Chair of the Council, and s/he has refused to call a meeting, or has failed to call a meeting, within seven days of the presentation of the requisition.

3.1.2 The Head of Paid Service may also call an extraordinary Council meeting.

3.2 Business

The only business to be transacted at an extraordinary meeting shall be that stated in the summons. The Chair may add urgent business to the agenda for the meeting, if s/he considers it appropriate, and will give reasons for so doing.

3.3 Questions

Questions shall not be permitted at extraordinary meetings and Rule 10 shall not apply.

4. TIME AND PLACE OF MEETINGS

The time and place of meetings will be determined by the Head of Paid Service, in consultation with the Chair, and notified in the summons.

5. NOTICE OF AND SUMMONS TO MEETINGS

The Head of Paid Service will give notice, to the public, of the time and place of any meeting, in accordance with the Non-Executive Access to Information Rules. At least five clear working days before a meeting, the Head of Paid Service will send a summons, signed by him or her, by post, to every councillor, or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

6. CHAIR OF MEETING

The person presiding at the meeting may exercise any power or duty of the Chair.

7. QUORUM

The quorum of a meeting will be one quarter of the whole number of councillors. During any meeting, if the Chair counts the number of councillors present and s/he believes that there is not a quorum present, s/he will declare that a quorum count will take place. If, after a period of five minutes, there is not a quorum present, then the Chair will announce that the meeting has ended. The remaining business will be considered at a time and date fixed by the Chair. If s/he does not fix a date, the remaining business will be considered at the next ordinary meeting.

8. QUESTIONS BY THE PUBLIC

8.1 General

Members of the public may ask questions of the Leader, and other members of the Cabinet, at ordinary meetings of the Council.

8.2 Order of questions

Questions will be asked in the order in which they were received, except that the Chair may group together similar questions.

8.3 Notice of questions

A question may only be asked if notice has been given, by delivering it in writing, or by electronic mail, to the Head of Paid Service, no later than ten clear working days before the day of the meeting. Each question must give the name and address of the questioner and must specify by name, or role, the councillor to whom it is to be put. The questioner may also specify the meeting at which they wish the question to be asked.

8.4 Number of questions

At any one meeting, no person may submit more than one question, and no more than one such question may be asked on behalf of a single organisation.

8.5 Scope of questions

8.5.1 The Monitoring Officer may reject a question if it:

- a) Is not about a matter for which the Council has a responsibility or which affects the district;
- b) Is defamatory, frivolous or offensive;
- c) Is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- d) Requires the disclosure of confidential or exempt information

8.5.2 The Monitoring Officer will inform the questioner of the rejection of their question within three clear working days, giving reasons. Where a question requires the disclosure of exempt information, the relevant Council meeting will decide whether to agree disclosure of such information.

8.6 Record of questions

8.6.1 The Head of Paid Service will make each question open to public inspection, by putting it on a searchable section of the Council's website, and will, as soon as is reasonably practicable, send a copy of the question to the councillor to whom it is to be put. Rejected questions will include reasons for rejection.

8.6.2 Copies of all questions will be circulated to all councillors and will be made available to the public attending the meeting.

8.7 Asking the question at the meeting

The Chair will invite the questioner to put the question to the councillor named in the notice. If a questioner, who has submitted a written question, is unable to be present, they may ask the Chair to put the question on his/her behalf. The Chair may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

8.8 Supplementary question

A questioner who has put a question in person may also put one supplementary question, without notice, to the councillor who has replied to his, or her, original question. A supplementary question must arise directly out of the original question or the reply. The Chair may reject a supplementary question on any of the grounds in Rule 8.5 above.

8.9 Written answers

Any question, which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the councillor (or an appropriate substitute member) to whom it was to be put, will be dealt with, by a written answer, within ten clear working days. All written answers will be circulated to councillors and published on the Council website.

8.10 Reference of question to the Cabinet or a committee

Unless the Chair decides otherwise, no discussion will take place on any question, but any councillor may move that a matter, raised by a question, be referred to the Cabinet or the appropriate committee or sub-committee. Once seconded, such a motion will be voted on without discussion.

8.11 Time limit

Public question time, under these procedure rules, shall be limited to 30 minutes.

9. LEADER'S ANNOUNCEMENTS

9.1 Oral report of the Leader

The Leader, or in his/her absence the Deputy Leader, shall give an oral report, of the business of the Cabinet, to each ordinary meeting of the Council. The Leader shall have up to ten minutes to make this report and any statements, which he/she wishes, on any topic or subject that he/she considers should be drawn to the attention of the Council.

9.2 Response by largest opposition group

The Leader of the largest opposition group (or a person nominated, by the Leader of the largest opposition group, to speak at the meeting) shall be

allowed to respond. If there are two opposition groups of the same size, the right of the first response shall alternate.

9.3 Response by other opposition groups

The Leader of any other opposition group (or a person nominated, by the Leader of that opposition group, to speak at the meeting) shall be allowed to respond.

9.4 The Leader's right of reply

Following the responses from the opposition groups, the Leader shall be allowed a right of reply.

9.5 Time limits

The Leader's oral report and right of reply shall be limited to 10 and 5 minutes, respectively. The opposition groups' responses shall be limited to 5 minutes each.

10. QUESTIONS FROM COUNCILLORS

10.1 Without notice, on reports of the Cabinet or committees

A councillor may ask the Leader or relevant Cabinet councillor, or Chair of a committee, any question, without notice, upon an item of the report of the Cabinet, or a committee, when that item is being received or under consideration by the Council.

10.2 Questions on notice at full Council

Subject to Rule 10.3, a Councillor may ask

- a) The Chair;
- b) A member of the Cabinet;
- c) The Chair of any committee or sub-committee;

a question on any matter, in relation to which the Council has powers or duties, or which affects the district.

10.3 Notice of questions

A councillor may only ask a question under rule 10.2 if:

- a) they have given notice, in writing, of the question to the Head of Paid Service, by 10.00am, on the third working day before the meeting (in this rule, the date of the giving of the question and the date of the meeting will be used in the calculation); or

- b) the question relates to urgent matters, they have the consent of the Chair of the Council and the content of the question is given to the Head of Paid Service, by noon, on the day of the meeting.

10.4 Order of questions

Questions will be asked in the order in which they were received.

10.5 Response

An answer may be provided by the councillor to whom it was put, or if appropriate, another relevant councillor, and will take the form of:

- a) A direct oral answer;
- b) Where the desired information is in a publication of the Council, or other published work, a reference to that publication; or
- c) Where the reply cannot conveniently be given orally, a written answer, circulated later, to the questioner.

10.6 Supplementary question

A councillor, asking a question under Rule 10.2, may ask one supplementary question, without notice, of the councillor to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply.

10.7 Time limit

Councillors' questions to the Council shall be limited to 45 minutes.

11. PETITIONS

11.1 Petitions, that the petitioner asks to be presented to full Council, shall be dealt with in accordance with the Petition Scheme in Part 4.5.

11.2 The Chair, on the advice of the Head of Paid Service or the Monitoring Officer, shall, where the Council has received more petitions, under the Petition Scheme, than can be considered at one meeting, have the power to determine at which meeting of the Council each petition shall be considered.

12. OPPOSITION BUSINESS

12.1 One item of business, in each ordinary meeting, may be raised by an opposition party, in accordance with this rule, provided that it has been received in writing, by the Head of Paid Service, no later than ten clear working days prior to the Council meeting, stating the nature of the business to be raised. Where there are two opposition groups of the same size, the groups will have the right to raise one item of business, in turn, at alternate meetings. Where there are opposition groups of differing sizes,

the number of items that each group can raise, in any municipal year, shall be determined by the ratio each bears to the others in terms of numerical size. The largest opposition group shall have the first opportunity, at each ordinary meeting, to raise an item of business, unless the number of items it has been entitled to raise has been reached; the second largest opposition party will have the second choice and so on.

12.2 The Monitoring Officer can reject opposition business which:

- a) Is not about a matter for which the local authority has a responsibility, or which affects the district;
- b) Is defamatory, frivolous or offensive;
- c) Requires the disclosure of confidential or exempt information.

Should the Monitoring Officer reject opposition business, the Leader of the opposition party will receive a written response advising of this, including the reasons for the rejection.

12.3 At the conclusion of the debate, or at the expiry of the time limit mentioned below, whichever is the earlier, a vote shall be taken on the opposition business, in accordance with rule 12.4. Before any vote is taken, the Leader of the opposition party, whose item it is, shall have the right of reply.

12.4 The vote on the opposition business shall:

- a) Note the issue raised and take no further action;
- b) Refer the issue to the Cabinet or the Overview and Scrutiny Committee, as the case may be, for their observations, before deciding whether to make a decision on the issue;
- c) Agree to examine the matter, as part of a future scrutiny programme;
- d) Adopt the issue raised by opposition business, provided that the decision, so made, is within the Policy Framework and Budget, and is within the power of the Council to make the decision.

12.5 Opposition business shall not be raised at the Annual Meeting or at an extraordinary meeting of the Council.

12.6 Time-limit debates on opposition business shall be limited to 30 minutes.

13. MOTIONS ON NOTICE

13.1 Except for motions which can be moved without notice, under Rule 14, written notice of every motion, signed by the councillor giving the notice, must be delivered to the Head of Paid Service not later than 10 clear working days before the date of the meeting. The Head of Paid Service will make each motion open to public inspection, by putting it on a searchable section of the Council's website. Amendments to motions may also be

submitted to the Head of Paid Service, and where received before the deadline for printing of the summons, will be included on the summons for the meeting. Those received after the print deadline, for the meeting, will be circulated to councillors, as soon as practicable, and will, in any event, be available at the meeting.

13.2 Motion set out in agenda

Motions, for which notice has been given, will be listed on the agenda in the order in which notice was received, unless the member, giving notice, states, in writing, that they propose to move it at a later meeting or withdraw it.

13.3 Scope

Motions must be about matters for which the Council has a responsibility, or which affect the district. The Monitoring Officer will adjudicate on whether the scope of the motion complies with this rule.

13.4 Time limit

Debates on motions, moved in accordance with this procedure rule, shall be limited to 60 minutes.

14. MOTIONS WITHOUT NOTICE

14.1 The following motions may be moved without notice:

- a) To appoint a Chair of the meeting at which the motion is moved;
- b) In relation to the accuracy of the minutes;
- c) To change the order of business in the agenda;
- d) To refer something to an appropriate body or individual;
- e) To appoint a committee or councillor, arising from an item on the summons for the meeting;
- f) To receive reports, or adoption of recommendations, of committees, or officers, and any resolutions following from them;
- g) To withdraw a motion;
- h) To amend a motion;
- i) Subject to 14.2 below, to proceed to the next business;
- j) Subject to 14.2. below, that the question be now put;
- k) To adjourn a debate;

- l) To adjourn a meeting;
- m) To suspend a particular Council procedure rule;
- n) To exclude the public and press, in accordance with the Non-Executive Access to Information Procedure Rules;
- o) Not to permit the recording and/or broadcast of the proceedings of the meeting;
- p) To not hear further a councillor named under Rule 21.3 or to exclude them from the meeting under Rule 21.4;
- q) To resolve to request the Head of Paid Service to call an extraordinary meeting of Council; and
- r) To give the consent of the Council, where its consent is required by this Constitution.

14.2 The Chair may refuse to accept a motion under i) or j) above if, in his/her opinion, the matter under discussion has not been discussed sufficiently. In doing so, s/he must give reasons for the rejection.

15. RULES OF DEBATE

15.1 Moving a motion

15.1.1 The mover of a motion may make a speech in support of his, or her, motion when moving it. The motion must then be seconded.

15.1.2 Councillor's absence

If a councillor, who has given notice of a motion, is not at the meeting at which the motion is to be moved, the motion falls.

15.2 Right to require motion in writing

Unless notice of the motion has already been given, the Chair may require it to be written down and handed to him/ her before it is discussed.

15.3 Seconded's speech

When seconding a motion or amendment, a councillor may reserve their speech until later in the debate.

15.4 Content and length of speeches

Speeches must be directed to the question under discussion or to a personal explanation, or point of order. No speech may exceed 5 minutes without the consent of the Chair.

15.5 When a councillor may speak again

A councillor, who has spoken on a motion, may not speak again whilst it is the subject of debate, except:

- a) To speak once on an amendment moved by another councillor;
- b) To move a further amendment, if the motion has been amended since s/he last spoke;
- c) If his/her first speech was on an amendment moved by another councillor, to speak on the main issue (whether or not the amendment on which s/he spoke was carried);
- d) In exercise of a right of reply;
- e) On a point of order and by way of personal explanation.

15.6 Amendments to motions

15.6.1 An amendment to a motion must be relevant to the motion and either be:

- a) To refer the matter to an appropriate body, or individual, for consideration or reconsideration;
- b) To leave out words;
- c) To leave out words and insert or add others; or
- d) To insert or add words.

as long as the effect of b) to d) is not to negate the motion.

15.6.2 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment, under discussion, has been disposed of.

15.6.3 If an amendment is not carried, other amendments to the original motion may be moved.

15.6.4 If an amendment is carried, the motion, as amended, takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

15.6.5 After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, the amended motion will be debated before it is put to the vote.

15.7 Alteration of motion

- 15.7.1** A councillor may alter a motion, of which s/he has given notice, with the consent of the meeting. The meeting's consent will be signified without discussion.
- 15.7.2** A councillor may alter a motion, which s/he has moved, without notice, with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- 15.7.3** Only alterations, which could be made as an amendment, may be made.

15.8 Withdrawal of motion

A councillor may withdraw a motion, which s/he has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No councillor may speak on the motion after the mover has asked permission to withdraw it, unless permission is refused.

15.9 Right of reply

- 15.9.1** The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- 15.9.2** If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- 15.9.3** The mover of the amendment has no right of reply to the debate on his or her amendment.

15.10 Motions which may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

- a) To withdraw a motion;
- b) To amend a motion;
- c) To proceed to the next business;
- d) That the question be now put;
- e) To adjourn a debate;
- f) To adjourn a meeting;
- g) To exclude the public and press, in accordance with the Access to Information Rules; and

- h) To not hear further a councillor named under Rule 21.3 or to exclude them from the meeting under Rule 21.4.

15.11 Closure motions

15.11.1 A councillor may move, without comment, the following motions at the end of a speech of another councillor:

- a) To proceed to the next business;
- b) That the question be now put;
- c) To adjourn a debate; or
- d) To adjourn a meeting.

15.11.2 If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote. If the motion to proceed to next business is carried during the discussion of an item, that item of business falls.

15.11.3 If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, s/he will put the procedural motion to the vote. If it is passed, s/he will give the mover of the original motion a right of reply before putting his/her motion to the vote.

15.11.4 If a motion to adjourn the debate, or to adjourn the meeting, is seconded and the Chair thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, s/he will put the procedural motion to the vote, without giving the mover of the original motion the right of reply.

15.12 Point of order

A councillor may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The councillor must indicate the rule or law and the way in which s/he considers it has been broken. The ruling of the Chair, on the matter, will be final.

15.13 Personal explanation

A councillor may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the councillor, which may appear to have been misunderstood in the present debate. The ruling of the Chair on the admissibility of a personal explanation will be final.

15.14 Council debates ‘in committee’

15.14.1 Where the Council wishes to conduct a debate as if it were a committee, it must first approve a motion suspending all or some of rules 15.3 (the prerogative of a councillor seconding a motion to reserve their speech to later in the debate); 15.4 (Content and length of speeches); 15.5 (When a councillor may speak again) and 21.1 (Councillors standing to speak).

15.14.2 Any motion moved under rule 15.14.1 must comply with rule 25.1.

16. PREVIOUS DECISIONS AND MOTIONS

16.1 Motion to rescind a previous decision

A motion or amendment to rescind a decision, made at a meeting of Council within the past six months, cannot be moved unless the notice of motion is signed by at least nine councillors, or is moved in pursuance of a report, or a recommendation, of the Cabinet, a committee or a statutory officer.

16.2 Motion similar to one previously rejected

A motion or amendment, in similar terms to one that has been rejected at a meeting of Council in the past six months, cannot be moved unless the notice of motion or amendment is signed by at least nine councillors. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

16.3 The Monitoring Officer shall determine whether a motion or amendment is similar to one that has been rejected at a meeting of Council in the past six months, and, unless falling within the exceptions in rule 16.1 above, shall disallow a similar motion or amendment and will advise the mover of the motion, of his/her decision, in writing.

17. VOTING

17.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present, in the room, at the time the question was put.

17.2 Chair’s casting vote

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

17.3 Show of hands/Automated system

Unless a recorded vote is demanded under Rule 17.4, the Chair will take the vote by show of hands or automated system, or if there is no dissent, by the affirmation of the meeting.

17.4 Recorded vote at meetings to set the budget or council tax

A recorded vote will be taken, for all meetings of Council, to set the budget or council tax. Immediately after any such meeting, there will be recorded, in the minutes of the proceedings of that meeting, the names of the councillors who cast a vote 'for' the decision, 'against' the decision or who abstained from voting. The recorded votes will also be noted on any amendments.

17.5 Recorded vote

If five councillors present, at any other meeting, demand it, the names for and against the motion or amendment, or abstaining from voting, will be taken down in writing and entered into the minutes.

17.6 Right to require individual vote to be recorded

Where any councillor requests it, immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion, or abstained from voting.

17.7 Voting on appointments

17.7.1 If there are more than two people nominated for any position to be filled (and this rule shall include the election of the Chair of the Council, the Vice-Chair of the Council and the Leader) and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

17.7.2 The person nominated for the position may speak and vote on the matter, notwithstanding his or her candidature.

18. MINUTES

18.1 Signing the minutes

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed, as a correct record. The only part of the minutes that can be discussed is their accuracy.

18.2 No requirement to sign minutes of previous meeting at extraordinary meeting

Where, in relation to any meeting, the next meeting, for the purpose of signing the minutes, is a meeting called under paragraph 3 of Schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next ordinary meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2), of schedule 12, relating to signing of minutes.

18.3 Form of minutes

Minutes will contain all motions and amendments in the exact form and order the Chair put them. They will be published on the Council website.

19. RECORD OF ATTENDANCE

All councillors present during the whole, or part of a meeting, must sign their names on the attendance sheets before the conclusion of every meeting, to assist with the record of attendance.

20. EXCLUSION OF PUBLIC

Members of the public and press may only be excluded either in accordance with the Access to Information Rules, in Part 4.3 of this Constitution, or Rule 23 (Disturbance by Public).

21. COUNCILLORS' CONDUCT

21.1 Standing to speak

Where possible, when a councillor speaks at full Council, they must stand and address the meeting through the Chair. If more than one councillor stands, the Chair will ask one to speak and the others must sit. Other councillors must remain seated whilst a councillor is speaking, unless they wish to make a point of order or a point of personal explanation.

21.2 Chair standing

When the Chair stands during a debate, or otherwise signifies that councillors should stop speaking, any councillor speaking at the time must stop and sit down. The meeting must be silent.

21.3 Councillor not to be heard further

If a councillor persistently disregards the ruling of the Chair, by behaving improperly or offensively, or deliberately obstructs business, the Chair may move that the councillor be not heard further. If seconded, the motion will be voted on without discussion.

21.4 Councillor to leave the meeting

If the councillor continues to behave improperly after such a motion is carried, the Chair may move that either the councillor leaves the room, in which the meeting is being held, or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

21.5 General disturbance

If there is a general disturbance making orderly business impossible, the Chair may adjourn the meeting for as long as s/he thinks necessary.

22. WITHDRAWAL FROM THE MEETING

22.1 A councillor or co-opted member with a Disclosable Pecuniary Interest in a matter to be considered, or being considered, at a meeting must withdraw from the meeting room unless he/she has been granted a dispensation by the Audit and Governance Committee or the Monitoring Officer (where authorised) to speak only, or to speak and vote on the matter.

22.2 A councillor or co-opted member with an Other Significant Interest in a matter to be considered, or being considered, at a meeting must:

- a) if he/she attends the meeting and, subject to sub-paragraph b) below, be in the place reserved for public in the meeting room;
- b) where public are allowed to make representations, answer questions or give evidence relating to the business, withdraw to the place in the meeting room reserved for the public, after having made representations, answered questions or given evidence

unless, in either case, he/she has been granted a dispensation by the Audit and Governance Committee or the Monitoring Officer (where authorised) to speak only, or to speak and vote on the matter.

23. DISTURBANCE BY PUBLIC

23.1 Removal of member of the public

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If they continue to interrupt, the Chair will order their removal from the meeting room.

23.2 Clearance of part of meeting room or adjournment

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared, or may adjourn the meeting for as long as he deems necessary.

24. RECORDING/BROADCAST OF THE MEETING

24.1 While a meeting is open to the public, any person is permitted to report on the meeting. For these purposes, report means filming, photographing or making audio recordings of proceedings at the meeting; using any other means for enabling persons, not present, to see or hear proceedings at the meeting, as it takes place, or later; or reporting or providing commentary on proceedings at the meeting, in writing, or orally, outside or after the meeting.

24.2 Reasonable facilities will be provided to any person who wishes to report on a meeting, subject to the following conditions:-

- a) Prior notification, to the Head of Democratic Services and Law, on the intention to report on a meeting.
- b) Recordings being made in an overt manner that would not disrupt the good order of the meeting. Disruptive behaviour could be any action or activity which disrupts the conduct of meetings or impedes other members of the public from being able to see, hear, or record the proceedings. Examples of disruptive behaviour include, but are not limited to:
 - Moving to areas outside those designated for the public without the consent of the Chair;
 - Oral commentary during a meeting;
 - Excessive noise in recording, or setting up, or re-siting equipment during the debate/discussion;
 - Intrusive lighting and use of flash photography;
 - Asking for people to repeat statements for the purposes of recording.
- c) Attendees being advised, by the Chair, at the start of the meeting, that it is to be recorded, in order to receive objections from those not wishing to be recorded.
- d) Removing any recording equipment from the meeting room prior to any part of the meeting where the public is excluded.
- e) The Chair's decision in relation to disruptive behaviour shall be final.

24.3 These rights are subject to the Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

25. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

25.1 Suspension

All of these Council Rules of Procedure, except Rule 1 (Annual Meeting); 5 (Notice and summons to a meeting); 15 (Rules of debate; other than rules 15.3 – the obligation of a councillor seconding a motion to reserve their speech to later in the debate; 15.4 – content and length of speeches; and 15.5 – When a councillor may speak again); 16.2 (Motions similar to one previously rejected); 17 (Voting); 20 (Exclusion of the public); 22 (Withdrawal from the meeting); and this rule, may be suspended by motion on notice, or without notice, if at least one half of the whole number of councillors, of the Council, are present. Suspension can only be for the duration of the meeting.

25.2 Amendment

Any motion to permanently add to, vary, or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned, without discussion, to the next ordinary meeting of the Council.

PART 4.3 – NON-EXECUTIVE ACCESS TO INFORMATION PROCEDURE RULES

1. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

2. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings, subject only to the exceptions in these rules.

3. RIGHTS TO REPORT MEETINGS

3.1 While a meeting is open to the public, any person is permitted to report on the meeting. For these purposes, report means filming, photographing or making audio recordings of proceedings at the meeting; using any other means for enabling persons, not present, to see or hear proceedings at the meeting, as it takes place, or later; or reporting, or providing commentary on proceedings, at the meeting, orally, or in writing.

3.2 These rights are subject to the Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

4. NOTICE OF MEETINGS

The Council will give at least 5 clear days notice of any meeting, by posting details of the meeting at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY and on the Council's website.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

5.1 The Council will make copies of the agenda and reports, which are open to the public, available for inspection at the Civic Centre and on the Council's website, at least 5 clear days before the meeting.

5.2 Where the meeting is convened at shorter notice than set out in Rule 4 (notice of meetings), copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

5.3 If an item is added to the agenda, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons or agenda has been sent out, the Head of Paid Service shall make each such report available to the public, as soon as the report is completed and sent to councillors.

6. SUPPLY OF COPIES

The Council will supply:

a) Copies of any agenda and reports, which are open to public inspection;

- b) Copies of any further statements, or particulars, necessary to indicate the nature of the items on the agenda; and
- c) Where the Head of Paid Service considers it appropriate, copies of any other documents, supplied to councillors, in connection with an item;

to any person, on payment of a charge for postage and any other costs, including copying and administration costs. All relevant documentation will be available from the Council's website, free of charge.

7. ACCESS TO DOCUMENTS AFTER MEETINGS

The Council will make copies of the following documents available for six years after a meeting:

- a) The minutes of the meeting, excluding any part of the minutes of proceedings when the meeting was not open to the public, or which disclose exempt or confidential information;
- b) A summary of any proceedings not open to the public, where the minutes, open to inspection, would not provide a reasonably fair and coherent record;
- c) The agenda for the meeting; and
- d) Reports relating to items when the meeting was open to the public.

8. BACKGROUND PAPERS

8.1 Background papers

The chief officer, responsible for the report, will set out in every report a list of those documents (called background papers) relating to the subject matter of the report, which in his/her opinion:

- a) Disclose any facts or matters on which the report, or an important part of the report, is based; and
- b) Which have been relied on, to a material extent, in preparing the report, but will not include, in such a list, published works or those which disclose exempt or confidential information (as defined in Rule 10).

8.2 Public inspection of background papers

The Council will make available, for inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.

9. SUMMARY OF THE PUBLIC'S RIGHTS

Article 3 of this Constitution, in conjunction with these rules and the Executive Access to Information Rules, is the written summary of the public's rights to attend meetings and to inspect and copy documents. These documents will be kept, and be available, to the public at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential information – requirement to exclude the public

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that confidential information would be disclosed.

10.2 Meaning of confidential information

Confidential information means information given to the Council, by a Government department, on terms which forbid its public disclosure or information which cannot be publicly disclosed because of a Court Order.

10.3 Exempt information – discretion to exclude the public

The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public, unless a private hearing is necessary for one of the reasons specified in Article 6 of the Human Rights Act 1998.

10.4 Meaning of exempt information

Exempt information means information falling within the following categories (defined by Part 1 of Schedule 12A to The Local Government Act 1972, as amended), provided that two conditions are met. The first condition is set out in the second column of the following table:

| Category | Condition |
|--|--|
| 1. Information relating to any individual. | Information falling within paragraph 1 is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 2. Information which is likely to reveal the identity of an individual. | Information falling within paragraph 2 is exempt if and so long as in all the circumstances of the case, the public interest |

| | |
|--|---|
| | in maintaining the exemption outweighs the public interest in disclosing the information. |
| <p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)</p> <p>‘Financial or business affairs’ includes contemplated as well as current activities.</p> | <p>Information falling within paragraph 3 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information falling within paragraph 3 is not exempt information if it is required to be registered under:</p> <p>The Companies Act (as defined in section 2 of the Companies Act 2006)</p> <p>The Friendly Societies Act 1974</p> <p>The Friendly Societies Act 1992</p> <p>The Industrial and Provident Societies Act 1965 to 1978</p> <p>The Building Societies Act 1986</p> <p>The Charities Act 1993</p> |
| <p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p> | <p>Information falling within paragraph 4 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>‘Labour relations matters’ are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act or any dispute about a matter within this paragraph).</p> |
| <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> | <p>Information falling within paragraph 5 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| <p>6. Information which reveals that the authority proposes:</p> <p>to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>to make an order or direction under any enactment.</p> | <p>Information falling within paragraph 6 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |

| | |
|--|---|
| <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p> | <p>Information falling within paragraph 7 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
|--|---|

The second condition is that information is not exempt information if it relates to proposed development, for which the local planning authority may grant itself planning permission, pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

11. EXCLUDING PUBLIC ACCESS TO REPORTS

The public may be denied access to reports if the Head of Paid Service believes that the report relates to matters which, in accordance with Rule 10, will not be considered in a public meeting. Such reports will be marked 'Not for publication', together with the category of information likely to be disclosed.

12. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS

12.1 Material relating to previous business

All councillors will be entitled to inspect any document which is in the possession, or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting; a decision made by an individual member; or a decision taken by an officer, unless it contains:

- a) Exempt information, as defined in Rule 10, apart from information falling within categories 3 (except in relation to proposed contracts), 6 and
- b) The advice of a political assistant.

12.2 Timescale

Any document required to be available for inspection under Rule 12.1 must be made available for inspection, in any event, within 24 hours of the conclusion of the meeting on the decision being made, as the case maybe.

12.3 Material relating to key decisions

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control of the Cabinet or its committees, which relates to any key decision, unless Rule 12.1 a) or b) applies.

12.4 Nature of rights

These rights of a councillor are additional to any other right he/she may have. A fuller statement of these rights is set out in the Protocol on Councillor and Officer Relations contained in Part 8 to this Constitution.

PART 4.4 - BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

1. THE FRAMEWORK FOR CABINET DECISIONS

The Council will be responsible for the adoption of its Budget and Policy Framework, as set out in Article 4 and Part 4. Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

2. PROCESS FOR DEVELOPING THE FRAMEWORK

The process by which the Budget and Policy Framework shall be developed is:

- 2.1** Each year the Head of Paid Service and relevant Cabinet members will, in their joint report to the Overview and Scrutiny Committee on potential issues for the committee's work programmes, include any matters which form part of the Budget and Policy Framework and which will require adoption in the coming year.
- 2.2** No less than two months before any plan, strategy or budget, that forms part of the Budget and Policy Framework, needs to be adopted, the Cabinet will publish initial proposals and a timetable to the Council. This will be included in the notice of intention to make a key decision. The timetable will be publicised on the Council's website and will give details of the arrangements for consultation, after publication, of those initial proposals.
- 2.3** If the Overview and Scrutiny Committee wishes to include the matter in the work programme, the chief officer will ensure that the committee is consulted in good time, to enable the committee's views to be considered by the Cabinet or Cabinet Member, prior to firm proposals being submitted to the Council.
- 2.4** In the event that the Overview and Scrutiny Committee chooses to consider a report which forms part of the Budget and Policy Framework, then its views shall be included in the report submitted to the Cabinet or Cabinet Member, who shall take them into account in drawing up firm proposals for submission to the Council. The report to Council will reflect the comments made by the Overview and Scrutiny Committee consultees and the Cabinet's response.
- 2.5** At the end of that period, the Cabinet will then draw up firm proposals, having regard to the responses of that consultation. If the Overview and Scrutiny Committee wishes to respond to the Cabinet with a report, in that consultation process, they may do so. The Cabinet will take any report, from the Overview and Scrutiny Committee, into account in drawing up firm proposals for submission to the Council, in accordance with the Overview and Scrutiny Procedure Rules (Part 7). The Cabinet's report will respond to comments made by consultees, including reasons for action or inaction, as appropriate.

- 2.6** When drawing up firm proposals, the Cabinet should be mindful that, subject to the provisions of paragraph 4 (urgent decisions outside the Budget and Policy Framework), the responsibility for agreeing the Budget and Policy Framework lies with the Council; and decisions by the Cabinet, a committee of the Cabinet, an individual member of the Cabinet, or officers, area committees, or joint arrangements discharging Cabinet functions must be in line with it. No changes to any policy and strategy which make up the Policy Framework may be made by those bodies or individuals, except where the Council has agreed this at the time of agreeing the Budget or relevant policy or strategy.
- 2.7** Once the Cabinet has approved the firm proposals, they will be placed on the agenda of the next ordinary meeting of the Council, for decision, unless the Head of Paid Service is of the view that there is an overriding requirement for the proposals to be considered earlier, when the Head of Paid Service will arrange for an extraordinary meeting of the Council to be convened.
- 2.8** The Council will consider the proposals of the Cabinet and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting. The decision shall be publicised.
- 2.9** If the Council accepts the recommendation of the Cabinet without amendment, or the Leader of the Council supports a proposal to amend the recommendation, the Council may make a decision which has immediate effect.
- 2.10** If the Council proposes an amendment which the Leader of the Council does not support, the Council may only make an in-principle decision. An in-principle decision will automatically become effective on the expiry of 5 working days from the date of the Council's decision, unless the Leader informs the Head of Paid Service, in writing, within the period of 5 working days, that he/she objects to the decision becoming effective and provides reasons why. Where such notification is received, the Head of Paid Service shall convene a further meeting of the Council, to reconsider its decision, and the decision shall not be effective, pending that meeting.
- 2.11** The Council meeting must take place within 15 clear working days of the receipt of the Leader's written objection. The Council will be required to reconsider its decision and the Leader's written submission.
- 2.12** The Council shall make its final decision on the matter, on the basis of a simple majority of votes cast at that meeting.
- 2.13** The decision shall then be made public and shall be implemented immediately.

3. DECISIONS OUTSIDE THE AGREED BUDGET OR POLICY FRAMEWORK

3.1 Subject to the provisions of paragraph 5 (virement) the Cabinet, committees of the Cabinet and any officers, area committees, or joint arrangements discharging Cabinet functions, may only take decisions, which are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision, which is contrary to the Policy Framework, or contrary, or not wholly in accordance with the Budget approved by full Council, then that decision may only be taken by the Council, subject to paragraph 4 below.

3.2 If the Cabinet, committees of the Cabinet, individual members of the Cabinet and any officers, area committees or joint arrangements discharging Cabinet functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Financial Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to, or not wholly in accordance with, the Budget. If the advice of either of those officers is that the decision would not be in line with the existing Budget and/or Policy Framework, then the decision must be referred, by that body or person, to the Council, for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the Budget and Policy Framework) shall apply.

3.3 Council may either:

- a) endorse a decision, or proposal, of the Cabinet 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 Budget or Policy Framework concerned, to encompass the decision or proposal of the decision-taker responsible for that Cabinet 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) where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to, or not wholly in accordance with the Budget, and does not amend the existing framework to accommodate it, the Council will require the decision-taker to reconsider the matter, in accordance with the advice of either the Monitoring Officer or Chief Finance Officer, and refer it back to the Cabinet. The decision-taker must reconsider within 7 working days of the Council meeting. Whatever decision the Cabinet takes at that meeting is final, bearing in mind that a decision taken outside the Budget or Policy Framework will be unlawful.

4. URGENT DECISIONS OUTSIDE THE AGREED BUDGET OR POLICY FRAMEWORK

4.1 The Cabinet, a committee of the Cabinet, an individual member of the Cabinet, or officers, area committees, or joint arrangements discharging Cabinet functions, may take a decision which is contrary to the Council's policy framework or contrary to, or not wholly in accordance with, the Budget approved by full Council, if the decision is a matter of urgency. However the decision may only be taken if:

- a) it is not practical to convene a quorate meeting of the full Council; and
- b) where the decision is subject to call-in, the Chair of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

4.2 The reasons why it is not practical to convene a quorate meeting of full Council, and the Chair of the Overview and Scrutiny Committee's consent to the decision being taken as a matter of urgency, must be noted on the record of the decision. In the absence of the Chair of the Overview and Scrutiny Committee, the consent of the Chair of the Council will be required. In the absence of both the Chair of the Overview and Scrutiny Committee and the Chair of the Council, the consent of the Vice-Chair of the Council will be required.

4.3 Following an urgent decision, the decision-taker will provide a full report to the next available Council meeting, explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

5. VIREMENT

5.1 The Council's budget heads shall be shown in the budget book for the current financial year.

5.2 Steps taken by the Cabinet, a committee of the Cabinet, an individual member of the Cabinet, area committees, or joint arrangements discharging Cabinet functions, to implement Council policy, shall not exceed those budgets allocated to each budget head for which they have responsibility. However, such bodies or individuals shall be entitled to vire across budget heads, provided there is compliance with the Financial Procedure Rules (included in Part 10 of this Constitution).

5.3 The Council has included in its Financial Procedure Rules (Part 10 of this Constitution) provisions which set out the rules for moving monies between budgetary allocations. Increases in the overall Budget must be approved by the Council.

PART 4.5 - PETITION SCHEME

1. FOLKESTONE AND HYTHE DISTRICT COUNCIL'S PETITION SCHEME

- 1.1** The Council welcomes petitions and recognises that petitions are one way in which people can let the Council know their concerns. All petitions sent, or presented, to the Council will receive an acknowledgement from the Council within 10 working days of receipt.
- 1.2** This acknowledgement will set out what the Council plans to do with the petition. The Council will treat something as a petition if it is identified as being a petition, or if it seems to the Council that it is intended to be a petition.
- 1.3** Paper petitions should be sent to:
Head of Paid Service
Folkestone and Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone,
Kent CT20 2QY
- 1.4** or be created, signed and submitted online, via the Council's website, under 'Petitions'.
- 1.5** Petitions can also be presented to a meeting of the Council. The dates and times of Council meetings can be found under committee meeting dates on the Council's website.
- 1.6** To present a petition to the Council, please contact the Council's Committee Services section, at least 15 working days before the meeting, to discuss the process.
- 1.7** If a petition has 250 signatures and is not a petition concerning a matter mentioned in paragraph 3.3 below, the Council will, if presented to full Council, make one of the following decisions on the petition; namely to:
- a) Note the petition and take no further action;
 - b) Refer the petition to the Cabinet or the Overview and Scrutiny Committee, as the case may be, for their observations before deciding whether to examine the issues raised by the petition;
 - c) Agree to examine the issues raised by the petition, by debate, at the meeting or a future meeting;
 - d) Agree to examine the issues raised by the petition, as part of a future scrutiny programme.

2. GUIDELINES FOR SUBMITTING A PETITION

- 2.1** Petitions submitted to the Council must include:

- a) A clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take.
 - b) The name and address and signature of any person supporting the petition.
 - c) At least 250 valid signatures.
- 2.2** Petitions should be accompanied by contact details, including an address, for the petition organiser. This is the person the Council will contact to explain how we will respond to the petition.
- 2.3** A signatory to a petition must either live or work, or study, in the district, or meet one of the criteria for election to the District Council.
- 2.4** The contact details of the petition organiser will not be placed on the website. If the petition does not identify a petition organiser, the Council will contact signatories to the petition, to agree who should act as the petition organiser.
- 2.5** Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. Petitions, for example, that target individuals, or relate to legal proceedings, are therefore unlikely to be accepted. In the period immediately before an election, or referendum, the Council may need to deal with a petition differently. If this is the case, the Council will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the Council may decide not to do anything further with it. In that case, the Council will write to the petition organiser to explain the reasons.
- 2.6** A petition must be received at least ten clear working days before a meeting of full Council if it is to be considered, or received, at this meeting. In some cases it may not be possible to place the petition on the agenda but the Council will endeavour to do so, where possible.

3. WHAT THE COUNCIL DOES AFTER RECEIVING A PETITION

- 3.1** An acknowledgement is sent to the petition organiser within 10 working days of receiving the petition. It will let them know what the Council plans to do with the petition and when it will contact the petition organiser next. It will also be published on the Council's website.
- 3.2** If the Council are able to do what is requested in the petition, the acknowledgement may confirm that the Council have taken the action requested and the petition will be closed. If the petition has enough signatures to be presented to Council, then the acknowledgment will confirm this and inform the petition organiser when and where the Council meeting will take place. If the petition needs more investigation, the Council will inform the petition organiser of the steps the Council plans to take.

- 3.3** If the petition applies to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or on a matter where there is already an existing right of appeal, such as council tax banding and non-domestic rates, other procedures apply and the petition will not be received or considered by the full Council meeting. Further information on all these procedures, and how the public can express their views, is available on the Council's website.
- 3.4** If a petition contains fewer than 250 signatures (and does not concern a matter referred to in paragraph 3.3 above) the decision on how to respond to the petition shall be made by the relevant Assistant Director or Chief Service Officer in consultation with the relevant portfolio holder.
- 3.5** The Council will not take action on any petition which it considers to be vexatious, abusive or otherwise inappropriate, and will explain the reasons for this in its acknowledgement of the petition.
- 3.6** To ensure that people know what the Council is doing, in response to the petitions it receives, the details of all the petitions, submitted to the Council, will be published on its website, except in cases where this would be inappropriate. Whenever possible, the Council will also publish all correspondence relating to the petition (all personal details will be removed). When an e-petition is signed, the signee can elect to receive this information by email. The Council will not send the signee anything which is not relevant to the e-petition that has been signed, unless the signee chooses to receive other emails from the Council.

4. HOW THE COUNCIL RESPONDS TO PETITIONS

- 4.1** The Council's response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:
- a) Taking the action requested in the petition;
 - b) Considering the petition at a Council meeting;
 - c) Holding an inquiry into the matter;
 - d) Undertaking research into the matter;
 - e) Holding a public meeting;
 - f) Holding a consultation;
 - g) Holding a meeting with petitioners;
 - h) Referring the petition for consideration by the Council's Overview and Scrutiny Committee;
 - i) Calling a referendum;

- j) Writing to the petition organiser, setting out our views about the request in the petition.

The Overview and Scrutiny Committee is a committee of councillors who are responsible for scrutinising the work of the Council: in other words, the Overview and Scrutiny Committee has the power to hold the Council's decision-makers to account.

- 4.2** In addition to these steps, the Council will consider all the specific actions it can potentially take on the issues highlighted in a petition.

If the petition is about something over which the Council has no direct control (for example the local railway or hospital) it will consider making representations, on behalf of the community, to the relevant body. The Council works with a large number of local partners and where possible will work with these partners to respond to the petition. If the Council is not able to do this, for any reason (for example, if what the petition calls for conflicts with Council policy), then it will set out the reasons for this to the petition organiser.

More information on the services, for which the Council is responsible, can be found at: www.folkestone-hythe.gov.uk/petitions.

- 4.3** If a petition is about something that a different Council is responsible for, the Council will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other council, but could involve other steps. In any event, the Council will always notify the petition organiser of the action it has taken.

5. PRESENTATION OF PETITION

If a petition contains 250, or more, signatures the petition organiser may present the petition to the full Council. The Council will endeavour to receive the petition at its next meeting, though, on some occasions, this may not be possible. The petition organiser will be given five minutes to present the petition at the meeting.

6. E-PETITIONS

- 6.1** The Council welcomes e-petitions which are created and submitted through its website at www.folkestone-hythe.gov.uk/petitions. E-petitions must follow the same guidelines as paper petitions.
- 6.2** The petition organiser will need to provide the Council with their name, postal address and email address. The petition organiser will also need to decide how long they would like the petition to be open for signatures. Most petitions run for six months, but can run for a shorter or longer timeframe but up to a maximum of 12 months.

- 6.3** When an e-petition is created, it may take five working days before it is published online. This is because the Council has to check that the content of the petition is suitable before it is made available for signature.
- 6.4** If the Council feels it cannot publish the petition for some reason, it will contact the petition organiser, within this time, to explain. Following this, the e-petition will be able to be changed and resubmitted. If this is not done within 10 working days, a summary of the petition, and the reason why it has not been accepted, will be published under the 'rejected petitions' section of the website.
- 6.5** When an e-petition has closed for signature, it will automatically be submitted to the Head of Paid Service. In the same way as a paper petition, an acknowledgement will be sent, within 10 working days. If the petition organiser would like to present the e-petition to a meeting of the Council, they can contact the Committee Services section, within 10 working days of receipt of the acknowledgement.
- 6.6** A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgment and response will also be published on the website.

7. HOW TO 'SIGN' AN E-PETITION

- 7.1** All the e-petitions, currently available for signature, are on the Council's, website under 'Petitions'.
- 7.2** When an e-petition is signed, the signee will be asked to provide their name, postcode and a valid email address. When this information has been submitted, an email will be sent to the email address provided. This email will include a link, which must be clicked on in order to confirm the email address is valid. Once this step is completed, the signee's 'signature' will be added to the petition. People visiting the e-petition will be able to see all the names, in the list of those who have signed it, but contact details will not be visible.

FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 5 - COMMITTEES OF THE COUNCIL: FUNCTIONS, RULES **AND PROCEDURES**

| CONTENTS | | Page Ref |
|-----------------|---|--------------------|
| 5.1 | Committees of the Council | ‘Part 5/2’ |
| 5.2 | Committee Procedure Rules | ‘Part 5/9’ |
| 5.3 | Non-Executive Access to Information Procedure Rules | ‘Part 5/23’ |

PART 5 – COMMITTEES OF THE COUNCIL, FUNCTIONS RULES AND PROCEDURES

PART 5.1 – COMMITTEES OF THE COUNCIL

1. COMMITTEES

- 1.1** Committees and sub-committees can determine all matters falling within their terms of reference, except for major policy changes or initiatives, which shall be recommended to Council.
- 1.2** Officers' delegated powers are set out in the Scheme of Delegation. In addition, each committee and sub-committee is authorised to delegate to officers such further powers as it thinks fit to facilitate the efficient management of the Council's and committee's business.
- 1.3** The committees of the Council are set out in the following paragraphs.

2. AUDIT AND GOVERNANCE COMMITTEE

2.1 Terms of Reference

2.1.1 Audit and Finance

- a) Review and approve the financial statements, external auditor's opinion and reports to members, and monitor management action in response to the issues raised by external audit.
- b) To consider the Head of Internal Audit's annual report and opinion on the Council's corporate governance arrangements.
- c) To conduct reviews of the effectiveness of the Council's system of internal audit.
- d) Be satisfied that the authority's assurance statement, including the annual governance statement, properly reflects the risk environment and any actions required to improve it.
- e) Approve (but not direct) internal audit's strategy, plan and monitor performance.
- f) Review summary internal audit reports and the main issues arising, and seek assurance that action has been taken, where necessary.
- g) Consider the effectiveness of the authority's risk management arrangements, the control environment and associated anti-fraud and anti-corruption arrangements, and seek assurance that action is being taken to mitigate those risks identified.
- h) To make recommendations to Council on Contract Standing Orders.

- i) To make recommendations to Council on the Financial Procedure Rules.
- j) To maintain an overview of the Council's Whistle-blowing Policy.

2.1.2 Standards

To discharge the functions as set out in Part 1, Chapter 7 of the Localism Act 2011 including:

- a) To promote and maintain high standards of conduct by members and co-opted members of Folkestone and Hythe District Council and to make recommendations to Council on improving standards.
- b) To advise and assist parish/town councils, and parish/town councillors, to maintain high standards of conduct and to make recommendations to parish/town councils on improving standards.
- c) To advise the District Council on the adoption of, or revisions to, its Code of Conduct.
- d) To advise, train, or arrange to train, district members, co-opted members and parish/town councillors on matters relating to the Code of Conduct.
- e) To assist the district councillors, co-opted members and parish/town councillors to observe their respective Codes of Conduct.
- f) To monitor and assess the operation and effectiveness for dealing with the Code of Conduct and to review and manage the arrangements for dealing with Code of Conduct complaints.
- g) To advise on local ethical governance protocols and procedures.
- h) To maintain oversight of the District Council's arrangements for dealing with Code of Conduct complaints.
- i) To act as an advisory body in respect of any ethical governance matter.
- j) To monitor and review the procedures for the Register of Members' Interests and declaring gifts and hospitality.
- k) To receive quarterly reports (or less frequently, if there are no complaints to report), from the Monitoring Officer, on the number and nature of complaints received, and action taken, as a result, in consultation with the Independent Person.
- l) To receive an annual report on the District Council's ethical governance arrangements.
- m) To make recommendations to Council on the appointment of an Independent Person(s) under S28 of the Localism Act 2011.

- n) To grant dispensations pursuant to Section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted Code of Conduct where:
- so many members of the decision-making body have Disclosable Pecuniary Interests in a matter, that it would impede the transaction of the business; or
 - without a dispensation, no member of the executive would be able to participate on a particular item of business;
 - without a dispensation, the representation of different political groups, on the body transacting the business, would be so upset as to alter the outcome of any voting on the matter;
 - that the authority considers that the dispensation is in the interests of persons living in the area; or
 - where the committee considers that it is otherwise appropriate to grant a dispensation.

2.1.3 Standards' Hearings

- a) At the request of the Monitoring Officer, to consider whether allegations of breaches of the Code of Conduct for members should be referred for local investigation or other action, although not making any finding of fact at that stage.
- b) To consider the report of the investigating officer.
- c) Where the investigating officer has concluded that there has been a breach of the Code of Conduct, to hear and determine the allegation.
- d) To impose or recommend the imposition of appropriate sanctions, where it finds that there has been a breach of the Code of Conduct.

2.1.4 Miscellaneous Non-Executive Functions

- a) To exercise all the Council's non-executive functions that have not been reserved to full Council or delegated to another committee. These include functions relating to:
 - Public rights of way (other than those delegated to the Planning and Licensing Committee), highways and limestone pavements;
 - Health and Safety at Work;
 - Elections;
 - Byelaws;
 - Smoke-free premises;
 - Overview of complaints handling and Ombudsman investigations;

- To authorise maladministration payments, where a chief officer considers it inappropriate to use his/her delegated powers;
 - To determine any appeal against any decision regarding homelessness or housing allocation.
- b) To make recommendations to Council on polling station reviews and the outcome of community governance reviews.

2.1.5 Constitutional Matters

To advise the Council on the adoption, alteration, review or amendment of any part of the Council's Constitution, other than matters relating to the powers of the Leader of the Council to decide the arrangements for the discharge of Cabinet functions, the Members' Allowances' Scheme, the management structure and the register of members.

2.2 Composition

Must be politically balanced.

3. PERSONNEL COMMITTEE

3.1 Terms of Reference

- a) To deal with all matters relating to staff employed by the Council, including determining their terms and conditions of employment or on which they hold office.
- b) To consider and determine applications for discretionary pension payments
- c) To make recommendations to Council on the appointment of Chief Officers as defined in Part 2 paragraph 11.1.2(a).
- d) To make recommendations to Council on the appointment or dismissal of the Head of Paid Service.
- e) To make recommendations to Council on the dismissal of the Monitoring Officer and Chief Finance Officer.
- f) To dismiss chief officers (other than the Head of Paid Service, the Monitoring Officer and Chief Finance Officer (S151 Officer)) in cases of disciplinary offence.
- g) To decide whether to initiate an investigation, in respect of the Head of Paid Service, which might lead to disciplinary action.
- h) To decide whether to suspend the Head of Paid Service in accordance with the relevant human resources policies.

- i) To make recommendations to Council on any disciplinary action to be taken against the Head of Paid Service.
- j) To be the remuneration committee for the pay of the Head of Paid Service and chief officers, with authority to determine the pay of those officers, provided that in making the determination, the committee shall be advised by an external advisor.
- k) To appoint the external advisor mentioned above.
- l) To determine any appeal regarding disciplinary and employment issues, in accordance with the Council's Human Resources' strategies.

3.2 Composition

Must be politically balanced and must include at least one member of the executive when considering the appointment or dismissal of a chief officer.

4. PLANNING AND LICENSING COMMITTEE

4.1.1 Terms of Reference

4.1.2 Development Control

To exercise all of the Council's functions, as specified in Schedule 1 of the functions' regulations relating to:

- a) Town and Country Planning;
- b) Trees and hedgerows;
- c) High hedges;
- d) Powers relating to public rights of way contained in the Town and Country Planning Act 1990, namely power to authorise stopping up or diversion of highway footpath or bridleway, and power to extinguish public rights of way over land held for planning purposes.

4.1.3 Licensing

To exercise all of the Council's functions, as specified in Schedule 1 of the functions' regulations, relating to licensing and registration, except those functions which are the responsibility of the Licensing Act Committee.

4.1.4 Composition

Must be politically balanced.

4.1.5 Planning and Licensing Codes

4.1.6 The terms of reference should be read in conjunction with the planning and licensing codes contained in Part 9 of this Constitution.

4.1.7 The planning and licensing codes contain parts of the rules of procedure of the committee when dealing, respectively, with development control and licensing matters.

5 LICENSING SUB COMMITTEE (sub-committee of the Planning and Licensing Committee)

5.1 Terms of Reference

To determine any licensing or registration issue (except in relation to those functions which are the responsibility of the Licensing Act Committee), where there is a valid objection.

5.2 Composition

Any three members of the Planning and Licensing Committee may form a sub-committee.

5.3 Licensing Code

5.3.1 The terms of reference should be read in conjunction with the Licensing Code in Part 9 of this Constitution.

5.3.2 The Licensing Code contains the rules of procedure of the sub-committee.

6 LICENSING ACT COMMITTEE

6.1 Terms of Reference

6.1.1 To exercise all of the Council's functions as Licensing Authority under the Licensing Act 2003 and the Gambling Act 2005 (unless reserved to full Council);

6.1.2 To exercise the Council's functions in relation to the control of demonstrations of hypnotism under section 2 of the Hypnotism Act 1952.

6.2 Composition

Not required to be politically balanced. The Licensing Act 2003 requires that the number of members on the committee must not be less than 10 or more than 15. Membership of the Licensing Act Committee will be the same as the membership of the Planning and Licensing Committee.

6.3 Licensing Code

6.3.1 The terms of reference should be read in conjunction with the licensing code contained in Part 9 of this Constitution.

7 LICENSING ACT SUB-COMMITTEE (sub-committee of the Licensing Act Committee)

7.1 Terms of Reference

a) To determine, in respect of licences issued under the Licensing Act 2003:

- Applications for a personal licence to vary a designated premises supervisor and for the transfer of a premise licence to interim authorities, if there is a Police objection;
- Applications for a personal licence, with unspent convictions, for provisions statement, to vary a premise licence/club premises certificate, if a relevant representation is made.

b) The determine, in respect of licences issued under the Gambling Act 2005:

- Applications for a premises licence, where representations have been made and not withdrawn;
- Applications for variation of a premises licence, where representations have been made and not withdrawn;
- Applications for transfer, following representations by the Commission;
- Reviews of premises' licences.

7.2 Composition

Any three members of the Licensing Act Committee may for a sub-committee. A ward member must not hear an application relating to premises in their ward.

7.3 Licensing Code

7.3.1 The terms of reference should be read in conjunction with the Licensing Code in Part 9 of this Constitution.

7.3.2 The Licensing Code contains the rules of procedure of the sub-committee.

PART 5.2 – COMMITTEE PROCEDURE RULES

1. APPLICATION OF THESE RULES

- 1.1** These rules apply to all committees and sub-committees of the Council. There are additional rules when a committee is acting in a quasi-judicial capacity. In addition, there are specific rules on public participation at the Planning and Licensing Committee.
- 1.2** These rules apply to the Council's Overview and Scrutiny Committee, subject to the provisions of the Overview and Scrutiny Procedure Rules in Part 7. Where there is a conflict between those rules and the Overview and Scrutiny Procedure Rules, the latter shall prevail.

2. ESTABLISHMENT OF COMMITTEES

- 2.1** At the annual meeting of the Council, the Council will:
- a) Decide which committees to establish for the municipal year;
 - b) Decide the size and terms of reference for those committees;
 - c) Decide the allocation of seats to political groups, in accordance with the political balance rules;
 - d) Receive nominations of councillors to serve on each committee and;
 - e) Appoint to those committees bodies, except where appointment to those bodies has been delegated by the Council.
- 2.2** The number and names of members, independent members and co-optees, appointed to each committee, can be found in Appendix 2 of this Constitution. A diagrammatic representation of the structure of the Council can also be found in that appendix.
- 2.3** The Council may establish additional committees between annual meetings as it sees fit.

3. ESTABLISHMENT OF SUB-COMMITTEES

- 3.1** Committees of the Council may establish sub-committees, with such terms of reference and delegated powers as they consider necessary for the proper discharge of the functions of the committee.
- 3.2** Committees may appoint ordinary and substitute members to sub-committees, in accordance with the rules on political proportionality. Committees may also appoint non-voting co-opted members to sub-Committees.
- 3.3** The details of any sub-committees can be found in Part 5 of this Constitution.

4. CHAIRING COMMITTEES AND SUB-COMMITTEES

4.1 Election of a Chair of a committee

4.1.1 The chairmen of committees (other than the Chair of the Overview and Scrutiny Committee) will be elected by the Council at the Annual Council Meeting or at the first meeting following a vacancy. The vice-chairmen of committees (other than the Vice-Chair of the Overview and Scrutiny Committee) will also be elected by the Council in the same way.

4.1.2 If the Council fails to appoint a Chair for any committee, then that committee shall appoint a Chair as the first item of business, at its first meeting, following the Annual Council Meeting.

4.2 Election of a Chair of a sub-committee

Where any committee establishes a sub-committee, the committee shall appoint the Chair of the sub-committee. If a committee fails to appoint a Chair to the sub-committee, then the sub-committee shall appoint a Chair, as the first item of business.

4.3 Absence of Chair at meetings of committees and sub-committees

In the absence of the Chair, the vice-Chair shall preside. In the absence of both the Chair and the vice-Chair, the committee or sub-committee will appoint a Chair for that meeting.

4.4 Removal of Chair from committees and sub-committees

The relevant committee or sub-committee may remove the Chair or vice-Chair of the committee or sub-committee, at any time, by resolution of the committee or sub-committee, on notice of motion moved under Rule 16.

5. SUBSTITUTES

5.1 If a councillor cannot attend a meeting of a committee or sub-committee, a nominated spokesperson, of his/her political group, may (subject to the conditions and restrictions in 5.2 below) nominate a substitute, by written notice to the committee administrator attending the meeting.

5.2 The written notice (including e-mail) of the substitute councillors must be given to the appropriate committee administrator by 4.30pm on the day of the meeting. Failing that, the appropriate committee administrator must be informed before the meeting commences. Once a meeting has been informed of the appointment of a substitute member, the original councillor may not resume membership of the committee until after the conclusion of the meeting.

6. ATTENDANCE OF MEMBERS AT COMMITTEES AND SUB-COMMITTEES

6.1 No right to speak

Any councillor may attend meetings of committees and sub-committees. Subject to 6.2 below, councillors, who are not ordinary members of the committee or sub-committee, may not speak at meetings, unless the Chair of the committee or sub-committee agrees that the councillor concerned may speak, or the councillor has been invited to the committee or sub-committee to speak.

6.2 Motions referred to the committee or sub-committee

A councillor, who has proposed a motion or opposition business which has been referred to a particular committee or sub-committee, shall be given at least three clear working days notice of the meeting, at which the motion will be considered, by the Head of Paid Service. If the councillor attends the meeting but is not a member of that committee or sub-committee, s/he shall have an opportunity to explain the motion to the committee or sub-committee.

7. MEETINGS OF COMMITTEES AND SUB-COMMITTEES

7.1 The meetings of committees and sub-committees shall be organised in accordance with a timetable approved each year by the Council. Dates of meetings may be changed to a date decided by the Chair, if it is in the interests of the Council's affairs or in the public interest to do so.

7.2 The meetings of committees and sub-committees will:

- a) Elect a person to preside if the Chair and vice-Chair are not present;
- b) Approve the minutes of the last meeting;
- c) Receive any declarations of interest from councillors;
- d) Deal with any business considered by the Chair to be urgent;
- e) Receive any announcements from the Chair, Leader, members of the Cabinet or the Head of Paid Service;
- f) Deal with any relevant business held over from the last meeting; and
- g) Consider any other business specified in the summons to the meeting, including consideration of, and debate on, proposals from the Cabinet, in relation to the Council's Budget and Policy Framework, and reports of the overview and scrutiny committees.

7.3 The order of items (a), (b) and (c) of paragraph 7.2 shall not be varied.

The order of other business may be varied:

- a) At the discretion of the Chair, prior to the meeting;
- b) Or at the meeting, by a resolution passed, on a motion (which need not be in writing), duly moved and seconded, and put without discussion.

7.4 Business not on the agenda may only be considered where:

- a) The Access to Information Procedure Rules have been complied with; and
- b) A member of the committee or sub-committee, or any statutory officer, has requested that an item be placed on the agenda for the meeting, at any time before the start of the meeting, and the committee or sub-committee agrees to the item being included, on the grounds of urgency. The grounds of urgency, and the circumstances giving rise to the request, must be recorded in the minutes of the meeting.

7.5 Late Reports

If there is a requirement to add an agenda item to an agenda, after the statutory deadline for publication, that item may only be considered if the Chair agrees, by virtue of the special circumstances set out either in the report or on the supplemental agenda, that the item should be considered as a matter of urgency and the reason specified in the minutes of the meeting.

8. TIME AND PLACE OF MEETINGS

The time and place of meetings will be determined by the Head of Paid Service, in consultation with the Chair, and notified in the summons.

9. CANCELLATION OF MEETINGS

The Head of Paid Service may cancel a meeting of any committee, or sub-committee, before the agenda for the meeting has been issued.

10. SPECIAL MEETINGS OF COMMITTEES

10.1 Calling special meetings

Those listed below may request the Head of Paid Service to call committee or sub-committee meetings, in addition to ordinary scheduled meetings:

- a) The committee or sub-committee, by resolution;
- b) The Chair of the committee or sub-committee;
- c) The Monitoring Officer;
- d) The Chief Finance Officer;
- e) The Head of Paid Service and
- f) At least two, or one quarter of the total number of the voting members of a committee or sub-committee, whichever is greater, if they have signed a requisition presented to the Chair of the committee, or sub-committee, and he/she has refused to call a meeting, or has failed to

call a meeting, within five clear working days of the presentation of the requisition.

10.2 Business

Business at special meetings of committees and sub-committees shall be restricted to:

- a) The election of a person to preside if the Chair or vice-Chair is absent;
- b) Any item of business specified by the committee or sub-committee, Chair, or Monitoring Officer, when calling the meeting, or specified in the requisition presented by at least two, or one quarter of the total number of the voting members of a committee or sub-committee, whichever is greater.

11. NOTICE AND AGENDA FOR MEETINGS

The Head of Paid Service will give notice to the public of the time and place of any meeting, in accordance with the Access to Information Procedure Rules. At least five clear working days before a meeting, the Head of Paid Service will send an agenda, by post or electronically, to every councillor, or leave it at their usual place of residence. The agenda will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

12. CHAIR OF MEETING

The person presiding at the meeting may exercise any power or duty of the Chair.

13. QUORUM

13.1 The quorum of a meeting will be at least one quarter of its membership and not less than three voting members, whichever is the greater.

13.2 If, after 15 minutes from the advertised time of the start of the meeting, or such other longer period as the Chair may decide, a quorum is not present, the meeting will not take place. The Chair may announce the time and date that the meeting will be convened.

13.3 During any meeting, if the Chair counts the number of councillors present and s/he believes that there is not a quorum present, s/he will declare that a quorum count will take place. If after a period of five minutes there is not a quorum present, then the Chair will announce that the meeting has ended. The remaining business will be considered at a time and date fixed by the Chair. If s/he does not fix a date, the remaining business will be considered at the next meeting.

14. SPECIAL PROCEDURES FOR PARTICIPATION IN RELATION TO APPLICATIONS AT THE PLANNING AND LICENSING COMMITTEE

14.1 Where the Planning and Licensing Committee is dealing with licensing applications; both applicants and objectors, as well as other relevant consultees, are able to speak about an application during consideration of it. The special procedures relating to licensing meetings can be found in Part 9 of this Constitution.

14.2 Where the Planning and Licensing Committee is dealing with planning applications; applicants and objectors, as well as ward, and parish and town council members, may be able to speak about an application during consideration of it. The special procedures relating to meetings, when considering planning, can be found in Part 9 of this Constitution

15. CONFIDENTIAL BUSINESS

All reports, other documents, information, discussions and proceedings of a committee or sub-committee, which are marked 'Exempt', under Schedule 12A of the Local Government Act 1972, or 'Confidential', must be treated as such by all members of the committee or sub-committee. Members of the public will not have access to these papers and discussions. Confidential or exempt items will be marked as such and the relevant part of Schedule 12A will be specified on the document. Confidential items will be discussed in a part of the committee, or sub-committee, meeting from which the press and public are excluded; and exempt items may be discussed, in a part of the meeting from which the press and public are excluded, if the committee resolves to exclude the press and public.

16. MOTIONS TO REMOVE A CHAIR OR VICE – CHAIR

16.1 A motion to remove a Chair or vice-Chair of a committee, or sub-committee, must be given in writing, signed by the councillor giving the notice and delivered to the Head of Paid Service, not later than 10 clear working days before the date of the meeting.

16.2 Motion set out in agenda

Any motions, under rule 16.1, will be listed on the agenda.

16.3 Eligibility to give notice

Only councillors appointed to the committee, or sub-committee, to which the motion relates, can give written notice under rule 16.1. Substitute members are not eligible to give notice.

17. MOTIONS WITHOUT NOTICE

17.1 The following motions may be moved without notice:

- a) To appoint a Chair of the meeting at which the motion is moved;
- b) In relation to the accuracy of the minutes;
- c) To change the order of business in the agenda;

- d) To refer something to an appropriate body or individual;
- e) To appoint a sub-committee, or councillor, arising from an item on the agenda for the meeting;
- f) To receive reports, or adoption of recommendations of sub-committees or officers, and any resolutions following from them;
- g) To withdraw a motion;
- h) To amend a motion;
- i) Subject to 17.2 below, to proceed to the next business;
- j) Subject to 17.2. below, that the question be now put;
- k) To adjourn a debate;
- l) To adjourn a meeting;
- m) To suspend a particular committee procedure rule;
- n) To exclude the public and press in accordance with the Access to Information Procedure Rules;
- o) Not to permit the recording and/or broadcast of the proceedings of the meeting;
- p) To not hear further a councillor named under Rule 23.2, or to exclude them from the meeting, under Rule 23.3; and
- q) To resolve to request the Head of Paid Service to call a special meeting of the committee or sub-committee.

17.2 The Chair may refuse to accept a motion under i) or j) above if, in his/her opinion, the matter under discussion has not been discussed sufficiently. In doing so he/she must give reasons for the rejection.

18. RULES OF DEBATE

18.1 Moving a motion

The mover of a motion may make a speech in support of his, or her, motion, when moving it. The motion must then be seconded.

18.2 Right to require motion in writing

Unless notice of the motion has already been given under rule 16.1, the Chair may require it to be written down and handed to him/ her before it is discussed.

18.3 More than one motion moved

Where more than one motion has been moved and seconded, and these are not amendments, the motions shall be taken in the order in which they were moved and seconded.

18.4 Content of speeches

Speeches must be directed to the question under discussion, or to a personal explanation or point of order.

18.5 Amendments to motions

18.5.1 An amendment to a motion must be relevant to the motion and either be:

- a) To refer the matter to an appropriate body, or individual, for consideration or reconsideration;
- b) To leave out words;
- c) To leave out words and insert or add others; or
- d) To insert or add words;

as long as the effect of b) to d) is not to negate the motion.

18.5.2 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

18.5.3 If an amendment is not carried, other amendments to the original motion may be moved.

18.5.4 If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.

18.5.5 After an amendment has been carried, the Chair will read out the amended motion before accepting any further amendments, or if there are none, the amended motion will be debated before it is put to the vote.

18.6 Alteration of motion

- a) A councillor may alter a motion of which s/he has given notice, with the consent of the meeting. The meeting's consent will be signified without discussion.
- b) A councillor may alter a motion which s/he has moved without notice, with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- c) Only alterations which could be made as an amendment may be made.

18.7 Withdrawal of motion

A councillor may withdraw a motion which s/he has moved, with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No councillor may speak on the motion after the mover has asked permission to withdraw it, unless permission is refused.

18.8 Right of reply

The mover of a motion has a right to reply, at the end of the debate on the motion, immediately before it is put to the vote.

If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.

The mover of the amendment has no right of reply to the debate on his or her amendment.

18.9 Motions which may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

- a) To withdraw a motion;
- b) To amend a motion;
- c) To proceed to the next business;
- d) That the question be now put;
- e) To adjourn a debate;
- f) To adjourn a meeting;
- g) To exclude the public and press in accordance with the Access to Information Rules; and
- h) To not hear further a councillor named under Rule 23.2, or to exclude them from the meeting under Rule 23.3.

18.10 Closure motions

18.10.1 A councillor may move, without comment, the following motions at the end of a speech of another councillor:

- a) To proceed to the next business;
- b) That the question be now put;
- c) To adjourn a debate; or

d) To adjourn a meeting.

18.10.2 If a motion to proceed to next business is seconded and the Chair thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote. If the motion to proceed to next business is carried during the discussion of an item, that item of business falls.

18.10.3 If a motion that the question be now put is seconded and the Chair thinks the item has been sufficiently discussed, s/he will put the procedural motion to the vote. If it is passed s/he will give the mover of the original motion a right of reply, before putting his/her motion to the vote.

18.10.4 If a motion to adjourn the debate, or to adjourn the meeting, is seconded and the Chair thinks the item has not been sufficiently discussed, and cannot reasonably be so discussed on that occasion, s/he will put the procedural motion to the vote, without giving the mover of the original motion the right of reply.

18.11 Point of order

A councillor may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Committee Procedure Rules or the law. The councillor must indicate the rule or law and the way in which s/he considers it has been broken. The ruling of the Chair, on the matter, will be final.

18.12 Personal explanation

A councillor may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the councillor, which may appear to have been misunderstood in the present debate. The ruling of the Chair, on the admissibility of a personal explanation, will be final.

19. VOTING

19.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

19.2 Chair's casting vote

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

19.3 Show of hands/Automated System

Unless a recorded vote is demanded under Rule 19.4, the Chair will take the vote by show of hands, or automated system, or if there is no dissent, by the affirmation of the meeting.

19.4 Recorded vote

If five councillors, present at the meeting, demand it, the names for and against the motion or amendment, or abstaining from voting, will be taken down in writing and entered into the minutes

19.5 Right to require individual vote to be recorded

Where any councillor requests it, immediately after the vote is taken, their vote will be so recorded, in the minutes, to show whether they voted for or against the motion, or abstained from voting.

19.6 Voting on appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person, with the least number of votes, will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

A member, nominated for a position, may speak and vote on the matter, notwithstanding his or her candidature.

20. MINUTES

20.1 Signing the minutes

The Chair will sign the minutes of the proceedings at the next suitable meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

20.2 Form of minutes

Minutes will contain all motions and amendments in the exact form and order the Chair put them. They will be published on the Council website.

21. RECORD OF ATTENDANCE

All councillors, present during the whole or part of a meeting, must sign their names on the attendance sheets before the conclusion of every meeting, to assist with the record of attendance.

22. EXCLUSION OF PUBLIC

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 5.3 of this Constitution, or Rule 25 (Disturbance by Public).

23. COUNCILLORS' CONDUCT

23.1 Chair

When the Chair signifies that councillors should stop speaking, any councillor, speaking at the time, must stop. The meeting must be silent.

23.2 Councillor not to be heard further

If a councillor persistently disregards the ruling of the Chair, by behaving improperly or offensively, or deliberately obstructs business, the Chair may move that the councillor be not heard further. If seconded, the motion will be voted on without discussion.

23.3 Councillor to leave the meeting

If the councillor continues to behave improperly after such a motion is carried, the Chair may move that either the councillor leaves the room, in which the meeting is being held, or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

23.4 General disturbance

If there is a general disturbance, making orderly business impossible, the Chair may adjourn the meeting for as long as s/he thinks necessary.

24. WITHDRAWAL FROM THE MEETING

24.1 A councillor or co-opted member, with a Disclosable Pecuniary Interest in a matter to be considered, or being considered, at a meeting, must withdraw from the meeting room, unless he/she has been granted a dispensation, by the Audit and Governance Committee or the Monitoring Officer (where authorised), to speak only, or to speak and vote on the matter.

24.2 A councillor or co-opted member with an Other Significant Interest in a matter to be considered, or being considered, at a meeting must:

- a) if he/she attends the meeting and subject to sub-paragraph b) below, be in the place reserved for the public in the meeting room;
- b) where the public are allowed to make representations, answer questions or give evidence relating to the business, withdraw to the place in the meeting room reserved for the public, after having made representations, answered questions or given evidence;

unless in either case he/she has been granted a dispensation, by the Audit and Governance Committee or the Monitoring Officer (where authorised), to speak only, or to speak and vote on the matter.

25. DISTURBANCE BY PUBLIC

25.1 Removal of member of the public

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If they continue to interrupt, the Chair will order their removal from the meeting room.

25.2 Clearance of part of meeting room or adjournment

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared, or may adjourn the meeting for as long as s/he deems necessary.

26. RECORDING/BROADCAST OF THE MEETING

26.1 While a meeting is open to the public, any person is permitted to report on the meeting. For these purposes, report means filming, photographing or making audio recordings of proceedings at the meeting; using any other means for enabling persons, not present, to see or hear proceedings at the meeting, as it takes place, or later; or reporting or providing commentary on proceedings at the meeting, in writing, or orally, outside or after the meeting.

26.2 Reasonable facilities will be provided to any person who wishes to report on a meeting, subject to the following conditions:-

- a) Prior notification, to the Head of Democratic Services and Law, on the intention to report on a meeting.
- b) Recordings being made in an overt manner that would not disrupt the good order of the meeting. Disruptive behaviour could be any action or activity which disrupts the conduct of meetings or impedes other members of the public from being able to see, hear, or record the proceedings. Examples of disruptive behaviour include, but are not limited to:
 - Moving to areas outside those designated for the public without the consent of the Chair;
 - Oral commentary during a meeting;
 - Excessive noise in recording, or setting up, or re-siting equipment during the debate/discussion;
 - Intrusive lighting and use of flash photography;
 - Asking for people to repeat statements for the purposes of recording.
- c) Attendees being advised, by the Chair, at the start of the meeting, that it is to be recorded, in order to receive objections from those not wishing to be recorded.
- d) Removing any recording equipment from the meeting room prior to any part of the meeting where the public is excluded.

e) The Chair's decision in relation to disruptive behaviour shall be final.

26.3 These rights are subject to the Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

27. SUSPENSION AND AMENDMENT OF COMMITTEE PROCEDURE RULES

27.1 Suspension

All of these Committee Procedure Rules except Rules 5 (Substitutes), 11 (Notice and Agenda for a Meeting), 18 (Rules of Debate), 19 (Voting), 22 (Exclusion of Public), 24 (Withdrawal from the Meeting) and this rule may be suspended by motion on notice, or without notice, if at least one half of the whole number of councillors sitting on the committee or sub-committee are present. Suspension can only be for the duration of the meeting.

27.2 Amendment

Any recommendation or motion, to add to, vary, or revoke these Committee Procedure Rules, must be proposed and seconded and referred to full Council for decision.

PART 5.3 – NON-EXECUTIVE ACCESS TO INFORMATION PROCEDURE RULES

1. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

2. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings, subject only to the exceptions in these rules.

3. NOTICE OF MEETINGS

The Council will give at least 5 clear days notice of any meeting, by posting details of the meeting at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

4. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

4.1 The Council will make copies of the agenda and reports, which are open to the public, available for inspection at the Civic Centre and on the Council's website, at least 5 clear days before the meeting.

4.2 Where the meeting is convened at shorter notice than set out in Rule 3 (notice of meetings), copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

4.3 If an item is added to the agenda, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons or agenda has been sent out, the Head of Paid Service shall make each such report available to the public, as soon as the report is completed and sent to councillors.

5. SUPPLY OF COPIES

The Council will supply:

- a) Copies of any agenda and reports which are open to public inspection;
- b) Copies of any further statements or particulars necessary to indicate the nature of the items on the agenda; and
- c) Where the Head of Paid Service considers it appropriate, copies of any other documents supplied to councillors in connection with an item;

to any person, on payment of a charge for postage and any other costs, including copying and administration costs. All relevant documentation will be available, from the Council's website, free of charge.

6. ACCESS TO DOCUMENTS AFTER MEETINGS

The Council will make copies, of the following documents, available for six years after a meeting:

- a) The minutes of the meeting, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- b) A summary of any proceedings, not open to the public, where the minutes, open to inspection, would not provide a reasonably fair and coherent record;
- c) The agenda for the meeting; and
- d) Reports relating to items when the meeting was open to the public.

7. BACKGROUND PAPERS

7.1 Background Papers

The chief officer, responsible for the report, will set out, in every report, a list of those documents (called background papers), relating to the subject matter of the report, which in his/her opinion:

- a) Disclose any facts or matters on which the report, or an important part of the report, is based; and
- b) Which have been relied on to a material extent in preparing the report but will not include, in such a list, published works or those which disclose exempt or confidential information (as defined in Rule 9).

7.2 Public Inspection of Background Papers

The Council will make available for inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.

8. SUMMARY OF THE PUBLIC'S RIGHTS

- 8.1** Article 3 of this Constitution, in conjunction with these rules, is the written summary of the public's rights to attend meetings, and to inspect and copy documents. These documents will be kept, and be available to the public, at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

9. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

9.1 Confidential information – requirement to exclude the public

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that confidential information would be disclosed.

9.2 Meaning of confidential information

Confidential information means information given to the Council, by a Government Department, on terms which forbid its public disclosure; or information which cannot be publicly disclosed because of a court order.

9.3 Exempt information – discretion to exclude the public

9.3.1 The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that exempt information would be disclosed.

9.3.2 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public, unless a private hearing is necessary for one of the reasons specified in Article 6 of the Human Rights Act 1998.

9.4 Meaning of exempt information

Exempt information means information falling within the following categories (defined by Part 1 of Schedule 12A to The Local Government Act 1972, as amended), provided that two conditions are met. The first condition is set out in the second column of the following table:

| Category | Condition |
|--|---|
| 1. Information relating to any individual. | Information falling within paragraph 1 is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 2. Information which is likely to reveal the identity of an individual. | Information falling within paragraph 2 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information) 'Financial or business affairs' | Information falling within paragraph 3 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information falling within paragraph 3 is not |

| | |
|---|---|
| includes contemplated as well as current activities. | <p>exempt information if it is required to be registered under:</p> <p>The Companies Act (as defined in section 2 of the Companies Act 2006)</p> <p>The Friendly Societies Act 1974</p> <p>The Friendly Societies Act 1992</p> <p>The Industrial and Provident Societies Act 1965 to 1978</p> <p>The Building Societies Act 1986</p> <p>The Charities Act 1993</p> |
| 4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority. | <p>Information falling within paragraph 4 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>‘Labour relations matters’ are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act or any dispute about a matter within this paragraph).</p> |
| 5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. | <p>Information falling within paragraph 5 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| 6. Information which reveals that the authority proposes: to give, under any enactment, a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment. | <p>Information falling within paragraph 6 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. | <p>Information falling within paragraph 7 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |

The second condition is that information is not exempt information if it relates to proposed development, for which the local planning authority may grant itself planning permission, pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

10. EXCLUDING PUBLIC ACCESS TO REPORTS

The public may be denied access to reports if the Head of Paid Service believes that the report relates to matters which, in accordance with Rule 9, will not be considered in a public meeting. Such reports will be marked 'Not for publication' together with the category of information likely to be disclosed.

11. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS

11.1 Material relating to previous business

All councillors will be entitled to inspect any document which is in the possession, or under the control, of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting; a decision made by an individual member; or a decision taken by an officer in the circumstances mentioned in the agreed protocol, unless it contains:

- a) Exempt information, as defined in Rule 9, apart from information falling within categories 3 (except in relation to proposed contracts), 6 and
- b) The advice of a political assistant.

11.2 Timescale

Any document required to be available for inspection, under Rule 11.1, must be made available for inspection, in any event, within 24 hours of the conclusion of the meeting on the decision being made, as the case maybe.

11.3 Material relating to key decisions

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its committees, which relates to any key decision unless Rule 11.1 a) or b) applies.

11.4 Nature of rights

These rights of a councillor are additional to any other right he/she may have. A fuller statement of these rights is set out in the Protocol on Councillor and Officer Relations contained in Part 8 to this Constitution.

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FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 6 – THE EXECUTIVE FUNCTIONS, RULES AND **PROCEDURES**

| CONTENTS | | Page Ref |
|-----------------|---|--------------------|
| 6.1 | Executive Functions | ‘Part 6/2’ |
| Annex A to 6.1 | Members of the Executive | ‘Part 6/5’ |
| Annex B to 6.1 | Cabinet Portfolios | ‘Part 6/7’ |
| Annex C to 6.1 | Cabinet Member Role Descriptions | ‘Part 6/9’ |
| Annex D to 6.1 | Collective Decisions | ‘Part 6/11’ |
| Annex E to 6.1 | Cabinet Committees | ‘Part 6/11’ |
| 6.2 | Cabinet Procedure Rules | ‘Part 6/12’ |
| 6.3 | Call-In Procedure Rules | ‘Part 6/19’ |
| 6.4 | Cabinet Access to Information Procedure Rules | ‘Part 6/24’ |

PART 6. – THE EXECUTIVE FUNCTIONS, RULES AND PROCEDURES

PART 6.1 - EXECUTIVE FUNCTIONS

1. EXECUTIVE FUNCTIONS

1.1 Executive functions are exercised by:

- a) The Cabinet;
- b) Cabinet committees, if any;
- c) The Leader and other individual cabinet members;
- d) Officers, under delegated powers (Delegation to Officers, Part 8);
- e) Ward councillors, to the extent that the executive function is exercisable in relation to the ward for which the member is elected.

1.2 It is the responsibility of the Leader to decide on the delegation of executive functions and to maintain a written record of such delegations. Executive functions can be also delegated to other local authorities, other organisations and may be contracted out.

1.3 This scheme of delegation has been prepared by the Leader, in accordance with those provisions. The executive is responsible for initiating and developing policy, and taking decisions, within the Budget and Policy Framework, in respect of all the functions of the Council, other than those which, whether by law, or under this Constitution, cannot be the responsibility of the executive. Such functions are referred to in this Scheme as 'executive functions'.

1.4 Members of the executive

The members appointed to the executive, by the Leader, are set out in Annexe A to this part.

1.5 An outline of the responsibilities, included in each portfolio, is set out in Annexe B.

1.6 A full description of the policy areas and executive functions, included in each portfolio, is set out in Annexe C to this part. The Leader will determine any question arising, as to whether a policy area or executive function falls within a particular portfolio conclusively.

1.7 Annexe D to this part sets out the executive functions, which will be determined by the executive collectively.

1.8 In addition, the Leader has appointed a deputy leader of the Council to exercise the following powers and duties:

- a) Deputising for the Leader, in his absence;
- b) Chairing executive meetings in the absence of the Leader;
- c) Acting as the Council's spokesperson on all key corporate issues, consistent with the Council's overall Budget and Policy Framework, in the absence of the Leader;
- d) Holding, leading or assisting on any portfolio which the Leader may allocate.

1.9 No deputies will be appointed in respect of portfolio holders and, in their absence, their duties and responsibilities will be undertaken by the Leader and, in his/her absence, by the Deputy Leader or such other portfolio holder as the Leader may nominate.

1.10 Duties and responsibilities of individual portfolio holders

The duties and responsibilities of individual portfolio holders are to:

- a) Provide political leadership for the designated functions and services of the Council, set out in the allocated portfolio;
- b) Exercise any delegated powers, and make decisions, in respect of the relevant portfolio area, to the extent authorised to do so by the Leader, under this scheme of delegation;
- c) Initiate and promote policies and programmes in respect of the allocated portfolio, both within the Council and externally;
- d) Present and consult on the Council's policies, in respect of the allocated portfolio, with the public, both directly and through appropriate media;
- e) Engage with, and represent, the Council in appropriate local, regional and national groupings involved with the service areas set out in the allocated portfolio;
- f) Report to the executive, and the Council, on decisions made, actions taken and progress achieved within the allocated portfolio;
- g) Consult with, and report, as required, to the executive, the Council and the Overview and Scrutiny Committee, in respect of the portfolio;
- h) Commission and consider reports/briefs from appropriate officers, as required, for the efficient discharge of the portfolio holder's duties/responsibilities;

- i) Keep abreast of national best practice/new initiatives in the areas covered by the portfolio, to help ensure high local service standards and provision;
- j) Consider, and act on, performance data and reports from the executive and the Overview and Scrutiny Committee;
- k) Contribute to the corporate development of the Council's policies and objectives, through active engagement of, and participation in the executive;
- l) Work closely with the relevant senior officers of the Council to help ensure the efficient management of the authority, to uphold high standards of performance and conduct, and to enable officers to exercise any powers delegated to them;
- m) Attend meetings of the Overview and Scrutiny Committee, as and when required.

1.11 Non-key decisions – delegations to portfolio holders

Each Cabinet member is authorised to take non-key decisions falling within his/her portfolio area, unless the matter falls within one of the matters that the executive must determine collectively.

- 1.12** If a Cabinet member has a Disclosable Pecuniary Interest, or an Other Significant Interest, in a decision to be taken on a matter within his/her portfolio, the Leader of the Council will decide who will take the decision.

1.13 Amendment of scheme

This scheme of delegation may be amended at any time, by the Leader, as provided for in the Cabinet Procedure Rules set out in Part 6 of this Constitution.

2. PORTFOLIOS

The portfolios, with any conditions and limitations of each member of the Cabinet, are set out in full in Part 6 to this part of the Constitution.

ANNEX A TO PART 6.1 – MEMBERS OF THE EXECUTIVE

Details of Councillors addresses can be found at:

<http://www.folkestone-hythe.gov.uk/moderngov/mgMemberIndex.aspx?bcr=1>

| Name | Ward |
|------------------------------|------------------------------|
| Councillor Jim Martin | Hythe |
| Councillor Tim Prater | Sandgate and West Folkestone |
| Councillor Gary Fuller | Sandgate and West Folkestone |
| Councillor Mike Blakemore | Cheriton |
| Councillor Rebecca Shoob | Cheriton |
| Councillor Stephen Scoffham | North Downs East |
| Councillor Polly Blakemore | Cheriton |
| Councillor James Butcher | North Downs East |
| Councillor Jeremy Speakman | Hythe Rural |
| Councillor Connor McConville | East Folkestone |

ANNEX B TO PART 6.1 – CABINET PORTFOLIOS

Cllr Jim Martin – Leader and Cabinet Member for Otterpool Park and Planning Policy

Special Projects, planning policy, property development, emergency planning and business continuity.

Cllr Tim Prater – Deputy Leader and Cabinet Member for Finance and Governance

Strategic budget, financial management, corporate debt, treasury management, revenues and benefits, business rates, business rates relief, business rates collection, corporate policy, write-off's, contract management, HR and OD, corporate governance, legal and risk management.

Cllr Gary Fuller – Cabinet Member for Resident Engagement and accountability

Information technology, Resident Service, elections and electoral registration, audit (internal and external), anti-fraud and corruption, information access and security, RIPA,

Cllr Mike Blakemore – Cabinet Member for Community and Collaboration

Community safety, community engagement, arts and culture, leisure and sport, young people, voluntary sector, town and parish liaison, equality and diversity, safeguarding, health and wellbeing, lifeline, partnership development, communications and public relations.

Cllr Rebecca Shoob – Cabinet Member for Housing and homelessness

Strategic housing, LA housing management, housing allocation, street homelessness, homelessness, private sector housing.

Cllr Stephen Scoffham – Climate, Environment and Bio Diversity

Recycling, coastal protection and strategy, contaminated land, air quality, water.

Cllr Polly Blakemore – Transport, Regulatory Services and Building Control

Licensing, building control, planning enforcement, health and safety, food safety, dog and pest control, environmental enforcement, traffic management, on and off street parking.

Cllr James Butcher – Cabinet Member for Place Plan, Heritage, Tourism and District Economy

Economic development and growth, regeneration, tourism, heritage.

Cllr Jeremy Speakman – Cabinet Member for Waste Management, Cleansing and Corporate Health and Safety

Waste management and street cleansing, corporate health and safety.

Cllr Connor McConville – Cabinet Member for Assets and Local Government reorganisation

Property and estate management, grounds maintenance and area officers.

ANNEX C TO PART 6.1 – CABINET MEMBER ROLE DESCRIPTIONS

Policy development

- a) To submit matters of policy, or which have strategic implications, within the portfolio, for consideration by the Cabinet.
- b) To contribute to, and support, any consultation carried out as part of any policy development.
- c) Engage with any partners or stakeholders involved in the formulation, or delivery, of the policy or strategy.
- d) Keep up to date with any local, regional or national developments that relate to, or effect, policies or strategies under development.
- e) To engage with the Council's overview and scrutiny process, ensuring that recommendations, in relation to the portfolio, are fully considered.

Leadership

- a) To take the lead role in:
 - i. preparing strategies and policies, in consultation with the appropriate officers relating to the portfolio;
 - ii. preparing the Budget to support the strategies and plans;
 - iii. being accountable for the Budget mentioned above;
 - iv. ensuring that the Council fulfils its equalities' duties;
 - v. making sure the citizens' interests are looked after.
- b) To be the principle spokesperson for the portfolio.
- c) To represent the Council at meetings of local, regional and national bodies dealing with matters in the portfolio.
- d) Ensuring that approved policies and strategies are implemented and delivered effectively.
- e) To chair the Cabinet.
- f) To determine the agenda of each Cabinet.
- g) To approve reports submitted in the name of the portfolio holder, or where reports are submitted in more than one portfolio holder's name, to agree the reports with the other portfolio holder(s).

Decision-making

- a) To bring to the Cabinet all matters that require a collective decision, at councillor level, as follows:
 - i. decisions to implement or amend a policy or strategy;
 - ii. decisions that require a departure from an approved policy or strategy;
 - iii. decisions outside the Budget and Policy Framework.
- b) An individual councillor can make a decision, if authorised to do so by the Leader. In cases of urgency, when it is not possible to obtain the consent of the Leader, an individual councillor may make a decision him/herself. The Leader may decide to take an individual decision him/herself.

Ways of working

- a) To take collective responsibility, and be accountable, for decisions and recommendations reached by the Cabinet.
- b) To comply with the Council's Code of Conduct for councillors and its other rules governing behaviour.
- c) To comply with the councillor/employee code of conduct contained in the Constitution.
- d) To take part in training and development, to ensure that the portfolio role is undertaken effectively.
- e) To champion equalities' duties.
- f) To use technology wherever possible.

Skills and knowledge required

- a) Good communication and interpersonal skills.
- b) Good understanding of how the Council works.
- c) Leadership skills.
- d) Ability to work effectively with the Council's officers, the media and partner organisations.
- e) Ability to work as part of a team.

ANNEX D TO PART 6.1 – COLLECTIVE DECISIONS

The executive shall, unless the Leader decides otherwise, collectively take decisions on the following:

- a) all key decisions;
- b) matters falling outside any identifiable portfolio, unless otherwise allocated to a portfolio holder by the Leader;
- c) issues referred to the executive by either a portfolio holder or one of the Council's statutory officers;
- d) where a virement of money is required, to implement a proposed decision;
- e) departures from the Budget and Policy Framework;
- f) decisions on matters that are not solely executive functions (e.g. that require the Council to make a decision).

ANNEX E TO PART 6.1 – CABINET COMMITTEES

TERMS OF REFERENCE AND CONSTITUTION

1. DISCRETIONARY RATE RELIEF APPEALS PANEL (Committee of the Cabinet)

1.1 Terms of reference

To considers appeals against discretionary rate relief decisions that have been made by the Cabinet Member for the District Economy or the Cabinet Member for Finance.

1.2 Composition

Any three members of Cabinet make up the membership of this panel.

PART 6.2 - CABINET PROCEDURE RULES

1. HOW THE CABINET OPERATES

1.1 Making Cabinet decisions

The Leader decides the arrangements for the discharge of Cabinet functions.

The Leader may provide for Cabinet functions to be discharged by:

- a) The Cabinet as a whole;
- b) A committee of the Cabinet;
- c) An individual member of the Cabinet;
- d) An officer;
- e) An area committee;
- f) Joint arrangements; or
- g) Another local authority.

1.2 Delegation by the Leader

At the Annual Meeting of the Council, the Leader will present to the Council a written record of delegations, made by him, for adoption and inclusion in the Council's scheme of delegation. The document, presented by the Leader, will contain the following information about Cabinet functions, in relation to the coming year:

- a) The names, addresses and wards of the people appointed to the Cabinet by the Leader;
- b) The extent of any authority delegated to Cabinet members, individually, including details of the limitation on their authority;
- c) The terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet members appointed to them;
- d) The nature and extent of any delegation of Cabinet functions to any other authority, or any joint arrangements, and the names of those Cabinet members appointed to any joint committee for the coming year.

1.3 Sub-delegation of Cabinet functions

- 1.3.1** Where the Cabinet, a committee of the Cabinet or an individual member of the Cabinet is responsible for a Cabinet function, they may delegate further to an area committee, joint arrangements or an officer.
- 1.3.2** If the Leader delegates functions to the Cabinet, then the Cabinet may delegate further to a committee of the Cabinet or to an officer.
- 1.3.3** Unless the Leader directs otherwise, a committee of the Cabinet to whom functions have been delegated by the Leader, may delegate further to an officer.
- 1.3.4** Even where Cabinet functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated them.

1.4 Amendment to the scheme of delegation of executive functions

- 1.4.1** The Leader may amend the scheme of delegation, relating to Cabinet functions, at any time during the year. To do so, the Leader must give written notice to the Head of Paid Service and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the Cabinet, as a whole. The Head of Paid Service will present a report to the next ordinary meeting of the Council, setting out the changes made by the Leader.
- 1.4.2** Where the Leader seeks to withdraw delegation from a committee, notice will be deemed to be served on that committee when he has served it on its Chair.

1.5 Delegation to officers

Cabinet functions delegated to officers are set out in Part 8 of this Constitution, subject to the limitations and conditions shown. Responsibility to produce a detailed scheme of delegations for officers lies with the Head of Paid Service.

1.6 Conflicts of interest in decision-making

Where an individual member of the Cabinet, including the Leader, has a conflict of interest in a matter on which a decision is to be made (including where he/she is making an individual decision), this should be dealt with as set out in the Councillor's Code of Conduct, in Part 9 of this Constitution.

1.7 Cabinet meetings

The Cabinet will hold a minimum of six meetings a year at times to be agreed by the Leader. The Cabinet shall meet at the Civic Centre or another location to be agreed by the Leader.

1.8 Public or private meetings of the Cabinet

All meetings of the Cabinet will be held in public session. If an item which contains confidential information is due to be discussed, the discussion of that item will take place in private. If an item containing exempt information is due to be discussed, the Cabinet meeting shall decide whether it is necessary to move into private session.

1.9 Recording/Broadcast of the meeting

1.9.1 While a meeting is open to the public, any person is permitted to report on the meeting. For these purposes, report means filming, photographing or making audio recordings of proceedings at the meeting; using any other means for enabling persons, not present, to see or hear proceedings at the meeting, as it takes place, or later; or reporting or providing commentary on proceedings at the meeting, in writing, or orally, outside or after the meeting.

1.9.2 Reasonable facilities will be provided to any person who wishes to report on a meeting, subject to the following conditions:-

- a) Prior notification, to the Head of Democratic Services and Law, on the intention to report on a meeting.
- b) Recordings being made in an overt manner that would not disrupt the good order of the meeting. Disruptive behaviour could be any action or activity which disrupts the conduct of meetings or impedes other members of the public from being able to see, hear, or record the proceedings. Examples of disruptive behaviour include, but are not limited to:
 - Moving to areas outside those designated for the public without the consent of the Chair;
 - Oral commentary during a meeting;
 - Excessive noise in recording, or setting up, or re-siting equipment during the debate/discussion;
 - Intrusive lighting and use of flash photography;
 - Asking for people to repeat statements for the purposes of recording.
- c) Attendees being advised, by the Chair, at the start of the meeting, that it is to be recorded, in order to receive objections from those not wishing to be recorded.
- d) Removing any recording equipment from the meeting room prior to any part of the meeting where the public is excluded.
- e) The Chair's decision in relation to disruptive behaviour shall be final.

- 1.9.3** These rights are subject to the Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1.10 Quorum

The quorum for a meeting of the Cabinet will be one quarter of the total number of members of the Cabinet (including the Leader or in his/her absence the Deputy Leader), or 3 members, whichever is the larger.

1.11 Decisions to be taken by the Cabinet

- 1.11.1** Cabinet decisions, which have been delegated to the Cabinet as a whole, will be taken at a meeting convened in accordance with the Access to Information Rules in Part 6 of this Constitution.

- 1.11.2** Where Cabinet decisions are delegated to a committee of the Cabinet, the rules applying to Cabinet decisions, taken by them, shall be the same as those taken by the Cabinet as a whole.

2. CONDUCT OF CABINET MEETINGS

2.1 Who presides?

The Leader will preside at any meeting of the Cabinet, or its committees, at which he is present. In his absence, the Deputy Leader will preside and, in his absence, a member of the Cabinet, appointed by the meeting, will preside.

2.2 Order of business

At each meeting of the Cabinet, the following business will be conducted:

- a) Minutes of last meeting;
- b) Declarations of interest;
- c) Matters referred to Cabinet;
- d) Reports from the Overview and Scrutiny Committee;
- e) Matters set out in the agenda.

2.3 Who can put items on the Cabinet agenda?

- 2.3.1** The Leader will decide upon the schedule for the meetings of the Cabinet. In deciding the agenda for each meeting, the Leader may include any matter, whether or not authority has been delegated to the Cabinet, a committee of it or any councillor, or officer, in respect of that matter.

- 2.3.2** Any member of the Cabinet may request the Head of Paid Service to place an item on the agenda of the next available meeting of the Cabinet, for consideration. The item will be placed on the agenda, if the Leader agrees.

- 2.3.3** The Head of Paid Service will make sure that an item is placed on the agenda of the next available meeting of the Cabinet, where the Overview and Scrutiny Committee, or the full Council, has resolved that an item be considered by the Cabinet.
- 2.3.4** Any non-Cabinet councillor may ask the Leader to put an item on the agenda of a Cabinet meeting, for consideration, and if the Leader agrees, the item will be considered at the next available meeting of the Cabinet. The notice of the meeting will give the name of the councillor who asked for the item to be considered. This individual will be invited to attend the meeting, whether or not it is a public meeting, for that item.
- 2.3.5** The Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the Head of Paid Service to call such a meeting, in pursuance of their statutory duties. In other circumstances, where any two of the Head of Paid Service, Chief Finance Officer and Monitoring Officer are of the opinion that the Cabinet needs to consider a matter that requires a decision, they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting of the Cabinet soon enough to deal with the issue in question, they may require that a meeting be convened, at which the matter will be considered.

2.4 Decisions

- 2.4.1** No decision, subject to sub-paragraph 2.4.2 below, relating to urgent decisions, shall be made by the Cabinet, or an individual member of the Cabinet, under delegated powers, without first receiving a written report, approved by chief officers, setting out the material factors and any financial and legal issues.
- 2.4.2** Where a decision is urgent and it is not reasonably practicable to receive a written report, a decision may be made by the Cabinet, having received an oral report from an officer. The officer shall, where practicable, obtain the advice of the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer on the contents of the oral report. The statutory officers may also comment on the oral report at the meeting.
- 2.4.3** In every case, where an oral report has been made, the officer shall, as soon as reasonably practical, record his/her advice in writing. The written advice shall be treated, in all respects, as if it was a written report, and the articles of this Constitution shall apply accordingly.

2.5 Withdrawal from the meeting

- 2.5.1** A Cabinet member with a Disclosable Pecuniary Interest in a matter to be considered, or being considered, at a meeting, must withdraw from the meeting room, unless he/she has been granted a dispensation by the Audit and Governance Committee, or the Monitoring Officer (where authorised), to speak only, or to speak and vote on the matter.

2.5.2 A Cabinet member with an Other Significant Interest in a matter to be considered, or being considered, at a meeting must:

- a) if he/she attends the meeting and, subject to sub-paragraph b) below, be in the place reserved for public in the meeting room;
- b) where the public are allowed to make representations, answer questions or give evidence relating to the business, withdraw to the place in the meeting room reserved for the public, after having made representations, answered questions or given evidence;

unless, in either case, he/she has been granted a dispensation by the Audit and Governance Committee, or the Monitoring Officer (where authorised), to speak only, or to speak and vote on the matter.

3. ADVISORY PANELS

3.1 General

3.1.1 The Cabinet, or any member of it, may establish such advisory panels and/or appoint advisers to it, as s/he considers necessary, in order to advise on matters relating to a Cabinet or portfolio holder decision.

3.1.2 An advisory panel or an adviser cannot exercise any Cabinet functions and its/his/her functions shall be solely advisory. The Cabinet, or any member of the Cabinet, shall not be bound to exercise its/his/her discretion in accordance with any report of an advisory panel or an adviser.

3.2 Membership

An advisory panel may consist of councillors, non-councillors, or both. The councillors' Code of Conduct shall apply to any voting non-councillor on an advisory panel. Any local protocol shall apply to voting, and non-voting councillors, if the protocol so states.

3.3 Overview and scrutiny

A councillor, who is on an advisory panel, shall not sit on the Overview and Scrutiny Committee when it is scrutinising a decision made by the Cabinet, after receiving a report of the advisory panel on which the councillor sits.

3.4 Cabinet Procedure Rules

The Cabinet Procedure Rules shall apply to advisory panels, subject to the rule that the Chair of the advisory panel shall be chosen from amongst its members.

3.5 Dissolution

An advisory panel may be dissolved by the Cabinet at any time.

3.6 Publicity

The Cabinet shall publish, as soon as reasonably practical, the names of those persons serving on advisory panels.

4. APPOINTMENTS TO OUTSIDE BODIES

An individual member of the Cabinet, acting under delegated powers, may make or change an appointment of the Council, to an outside body, without receiving or considering a written report.

PART 6.3 – CALL-IN RULES OF PROCEDURE

1. WHEN CAN A DECISION BE CALLED IN?

- 1.1** When a decision is made by the Cabinet, an individual member, or a committee of the Cabinet; or where a Key Decision is made by an officer, under delegated authority given to him/her by the Leader; or by an area committee; or under joint arrangements; the decision shall be published within three clear working days.
- 1.2** The notice of the decision will be dated and will specify that the decision will come into force, and may be implemented, on the expiry of five clear working days after the publication of the decision, unless a valid request has been received by the Head of Paid Service, objecting to the decision and asking for it to be called in. This does not apply to an urgent decision.

2. WHO MAY CALL-IN A DECISION?

Any three or more members of the Overview and Scrutiny Committee may request that a decision is called in, during the five clear working days after the publication of the notice of the decision, in 1.2 above (the call-in period).

3. WHAT ARE THE CRITERIA FOR CALL-IN OF A DECISION AND WHO DECIDES WHETHER IT IS VALID?

- 3.1** The Head of Paid Service, on advice from the Monitoring Officer, will determine whether or not a call-in is valid. In order to be valid, the call-in must meet all of the criteria in (a) to (g), plus at least two of the criteria in (h) to (m) below:
- a) It is submitted by three or more members of the Overview and Scrutiny Committee, in writing;
 - b) It is received before 5pm on the fifth day after publication of the notice of the decision;
 - c) It specifies which decision is being objected to;
 - d) It gives the reasons for the call-in request;
 - e) It is not made in relation to a decision taken in accordance with the urgency procedures;
 - f) It specifies the officers and members the councillors, calling in the matter, wish to hear from;
 - g) The matters concerning the decision the councillor, calling in the decision, wishes to ask questions on.
- 3.2** The call-in must also meet two or more of the following criteria:

- h) It specifies that the decision is claimed to be outside or contrary to the Budget and Policy Framework;
- i) It specifies inadequate consultation with stakeholders, prior to the decision;
- j) It specifies inadequate evidence on which to base the decision;
- k) It specifies that the action is not proportionate to the desired outcome;
- l) It specifies a potential human rights challenge;
- m) It specifies insufficient consideration of the advice of the statutory officers.

3.3 If the Head of Paid Service decides that a call-in is not valid, he will inform the decision-taker, and those requesting the call-in, and the decision may be implemented at any time thereafter.

4. THE PROCESS FOR REFERRAL OF A DECISION VALIDLY CALLED IN

4.1 Subject to rules 4.2 and 4.3 below, once a request for a call-in is deemed valid by the Head of Paid Service, the decision may not be implemented until the Overview and Scrutiny Committee has met to consider the called in decision. The Head of Paid Service will call a meeting of the Overview and Scrutiny Committee, within 10 clear working days of a valid call-in (unless a scheduled meeting is due to take place within that period, in which case the scheduled meeting will consider the call-in).

4.2 Where the Overview and Scrutiny Committee fails to meet to discuss a called in decision, within 10 clear working days of the Head of Paid Service's confirmation of a decision validly called in, the decision may be implemented on the day following 15 clear working days from the date the decision was published.

4.3 Where the Overview and Scrutiny Committee meets within 10 clear working days of the Head of Paid Service's confirmation of a valid call-in, but fails to discuss the call-in request, and no other meeting of the Overview and Scrutiny Committee is planned before 10 clear working days after the confirmation of a valid call-in, the decision may be implemented on the day following the committee meeting.

5. THE PROCESS FOR CONSIDERATION OF DECISIONS VALIDLY CALLED IN

5.1 The Overview and Scrutiny Committee will consider the decision and the reasons for call-in. The committee may invite the decision-taker, and a representative of those calling in the decision, to attend the meeting to provide information.

5.2 The committee may then come to one of the following conclusions:

- a) That the challenge to the decision should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Budget or Policy Framework and should therefore be referred to the Council. In such a case, the Overview and Scrutiny Committee must set out its reasoning for the Council to consider;
- c) That the matter should be referred back to the decision-taker, for reconsideration. In such a case, the Overview and Scrutiny Committee must set out its reasoning for the decision-taker to consider.

5.3 If the Overview and Scrutiny Committee refers back to the decision-taker under 5.2.c) above, the decision-taker must reconsider the decision, in accordance with paragraph 6 below.

5.4 If the Overview and Scrutiny Committee refers the decision to the Council meeting, under 5.2.b, the decision shall be discussed at the next ordinary meeting of the Council, provided that the next scheduled meeting is within 20 clear working days of a referral of the decision from the Overview and Scrutiny Committee. If the next ordinary meeting of the Council is more than 20 clear working days after the referral of the decision from the Overview and Scrutiny Committee, the Chair of the Council, in consultation with the leaders of all the political parties, will decide whether an extraordinary meeting of the Council is needed. If they decide that it is not, the decision will stand referred to the next ordinary meeting of the Council.

5.5 When the Council considers the decision, it may conclude:

- a) That the challenge to the decision-taker should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Policy Framework or the Budget and cannot be implemented, with reasons being given;
- c) That the decision is contrary to the Budget or Policy Framework, but that the relevant framework should be amended to enable the decision to be implemented (in which case the Council meeting should make the amendment at the meeting, in order that the decision can be implemented);
- d) That the matter should be referred back to the decision-taker for reconsideration, with reasons being given.

5.6 If the Council meeting is scheduled to, but does not discuss the called in decision at the next ordinary meeting, or an extraordinary Council meeting called for that purpose, the decision may be implemented on the day following the meeting at which the matter was to be discussed.

6. ACTION OF THE DECISION-TAKER AFTER A REFERRAL BACK FROM THE COUNCIL OR THE OVERVIEW AND SCRUTINY COMMITTEE

6.1 A decision referred back to the /Cabinet, a Cabinet committee, or an area committee, as decision-taker, must be discussed at the next scheduled meeting of the Cabinet or committee (the Leader may decide to call a special meeting of the Cabinet, or the committee, if he considers it necessary). A decision referred back to a Cabinet member, or an officer, must be reconsidered by the decision-taker within 10 clear working days of receiving the referral.

6.2 The decision-taker(s) may either reconfirm the decision, or amend the decision, in light of the comments from the Council or the Overview and Scrutiny Committee, and report back, as appropriate, to the next meeting of the Council or the Overview and Scrutiny Committee. In either case, the decision can be implemented as soon as the decision has been reconfirmed or amended.

7. CALL-IN AND URGENCY

7.1 The call-in procedure, set out above, shall not apply where the decision being taken is urgent. A decision is urgent if any delay, likely to be caused by the call-in process, would seriously prejudice the Council's or the public interest.

7.2 The record of an urgent decision, and the notice by which it is made public, shall state whether, in the opinion of the person or body making the decision, that the decision is an urgent one and therefore not subject to call-in.

7.3 The Chair of the Overview and Scrutiny Committee must agree both that the decision proposed is reasonable, in the circumstances, and should be treated as a matter of urgency. In the absence of the Chair, the Vice-Chair's consent is required. In the absence of both the Chair and Vice-Chair, the Head of Paid Service's consent is required.

7.4 Decisions taken, as a matter of urgency, must be reported to the next available meeting of the Council, together with the reasons for urgency.

7.5 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council, with proposals for review, if necessary.

8. DECISION NOT SUBJECT TO CALL-IN

8.1 The call-in procedure shall not apply to the decisions set out in Rule 8.2 below.

8.2 The decisions not subject to call-in are:

- a) Matters to be decided by full Council;

- b) Executive appointments to outside bodies;
- c) A decision of the executive to consult on a proposal;
- d) Decisions by ward members, under the Council's approved Ward Member Budget Scheme or relating to ward plans; and
- e) Decisions made after considering the call-in of the original decision.

8.3 An executive decision, against which there is a right to request an internal review or an appeal to an external body, is subject to call-in; however, if the right to request an internal review is exercised, or an appeal made, the call-in shall cease to have effect.

8.4 No non-executive decision is subject to call-in.

PART 6.4 – CABINET ACCESS TO INFORMATION PROCEDURE RULES

1. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

2. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings, subject only to the exceptions in these rules.

3. NOTICE OF MEETINGS

The Council will give at least 5 clear days notice of any meeting, by posting details of the meeting at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY and on the Council's website.

4. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

4.1 The Council will make copies of the agenda and reports, which are open to the public, available for inspection, at the Civic Centre and on the Council's website, at least 5 clear days before the meeting.

4.2 Where the meeting is convened at shorter notice than set out in Rule 3 (notice of meetings), copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

4.3 If an item is added to the agenda, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons or agenda has been sent out, the Head of Paid Service shall make each such report available to the public, as soon as the report is completed and sent to councillors.

5. SUPPLY OF COPIES

The Council will supply:

- a) Copies of any agenda and reports which are open to public inspection;
- b) Copies of any further statements or particulars necessary to indicate the nature of the items on the agenda; and
- c) Where the Head of Paid Service considers it appropriate, copies of any other documents supplied to councillors in connection with an item;

to any person, on payment of a charge for postage and any other costs, including copying and administration costs. All relevant documentation will be available from the Council's website, free of charge.

6. ACCESS TO DOCUMENTS AFTER MEETINGS

The Council will make copies of the following documents, available, for six years after a meeting:

- a) The minutes of the meeting (or records of decisions taken, together with reasons), excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- b) A summary of any proceedings not open to the public, where the minutes, open to inspection, would not provide a reasonably fair and coherent record;
- c) The agenda for the meeting; and
- d) Reports relating to items when the meeting was open to the public.

7. BACKGROUND PAPERS

7.1 Background papers

The chief officer, responsible for the report, will set out in every report a list of those documents (called background papers) relating to the subject matter of the report, which in his/her opinion:

- a) Relate to the subject matter of the report or, as the case maybe, the part of the report;
- b) Disclose any facts or matters on which the report, or an important part of the report, is based; and
- c) Which have been relied on, to a material extent, in preparing the report but will not include, in such a list, published works or those which disclose exempt or confidential information (as defined in Rule 9) and, in respect of Cabinet reports, the advice of a political assistant.

7.2 Public inspection of background papers

The Council will make available for inspection:

- a) A copy of the background papers at the Council, or on the Council's website; and
- b) A copy of the background documents, for four years after the date of the meeting.

8. SUMMARY OF THE PUBLIC'S RIGHTS

Article 3 of this Constitution, in conjunction with these rules, is the written summary of the public's rights to attend meetings and to inspect and copy documents. These documents will be kept and be available to the public at

the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

9. EXCLUSION OF ACCESS, BY THE PUBLIC, TO MEETINGS

9.1 Confidential information – requirement to exclude the public

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that confidential information would be disclosed.

9.2 Meaning of confidential information

Confidential information means information given to the Council, by a Government department, on terms which forbid its public disclosure, or information which cannot be publicly disclosed because of a Court Order.

9.3 Exempt information – discretion to exclude the public

9.3.1 The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that exempt information would be disclosed.

9.3.2 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public, unless a private hearing is necessary for one of the reasons specified in Article 6 of the Human Rights Act 1998.

9.4 Meaning of exempt information

Exempt information means information falling within the following categories (defined by Part 1 of Schedule 12A to The Local Government Act 1972, as amended), provided that two conditions are met. The first condition is set out in the second column of the following table:

| Category | Condition |
|--|--|
| 1. Information relating to any individual. | Information falling within paragraph 1 is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 2. Information which is likely to reveal the identity of an individual. | Information falling within paragraph 2 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 3. Information relating to the financial or business affairs of any particular person | Information falling within paragraph 3 is exempt if and so long as in all the circumstances of the case, the public interest |

| | |
|--|---|
| <p>(including the authority holding that information)</p> <p>‘Financial or business affairs’ includes contemplated as well as current activities.</p> | <p>in maintaining the exemption outweighs the public interest in disclosing the information. Information falling within paragraph 3 is not exempt information if it is required to be registered under:</p> <p>The Companies Act (as defined in section 2 of the Companies Act 2006)</p> <p>The Friendly Societies Act 1974</p> <p>The Friendly Societies Act 1992</p> <p>The Industrial and Provident Societies Act 1965 to 1978</p> <p>The Building Societies Act 1986</p> <p>The Charities Act 1993</p> |
| <p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p> | <p>Information falling within paragraph 4 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>‘Labour relations matters’ are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act or any dispute about a matter within this paragraph).</p> |
| <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> | <p>Information falling within paragraph 5 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| <p>6. Information which reveals that the authority proposes:</p> <p>to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>to make an order or direction under any enactment.</p> | <p>Information falling within paragraph 6 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p> | <p>Information falling within paragraph 7 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |

The second condition is that information is not exempt information if it relates to proposed development, for which the local planning authority may grant itself planning permission, pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

10. EXCLUDING PUBLIC ACCESS TO REPORTS

The public may be denied access to reports if the Head of Paid Service believes that the report relates to matters which, in accordance with Rule 9, will not be considered in a public meeting. Such reports will be marked 'Not for publication' together with the category of information likely to be disclosed.

11. KEY DECISIONS

11.1 Definition

11.1.1 A key decision is any decision:

- a) Relating to the approval of, or variation to, the Council's Budget or Policy Framework, which is reserved in the Council's Constitution for determination by full Council, on a recommendation from Cabinet; or
- b) Which involves the incurring of expenditure, or the making of savings, by the Council, which are anticipated to be in excess of £300,000, with the exception of items previously included in the relevant approved budget; or
- c) Where the Council is entering into a contractual obligation with a value in excess of £500,000; or
- d) For the acquisition or disposal of land or property with a value of over £500,000; or
- e) Which is likely to be significant in terms of its effects on communities, living or working in an area comprising two or more wards, in the Council's area.

11.1.2 A decision will not be a key decision if it relates to expenditure, income or savings that:

- a) Has been approved previously by full Council; or
- b) Has been approved previously, following compliance with the key decision procedure or;
- c) Is in accordance with the current treasury management and investment policy of the Council.

11.2 Publicity in connection with key decisions

11.2.1 Subject to Rule 12 (General Exception) or Rule 13 (Special Urgency), a key decision may not be taken unless, at least 28 clear days before it is made, a document has been made available for inspection at the Council's offices, and on its website, which states:

- a) That a key decision is to be made on behalf of the Council;
- b) The matter in respect of which a decision is to be made;
- c) Where the decision-taker is an individual, his/her name and title, if any, and where the decision-taker is a body, its name and details of membership;
- d) The date on which, or the period within which, the decision will be taken;
- e) A list of the documents submitted to the decision-taker, for consideration, in relation to the matter; and
- f) The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document are available;
- g) That other documents, relevant to those matters, may be submitted to the decision-maker; and
- h) The procedure for requesting details of the document, (if any) as they become available.

11.2.2 An item that is likely to contain confidential or exempt information, as defined in Rule 9, should still be included in the document, but the confidential information must be omitted and the exempt information should be omitted.

12. GENERAL EXCEPTION

Where it is not possible to publish the intention to make a key decision, then, subject to Rule 13 (Special Urgency), the decision may still be taken if:

- a) The decision must be taken by such a date, that it is impracticable to defer the decision until the publicity requirements for key decisions can be met;
- b) The Head of Paid Service has notified the Chair of the Overview and Scrutiny Committee, by notice, in writing, of the matter on which the decision is to be made. If there is no Chair, all the members of the committee will be notified;

- c) The Head of Paid Service has made copies of that notice available, to the public, at the offices of the Council and on the Council's website;
- d) At least five clear working days have elapsed since the Head of Paid Service complied with b) and c).

13. SPECIAL URGENCY

13.1 If, by virtue of the date by which a decision must be taken, Rule 12 (General Exception) cannot be followed, then the decision can only be taken if the decision-taker (if an individual), or the Chair of the body making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot reasonably be deferred. In the absence of the Chair of the Overview and Scrutiny Committee, the agreement of the Chair of the Council will be required. In the absence of both the Chair of the Overview and Scrutiny Committee and the Chair of the Council, the agreement of the Vice-Chair of the Council will be required.

13.2 As soon as reasonably practicable after the decision-maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred, the decision-maker must make available at the offices of the Council, and on its website, a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

14. PRIVATE MEETINGS OF THE EXECUTIVE

14.1 The Cabinet or its committees may, subject to rule 14.2, only hold a meeting in private (in whole or part) if notices are made available at the offices of the Council, and on its website,:

- a) At least 28 clear days, prior to the meeting, of its intention to hold a private meeting, containing a statement of reasons for the meeting to be held in private; and
- b) At least 5 working days, prior to the meeting, of its intention to hold the meeting in private, containing a statement of reasons for the meeting to be held in private, details of any representations, received by the decision-making body, about why the meeting should be open to the public, and a statement of its response to any such representation.

14.2 If, by virtue of the date by which a meeting must be taken, Rule 14.1 cannot be followed, then the meeting can only be held in private if the Chair of the body, making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot reasonably be deferred. In the absence of the Chair of the Overview and Scrutiny Committee, the agreement of the Chair of the Council will be required. In the absence of both the Chair of the Overview and Scrutiny Committee and the Chair of the Council, the agreement of the Vice-Chair of the Council will be required.

- 14.3** As soon as reasonably practicable, after the decision-maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred, the decision-maker must make available at the offices of the council, and on its website, a notice setting out the reasons that the meeting is urgent and cannot be reasonably deferred.

15. RECORD OF DECISIONS

As soon as reasonably practicable, and normally within three clear working days, after any meeting of the Cabinet or any of its committees, whether held in public or private, the Head of Paid Service or, where the Head of Paid Service or his/her representative is not present, the person presiding at the meeting, will ensure that a written statement is produced, in respect of every decision made at that meeting, which must include the following information:

- a) A record of the decision;
- b) A statement of the reasons for the decision;
- c) Details of any alternative options considered, and rejected, at that meeting;
- d) A record of any conflict of interest, in relation to the matter decided, which is declared by any member of the decision-making body; and
- e) In respect of any declared conflict of interest, a note of any dispensation granted by the Head of Paid Service.

16. DECISIONS BY INDIVIDUAL CABINET MEMBERS AND OFFICERS

16.1 Reports intended to be taken into account

- a) Where an individual member of the Cabinet receives a report, which he/she intends to be taken into account in making any decision, whether or not that decision is a key decision, then he/she will not make the decision until at least five clear working days after receipt of that report.
- b) Where an officer receives a report, which he/she intends to be taken into account in making a key decision, then he/she will not make the decision until at least five clear working days after receipt of that report.
- c) The report, and background papers, must be made available for inspection by the public, except in so far as they contain confidential or exempt information.

16.2 Provision of copies of reports to the Overview and Scrutiny Committee

On giving such a report to an individual decision-maker, the person who prepared the report will give a copy of it to the Chair of the Overview and

Scrutiny Committee, as soon as reasonably practicable, and make it publicly available at the same time.

16.3 Status of decision-making by an individual member of the Cabinet

The point at which an individual member of the Cabinet makes a decision does not constitute a meeting and is not open to the public.

16.4 Record of individual decision by a member of the Cabinet

As soon as reasonably practicable, after a Cabinet member has made an Executive decision, he/she will produce, or if he/she instructs the Head of Paid Service to do so, the Head of Paid Service, or his/her representative will produce a written statement in respect of that executive decision, which must include the following:

- a) A record of the decision;
- b) A statement of the reasons for the decision;
- c) Details of any alternative options considered, and rejected, by the member when he/she made the decision;
- d) A record of any conflict of interest which is declared, in relation to the decision, by any Cabinet member, who is consulted by the member in relation to the decision or making the decision; and
- e) In respect of any declared conflict of interest, a note of any dispensation granted by the Head of Paid Service.

16.5 Record of individual decision by an officer

As soon as reasonably practicable, after an officer has made a decision where:

- a) The financial implications for the Council, of the decisions, exceed £49,999 (officers should ensure that they act within the Budget and the Financial Procedure Rules);
- b) They make a key decision; or
- c) They have been specifically delegated to make a particular decision (whether or not in consultation with a Cabinet member) by the Cabinet or an individual executive councillor;

the officer will produce a written statement which must include:

- a) A record of the decision;
- b) The date that the decision was made;

- c) A record of the reasons for the decision;
- d) Details of any alternative options considered, and rejected, by the decision-maker;
- e) A record of any conflict of interest declared by the decision-maker, or any executive member who is consulted by the officer, which also relates to the decision;
- f) In respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

17. INSPECTION OF DOCUMENTS FOLLOWING EXECUTIVE DECISIONS

17.1 After a private meeting, or a public meeting, of a decision-making body, at which an executive decision has been made; after an individual councillor has made an executive decision; or after an officer has made a key decision, the proper officer shall ensure that a copy of:

- a) Any records are prepared in accordance with Rule 16; and
- b) Any report considered at the meeting, or, as the case may be, considered by the individual member, or officer, and relevant to a decision recorded in accordance with Rule 16 or, where only part of the report is relevant to such a decision, that part, shall be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of Folkestone and Hythe District Council and on the Council's website.

17.2 Where a request, on behalf of a newspaper, is made for a copy of any of the documents available for public inspection, as detailed in 17.1 above, those documents shall be supplied for the benefit of the newspaper on payment of postage, copying or other necessary charge for transmission.

18. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

18.1 Cabinet members

- a) All members of the Cabinet will be served notice of all private meetings of committees of the Cabinet, whether or not they are members of that committee.
- b) All members of the Cabinet are entitled to attend a private meeting of any committee of the Cabinet.

18.2 Non-executive councillors

Members, other than Cabinet members, will not be entitled to attend private meetings of the Cabinet and its committees but may be invited to attend by the Leader.

18.3 Officers

- a) The Head of Paid Service, the Section 151 Officer and the Monitoring Officer, and their nominees, are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Head of Paid Service has been given reasonable notice that a meeting is to take place.
- b) Decisions may only be made, at a private Cabinet meeting, in the presence of the Head of Paid Service, or his/her nominee, whose purpose will be to record and publicise the decisions taken.

19. REPORT TO COUNCIL

19.1 Requests from the Overview and Scrutiny Committee

Where the Overview and Scrutiny Committee thinks that a key decision has been taken, which was neither:

- a) Treated as a key decision nor
- b) The subject of the General Exception procedure, as detailed in Rule 12; or
- c) The subject of an agreement with the Overview and Scrutiny Committee Chair, or the Chair or Vice-Chair of the Council, under Rule 13 (Special Urgency).

- 19.2** The committee may require the Cabinet to submit a report to the Council, within such reasonable time as the committee specifies. The power to require a report rests with the committee, but is also delegated to the Head of Paid Service, who shall require such a report, on behalf of the committee, when so requested by the Chair, or any five members, of the Overview and Scrutiny Committee. Alternatively, the requirement may be raised by resolution, passed at a meeting of the Overview and Scrutiny Committee.

19.3 Cabinet's report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the Overview and Scrutiny Committee, then the report may be submitted to the following Council meeting. The report to Council will set out particulars of the decision, the individual or body making the decision, and, if the decision-maker is of the opinion that it was not a key decision, the reasons for that opinion.

19.4 Annual reports on Special Urgency decisions

The Leader of the Council will submit, annually, a report to the Council on the executive decisions taken, in the circumstances set out in Rule 13 (Special Urgency), in the preceding year. The report will include the number

of decisions so taken and a summary of the matters, in respect of which those decisions were taken.

20. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS

20.1 Material relating to previous business

All councillors will be entitled to inspect any document which is in the possession, or under the control of the Cabinet, or its committees, and contains material relating to any business previously transacted at a private meeting; a decision made by an individual member; or a decision taken by an officer, in the circumstances mentioned in the agreed protocol; unless it contains:

- a) Exempt information, as defined in Rule 9, apart from information falling within categories 3 (except in relation to proposed contracts), 6 and
- b) The advice of a political assistant.

20.2 Timescale

Any document required to be available for inspection, under Rule 20.1, must be made available for inspection, in any event, within 24 hours of the conclusion of the meeting on the decision being made, as the case maybe.

20.3 Material relating to key decisions

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control of the Cabinet or its committees, which relates to any key decision, unless Rule 20.1 a) or b) applies.

20.4 Nature of rights

These rights of a councillor are additional to any other right he/she may have. A fuller statement of these rights is set out in the Protocol on Councillor and Officer Relations, contained in Part 8 to this Constitution.

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FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 7 – OVERVIEW AND SCRUTINY RULES AND PROCEDURES

| CONTENTS | | Page Ref |
|-----------------|--|--------------------|
| 7.1 | Overview and Scrutiny Committee and Finance and Performance Scrutiny Sub-Committee | ‘Part 7/2’ |
| 7.2 | Overview and Scrutiny Procedure Rules | ‘Part 7/4’ |
| 7.3 | Call-in Rules and Procedures | ‘Part 7/12’ |
| 7.4 | Overview and Scrutiny Access to Information Procedure Rules | ‘Part 7/17’ |
| 7.5 | Overview and Scrutiny Inter-Authority Co-operation | ‘Part 7/23’ |

PART 7 - OVERVIEW AND SCRUTINY

PART 7.1 – OVERVIEW AND SCRUTINY COMMITTEE

1. OVERVIEW AND SCRUTINY COMMITTEE

1.1 Terms of reference

- a) To consult on the Overview and Scrutiny work programme and agree its contents. The work programme to be a rolling programme.
- b) To respond to requests from the Cabinet and /or Council to undertake overview and scrutiny reviews as it sees fit.
- c) To act as the Council's Crime and Disorder Committee and to meet for that purpose at least once a year.
- d) When acting as the Crime & Disorder Committee, to be able to co-opt members and determine whether they are entitled to vote on any matter, in accordance with the Crime and Disorder (Overview and Scrutiny) Regulations 2009.
- e) To review and scrutinise the executive's decisions, including prior scrutiny of proposed executive decisions, and decisions made by committees and officers.
- f) To contribute to the development of the Budget and other financial strategies, and review the performance of the executive against the Budget and other financial targets.
- g) To contribute to, and review, the development of the Council's corporate management policies, including risk management and corporate governance policies and strategies, and to review the performance against targets, and review the effectiveness of the policies and strategies over time.
- h) To exercise the right, set out in the 'Call-in' Rules of Procedure, contained in Part 6 and 7 of this Constitution, to call-in for review, and recommend for re-consideration, any decisions made by the executive but not implemented.
- i) Agree the scope of task and finish group overview and scrutiny reviews and appoint members to task groups. [Numbers of task groups will be dependent upon resources and the availability of members and officer support, and groups cannot be simultaneous or concurrent].
- j) When agreeing an overview and scrutiny topic for task group investigation the committee will follow the set of criteria set out below to ensure its suitability for an overview scrutiny review. In order to qualify for consideration, submissions for topics to review must conform to at least one of the following:
 - affect a group or community of people (overview and scrutiny will not normally look at service complaints) that either live or work in the district,
 - be an issue of significant public concern,
 - relate to a service, event or issue in which the Council has a significant stake,

- not be an issue which scrutiny has considered during the past 24 months,
 - not be an issue dealt with by another Council committee (excluding cabinet).
- k) Manage and co-ordinate task group work by checking that progress is according to timetable and testing the soundness of recommendations against scopes.
- l) Together with the task group chairs, formally present task group reports to Cabinet or Council or other appropriate groups and organisations.

1.2 Composition

Must be politically balanced. No member of the executive may be a member of the Overview and Scrutiny Committee.

2. FINANCE AND PERFORMANCE SCRUTINY SUB-COMMITTEE

2.1 Terms of reference

1. To scrutinise the Council's performance against KPIs and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
 - the proposed performance targets for the coming year;
 - the in-year performance management data; and
 - the annual performance report.
2. To scrutinise the Council's financial monitoring data against budget and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
 - the annual Budget Strategy; and
 - the quarterly budget monitoring data for GF Revenue & Capital and HRA Rev & Capital.

2.2 Composition

Must be politically balanced. Comprised of five Members, drawn from the main Overview and Scrutiny Committee. The Chair will be appointed by Overview and Scrutiny Committee at their first meeting of the municipal year, until the next annual meeting of the Council.

PART 7.2 – OVERVIEW AND SCRUTINY PROCEDURE RULES

1. THE ARRANGEMENTS FOR THE OVERVIEW AND SCRUTINY COMMITTEES AND SUB-COMMITTEES

- 1.1.** The Overview and Scrutiny Committee performs all scrutiny functions on behalf of the Council.
- 1.2** The terms of reference of the Overview and Scrutiny Committee are set out in Part 7 of the Constitution.
- 1.3** These rules apply to the Overview and Scrutiny Committee, and any sub-committees, with any necessary changes.

2. MEMBERSHIP OF THE OVERVIEW AND SCRUTINY COMMITTEE

- 2.1** All councillors, except members of the Cabinet, may be members of the Overview and Scrutiny Committee or sub-committee. However, no councillor may be involved in scrutinising a decision in which s/he has been directly involved, or where s/he has sat on an advisory panel of the Cabinet which has considered matters leading up to the decision, or has been appointed, as an adviser, to the Cabinet, on the decisions.
- 2.2** Councillor membership of the Overview and Scrutiny Committee will be in proportion to the representation of the different political groups on the Council.

3. CO-OPTEEES

- 3.1** The Overview and Scrutiny Committee shall be entitled to recommend to Council the appointment of a number of people, as non-voting co-optees. Co-optees will, in any event, comprise no more than 50% of the committee membership.
- 3.2** Council may co-opt members, who are not councillors, to the Overview and Scrutiny Committee, if this is necessary to give effect to legislation.

4. MEETINGS OF THE OVERVIEW AND SCRUTINY COMMITTEE

There shall be at least four ordinary meetings of the Overview and Scrutiny Committee in each year. The Overview and Scrutiny Committee, or sub-committee, when fulfilling the role of the Crime and Disorder Committee, shall meet, as such, at least once in each year. In addition, extraordinary meetings may be called, as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the Chair of the Overview and Scrutiny Committee, by any two members of the committee, or by the Head of Paid Service, if s/he considers it necessary or appropriate.

5. QUORUM

The quorum for the Overview and Scrutiny Committee shall be at least one quarter of its membership and not less than two voting members.

6. CHAIRING OVERVIEW AND SCRUTINY COMMITTEE MEETINGS

6.1 The Chair of the Overview and Scrutiny Committee shall be appointed as the first item of business, at its first meeting, following the Annual Council Meeting.

6.2 The Vice-Chair of the Overview and Scrutiny Committee shall be appointed, at its first meeting, following the Annual Council Meeting.

7. WORK PROGRAMME

7.1 The Overview and Scrutiny Committee will be responsible for setting its own work programme. In setting the work programme they shall take into account the wishes of councillors, on that committee, who are not members of the largest political group on the Council.

7.2 Each year, the work programme for the Overview and Scrutiny Committee will be approved at the Annual Council Meeting. For the avoidance of doubt, the work programme may be a rolling programme, spanning more than one municipal year.

8. PROTOCOLS AND GUIDELINES

8.1 The members of the Overview and Scrutiny Committee shall abide by any protocol for overview and scrutiny committees.

8.2 The Overview and Scrutiny Committee shall have regard to any statutory guidance on the exercise of their scrutiny functions.

9. AGENDA ITEMS AND THE 'CALL TO ACTION'

9.1 Any member of the Council may give written notice, to the Head of Paid Service, that they wish an item to be included on the agenda of the Overview and Scrutiny Committee (the 'call to action'). If the Head of Paid Service receives such a notification, s/he will include the item, on the first available agenda of the Overview and Scrutiny Committee, for discussion by the committee. The member should first consider any relevant statutory guidance. The Head of Paid Service may reject an item if it is not a 'local government matter', as defined by section 21A of the Local Government Act 2000.

9.2 The Overview and Scrutiny Committee shall consider requests from the Council, or the Cabinet, to review particular areas of Council activity but the committee itself will decide whether or not to undertake the review, and will give reasons, if it decides not to review a matter. Where the committee decides to do so, they shall report their findings, and any recommendations, to the Cabinet and/or the Council. The Council and/or the Cabinet shall consider the report of the Overview and Scrutiny Committee at the next meeting, following submission of the report by the Head of Paid Service, and will provide a written response, to the report, back to the committee.

10. POLICY REVIEW AND DEVELOPMENT

- 10.1** The role of the Overview and Scrutiny Committee, in relation to the development of the Council's Budget and Policy Framework, is set out in detail in the Budget and Policy Framework Procedure Rules in Part 4.4 of this Constitution.
- 10.2** In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, the Overview and Scrutiny Committee may make proposals, to the Cabinet, for developments, insofar as they relate to matters within its terms of reference.
- 10.3** The Overview and Scrutiny Committee may hold enquiries, and investigate the available options, for the future direction in policy development.

11. REPORTS FROM THE OVERVIEW AND SCRUTINY COMMITTEE

- 11.1** If an item is included on the agenda of the Overview and Scrutiny Committee, following a notification from a member of the Council, the committee will decide, in relation to that item, whether or not to review or scrutinise any decisions made, or actions taken; whether or not to require a member, who has exercised ward member powers, to attend before it to answer questions; and whether or not to make any report or recommendation. It must have regard to any ward member powers that the member may exercise, and any representations made by the member, as to whether it should exercise these powers. If it decides not to exercise these powers, it must notify the member of its decision and the reasons for it. If the committee decides to make a report or recommendations to the Council, or to Cabinet, it must copy the report to the member, and it may publish the report or recommendations. In so doing, it must exclude information which is 'confidential' and it may exclude information which is 'exempt' (applying the definitions set out in the Access to Information Rules). It may replace the excluded information with a summary which does not disclose that information, and it must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible.
- 11.2** If the Overview and Scrutiny Committee decides to make a report or recommendations to Council, or Cabinet, it must, by notice, in writing, require them, within two months from their receipt of the report or recommendations, or, if later, the notice:
- a) To consider the report or recommendations;
 - b) To respond to the committee indicating what, if any, action it proposes to take;
 - c) If the committee has published the report or recommendations, to publish the response;
 - d) If the committee provided a copy of the report or recommendations to the member, to provide the member with a copy of the response.

- 11.3** In order to make a report to Council or Cabinet, the Overview and Scrutiny Committee will commission and approve a formal report, from officers supporting the committee, and submit it to the Head of Paid Service, for consideration by the Council or Cabinet. Those officers will ensure that the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer are given an opportunity to comment on all such reports.
- 11.4** If there is a minority view, to which, at least, three councillors on the Overview and Scrutiny Committee subscribe, those councillors can request that the report includes a summary of that minority view.
- 11.5** The Council or Cabinet shall consider a report from the Overview and Scrutiny Committee at the next ordinary meeting, following submission of the report to the Head of Paid Service.
- 12. MAKING SURE THAT OVERVIEW AND SCRUTINY REPORTS ARE CONSIDERED BY THE COUNCIL AND CABINET**
- 12.1** Reports and recommendations to Council will be considered as an item of business (a report from a committee).
- 12.2** The agenda for Cabinet meetings shall include an item entitled 'Reports from Overview and Scrutiny'. Any report or recommendations of the Overview and Scrutiny Committee, referred to the Cabinet, shall be included at this point on the agenda (unless they have been/are to be considered in the context of the Cabinet's deliberations on a substantive item on the agenda) at the next ordinary meeting of the Cabinet, following submission of the report to the Head of Paid Service.
- 12.3** The Council and the Cabinet must comply with a notice, in writing, given by the Overview and Scrutiny Committee, under Rule 11.2, subject to any regulations preventing the disclosure of 'confidential information' and permitting the exclusion of 'exempt information' from anything that is published or copied to any member.
- 13. RIGHTS AND POWERS OF OVERVIEW AND SCRUTINY COMMITTEE MEMBERS**
- 13.1 Rights to documents**
- 13.1.1** In addition to their rights, as councillors, members of the Overview and Scrutiny Committee have the additional right to documents, and to notice of meetings, set out in the Access to Information Procedure Rules in Part 7.4 of this Constitution.
- 13.1.2** Nothing in this paragraph prevents more detailed liaison and information exchanges between the Cabinet and the Overview and Scrutiny Committee, depending on the particular matter under consideration.
- 13.2 Powers to conduct enquiries**

Subject to resources being available within the agreed annual budget, the Overview and Scrutiny Committee may:

- a) Review and scrutinise decisions made and look at past performance;
- b) Investigate options for future direction in Council policy;
- c) Investigate and make reports and recommendations to the Council, or the Cabinet, on any matter which affects the authority's area, or the inhabitants of that area.

In so doing, they may, subject to resources being available within the agreed annual Budget, set up ad hoc working groups, and appoint advisers and assessors to assist them in these processes. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations, within available resources. They may ask witnesses to attend, to address them on any matter under consideration and may pay any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

14. COUNCILLORS AND OFFICERS GIVING ACCOUNT

14.1 In addition to attending when requested, under paragraph 14.2 below, all Cabinet members will attend, if, and when, requested by the overview and scrutiny Chair, at least on one occasion per municipal year, before the Overview and Scrutiny Committee, in order to provide a general update on decisions made within their portfolio. The specific dates and scope of attendance will be agreed between the Cabinet member and the overview and scrutiny chair, and included in the overview and scrutiny work programme.

14.2 As well as reviewing documentation, in fulfilling the scrutiny role, the committee may require any councillor, member of the Cabinet, or officer, to attend before it, and it is the duty of those persons to attend, to explain, in relation to matters within their remit:

- a) Any particular decision or series of decisions; and/or
- b) The extent to which the actions taken implement Council policy; and/or
- c) The performance of the service.

At the discretion of their chief officer, Council officers, below third tier, may attend the Overview and Scrutiny Committee, usually accompanied by a senior manager. Neither the Head of Paid Service, nor any officer, will be required to explain matters within the remit of the Cabinet.

14.3 Where any councillor or officer is required to attend the Overview and Scrutiny Committee, or sub-committee, under this provision, the Chair of that committee will inform the Head of Paid Service. The Head of Paid

Service will inform the councillor, or officer, in writing, giving at least ten working days' notice of the meeting at which s/he is required to attend. The notice will state the nature of the item on which s/he is required to attend, to give account, and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the councillor or officer concerned will be given sufficient notice to allow for preparation of that documentation.

14.4 Where, in exceptional circumstances, the councillor or officer is unable to attend on the required date, then the committee shall, in consultation with the councillor, or officer, arrange an alternative date for attendance, or a substitution agreed with the Chair and vice-Chair of the committee.

14.5 Where an officer is required to give evidence under the petition scheme, the provisions of paragraphs 14.2, 14.3 and 14.4 shall apply.

15. ATTENDANCE BY OTHERS

The Overview and Scrutiny Committee may invite people, other than those people referred to in paragraph 14 above, to address it, discuss issues of local concern and/or answer questions. It may, for example, wish to hear from contractors, or organisations, providing services on behalf of the Council; residents, stakeholders, and members and officers in other parts of the public sector; and may invite such people to attend.

16. CALL-IN

The call-in procedure is dealt with separately in the Call-in Rules of Procedure in this part of the Constitution.

17. PROCEDURE AT OVERVIEW AND SCRUTINY COMMITTEE MEETINGS

17.1 The Overview and Scrutiny Committee shall consider the following business:

- a) Declarations of interest;
- b) Minutes of the last meeting;
- c) Consideration of any matter on the agenda.

17.2 Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the committee may also ask people to attend, to give evidence at committee meetings, which are to be conducted in accordance with the following principles:

- a) That the investigation is conducted fairly and all members of the committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- b) That those assisting the committee, by giving evidence, be treated with respect and courtesy; and

- c) That the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

17.3 Following any investigation or review, officers supporting the committee shall prepare a report for debate, amendment and approval by the committee and subsequently for submission to the Cabinet and/or Council, as appropriate. The committee shall make its report and findings public.

18. RECOMMENDATIONS BY THE OVERVIEW AND SCRUTINY COMMITTEE

18.1 The Overview and Scrutiny Committee shall not make a recommendation on a matter unless:

- a) It is considering an item, following notification by a member, under Rule 9.1 (the 'call to action'); or
- b) It has received a written report, from an officer, on the matter; or
- c) In exceptional circumstances, where a report which is to be placed before the committee has not been prepared by an officer, that report has been submitted to the Head of Paid Service, Chief Finance Officer and Monitoring Officer for comment.

18.2 Where a report, which has not been prepared by an officer, is submitted in accordance with the previous paragraph, the report shall not be submitted to the Overview and Scrutiny Committee unless:

- a) None of the officers mentioned wish to comment on it;
- b) The report incorporates any comments by officers; or
- c) A report, on the same topic, is submitted, on the same agenda, by officers.

18.3 The Overview and Scrutiny Committee shall not scrutinise:

- a) Individual decisions relating to planning applications, quasi-judicial and personnel matters e.g. licensing, housing appeals and disciplinary appeals;
- b) Decisions of the Audit and Governance Committee, (when those decisions relate to standards matters, including the granting of dispensations to participate) or the Joint Standards Hearing Committee;
- c) Decisions which are called in, other than via the procedure set out in the Call-in Rules of Procedure.

PART 7.3 – CALL-IN RULES OF PROCEDURE

1. WHEN CAN A DECISION BE CALLED IN?

- 1.1** When a decision is made by the Cabinet, an individual member or a committee of the Cabinet; or where a key decision is made by an officer, under delegated authority, given to them by the Leader; or by an area

committee; or under joint arrangements, the decision shall be published within three clear working days.

- 1.2** The notice of the decision will be dated and will specify that the decision will come into force, and may be implemented, on the expiry of five clear working days after the publication of the decision, unless a valid request has been received, by the Head of Paid Service, objecting to the decision and asking for it to be called in. This does not apply to an urgent decision.

2. WHO MAY CALL-IN A DECISION?

Any three or more members of the Overview and Scrutiny Committee may request that a decision is called in, during the five clear working days after the publication of the notice of the decision, in 1.2 above (the call-in period).

3. WHAT ARE THE CRITERIA FOR CALL-IN OF A DECISION AND WHO DECIDES WHETHER IT IS VALID?

- 3.1** The Head of Paid Service, on advice from the Monitoring Officer, will determine whether or not a call-in is valid. In order to be valid, the call-in must meet all of the criteria in (a) to (g), plus at least two of the criteria in (h) to (m), below:

- a) It is submitted by three or more members of the Overview and Scrutiny Committee, in writing;
- b) It is received before 5pm on the fifth day after publication of the notice of the decision;
- c) It specifies which decision is being objected to;
- d) It gives the reasons for the call-in request;
- e) It is not made in relation to a decision taken in accordance with the urgency procedures;
- f) It specifies the officers and members, the councillors calling in the matter, wish to hear from;
- g) It specifies the matters that the councillors, who called in the decision, wish to ask questions on.

- 3.2** The call-in must also meet two or more of the following criteria:

- h) It specifies that the decision is claimed to be outside, or contrary to, the Budget and Policy Framework;
- i) It specifies inadequate consultation with stakeholders prior to the decision;
- j) It specifies inadequate evidence on which to base the decision;

- k) It specifies that the action is not proportionate to the desired outcome;
- l) It specifies a potential human rights' challenge;
- m) It specifies insufficient consideration of the advice of the statutory officers.

If the Head of Paid Service decides that a call-in is not valid, he will inform the decision-taker, and those requesting the call-in, and the decision may be implemented at any time thereafter.

4. THE PROCESS FOR REFERRAL OF A DECISION VALIDLY CALLED IN

- 4.1** Subject to rules 4.2 and 4.3 below, once a request for a call-in is deemed valid by the Head of Paid Service, the decision may not be implemented until the Overview and Scrutiny Committee has met to consider the called in decision. The Head of Paid Service will call a meeting of the Overview and Scrutiny Committee within 10 clear working days of a valid call-in (unless a scheduled meeting is due to take place within that period, in which case the scheduled meeting will consider the call-in).
- 4.2** Where the Overview and Scrutiny Committee fails to meet, to discuss a called in decision, within 10 clear working days of the Head of Paid Service's confirmation of a decision validly called in, the decision may be implemented on the day following 15 clear working days from the date the decision was published.
- 4.3** Where the Overview and Scrutiny Committee meets within 10 clear working days of the Head of Paid Service's confirmation of a valid call-in, but fails to discuss the call-in request, and no other meeting of the Overview and Scrutiny Committee is planned before 10 clear working days after the confirmation of a valid call-in, the decision may be implemented on the day following the committee meeting.

5. THE PROCESS FOR CONSIDERATION OF DECISIONS VALIDLY CALLED IN

- 5.1** The Overview and Scrutiny Committee will consider the decision and the reasons for call-in. The committee may invite the decision-taker, and a representative of those calling in the decision, to attend the meeting to provide information.
- 5.2** The committee may then come to one of the following conclusions:
 - a) That the challenge to the decision should be taken no further and the decision may be implemented;
 - b) That the decision is contrary to the Budget or Policy Framework and should therefore be referred to the Council. In such a case, the

Overview and Scrutiny Committee must set out its reasoning for the Council to consider;

- c) That the matter should be referred back to the decision-taker for reconsideration. In such a case the Overview and Scrutiny Committee must set out its reasoning for the decision-taker to consider.

5.3 If the Overview and Scrutiny Committee refers back to the decision-taker under 5.2.c) above, the decision-taker must reconsider the decision in accordance with paragraph 6 below.

5.4 If the Overview and Scrutiny Committee refers the decision to a Council meeting under 5.2.b), the decision shall be discussed at the next ordinary meeting of the Council, provided that the next scheduled meeting is within 20 clear working days of a referral of the decision from the Overview and Scrutiny Committee. If the next ordinary meeting of the Council is more than 20 clear working days after the referral of the decision from the Overview and Scrutiny Committee, the Chair of the Council, in consultation with the leaders of all the political parties, will decide whether an extraordinary meeting of the Council is needed. If they decide that it is not, the decision will stand referred to the next ordinary meeting of the Council.

5.5 When the Council considers the decision, it may conclude:

- a) That the challenge to the decision-taker should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Policy Framework, or the Budget, and cannot be implemented, with reasons being given;
- c) That the decision is contrary to the Budget or Policy Framework, but that the relevant framework should be amended to enable the decision to be implemented (in which case the Council meeting should make the amendment at the meeting, in order that the decision can be implemented);
- d) That the matter should be referred back to the decision-taker for reconsideration, with reasons being given.

5.6 If the Council meeting is scheduled to, but does not, discuss the called in decision at the next ordinary meeting, or an extraordinary Council meeting called for that purpose, the decision may be implemented on the day following the meeting at which the matter was to be discussed.

6. ACTION OF THE DECISION-TAKER AFTER A REFERRAL BACK FROM THE COUNCIL OR THE OVERVIEW AND SCRUTINY COMMITTEE

6.1 A decision referred back to the Cabinet, a Cabinet committee, or an area committee, as decision-taker, must be discussed at the next scheduled meeting of the Cabinet or committee (the Leader may decide to call a special meeting of the Cabinet, or the committee, if he considers it necessary). A decision referred back to a Cabinet member, or an officer,

must be reconsidered by the decision-taker within 10 clear working days of receiving the referral.

- 6.2** The decision-taker(s) may either reconfirm the decision, or amend the decision, in light of the comments from the Council or Overview and Scrutiny Committee, and report back, as appropriate, to the next meeting of the Council or Overview and Scrutiny Committee. In either case, the decision can be implemented, as soon as the decision has been reconfirmed or amended.

7. CALL-IN AND URGENCY

- 7.1** The call-in procedure, set out above, shall not apply where the decision being taken is urgent. A decision is urgent if any delay, likely to be caused by the call-in process, would seriously prejudice the Council's or the public interest.
- 7.2** The record of an urgent decision, and the notice by which it is made public, shall state whether, in the opinion of the person, or body, making the decision, that the decision is an urgent one, and therefore not subject to call-in.
- 7.3** The Chair of the Overview and Scrutiny Committee must agree both that the decision proposed is reasonable, in the circumstances, and should be treated as a matter of urgency. In the absence of the Chair, the Vice-Chair's consent is required. In the absence of both the Chair and Vice-Chair, the Head of Paid Service's consent is required.
- 7.4** Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 7.5** The operation of the provisions, relating to call-in and urgency, shall be monitored annually, and a report submitted to Council, with proposals for review, if necessary.

8. DECISION NOT SUBJECT TO CALL-IN

- 8.1** The call-in procedure shall not apply to the decisions set out in rule 8.2 below.
- 8.2** The decisions not subject to call-in are:
- a) Matters to be decided by full Council;
 - b) Executive appointments to outside bodies;
 - c) A decision of the executive to consult on a proposal;
 - d) Decisions by ward members, under the Council's approved ward member budget scheme or relating to ward plans;
 - e) Decisions made after considering the call-in of the original decision;

- f) An executive decision, against which there is a right to request an internal review, or an appeal to an external body, is subject to call-in; however, if the right to request an internal review is exercised, or an appeal made, the call-in shall cease to have effect and;

8.3 No non-executive decision is subject to call-in.

PART 7.4 – OVERVIEW AND SCRUTINY ACCESS TO INFORMATION PROCEDURE RULES

1. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

2. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings, subject only to the exceptions in these rules.

3. NOTICE OF MEETINGS

The Council will give at least 5 clear days notice of any meeting, by posting details of the meeting at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY and on the Council's website.

4. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

4.1 The Council will make copies of the agenda and reports, which are open to the public, available for inspection at the Civic Centre and on the Council's website, at least 5 clear days before the meeting.

4.2 Where the meeting is convened at shorter notice than set out in Rule 3 (notice of meetings), copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

4.3 If an item is added to the agenda, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons or agenda has been sent out, the Head of Paid Service shall make each such report available to the public, as soon as the report is completed and sent to councillors.

5. SUPPLY OF COPIES

The Council will supply:

- a) Copies of any agenda and reports which are open to public inspection;
- b) Copies of any further statements, or particulars, necessary to indicate the nature of the items on the agenda; and
- c) Where the Head of Paid Service considers it appropriate, copies of any other documents, supplied to councillors, in connection with an item;

to any person, on payment of a charge for postage and any other costs, including copying and administration costs. All relevant documentation will be available, from the Council's website, free of charge.

6. ACCESS TO DOCUMENTS AFTER MEETINGS

The Council will make copies, of the following documents, available for six years after a meeting:

- a) the minutes of the meeting, excluding any part of the minutes of proceedings when the meeting was not open to the public, or which disclose exempt or confidential information;

- b) A summary of any proceedings, not open to the public, where the minutes, open to inspection, would not provide a reasonably fair and coherent record;
- c) The agenda for the meeting; and
- d) Reports relating to items when the meeting was open to the public.

7. BACKGROUND PAPERS

7.1 Background Papers

The chief officer, responsible for the report, will set out, in every report, a list of those documents (called background papers), relating to the subject matter of the report, which in his/her opinion:

- a) In the case of reports to the Cabinet, Cabinet committees, Cabinet members or officers, when taking executive decisions, relate to the subject matter of the report or, as the case maybe, the part of the report;
- b) Disclose any facts or matters on which the report, or an important part of the report, is based; and
- c) Which have been relied on, to a material extent, in preparing the report but will not include, in such a list, published works or those which disclose exempt or confidential information (as defined in Rule 9) and, in respect of Cabinet reports, the advice of a political assistant.

In addition, in the case of a report to the executive, a copy of the background papers must be made available, for inspection, at the Council or on the Council's website.

7.2 Public inspection of background papers

The Council will make available, for inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.

8. SUMMARY OF THE PUBLIC'S RIGHTS

Article 3 of this Constitution, in conjunction with these rules, is the written summary of the public's rights to attend meetings and to inspect and copy documents. These documents will be kept, and be available, to the public at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

9. EXCLUSION OF ACCESS, BY THE PUBLIC, TO MEETINGS

9.1 Confidential information – requirement to exclude the public

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information would be disclosed.

9.2 Meaning of confidential information

Confidential information means information given to the Council, by a government department, on terms which forbid its public disclosure, or information which cannot be publicly disclosed because of a Court Order.

9.3 Exempt information – discretion to exclude the public

9.3.1 The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that exempt information would be disclosed.

9.3.2 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public, unless a private hearing is necessary for one of the reasons specified in Article 6 of the Human Rights Act 1998.

9.4 Meaning of exempt information

Exempt information means information falling within the following categories (defined by Part 1 of Schedule 12A to the Local Government Act 1972, as amended), provided that two conditions are met. The first condition is set out in the second column of the following table:

| Category | Condition |
|---|---|
| 1. Information relating to any individual. | Information falling within paragraph 1 is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 2. Information which is likely to reveal the identity of an individual. | Information falling within paragraph 2 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information) 'Financial or business affairs' includes contemplated as well as current activities. | Information falling within paragraph 3 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information falling within paragraph 3 is not exempt information if it is required to be registered under: The Companies Act (as defined in section 2 of the Companies Act 2006) |

| | |
|--|---|
| | <p>The Friendly Societies Act 1974</p> <p>The Friendly Societies Act 1992</p> <p>The Industrial and Provident Societies Act 1965 to 1978</p> <p>The Building Societies Act 1986</p> <p>The Charities Act 1993</p> |
| <p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p> | <p>Information falling within paragraph 4 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>‘Labour relations matters’ are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act or any dispute about a matter within this paragraph).</p> |
| <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> | <p>Information falling within paragraph 5 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| <p>6. Information which reveals that the authority proposes: to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment.</p> | <p>Information falling within paragraph 6 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p> | <p>Information falling within paragraph 7 is exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |

The second condition is that information is not exempt information if it relates to proposed development, for which the local planning authority may grant itself planning permission, pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

10. EXCLUDING PUBLIC ACCESS TO REPORTS

The public may be denied access to reports if the Head of Paid Service believes that the report relates to matters which, in accordance with Rule 10, will not be considered in a public meeting. Such reports will be marked 'Not for publication' together with the category of information likely to be disclosed.

11. OVERVIEW AND SCRUTINY COMMITTEE ACCESS TO DOCUMENTS

11.1 Subject to Rule 11.2 below, a member of the Overview and Scrutiny Committee will be entitled, on request, to copies of any document which is in the possession or control of the Cabinet and which contains material relating to:

- a) Any business transacted at a meeting of a decision-making body; or
- b) Any decision taken by an individual member of the Cabinet;
- c) Any decision, taken by an officer, in the circumstances mentioned in the agreed protocol for officers taking executive decisions.

These rights are additional to any other rights that members of the Council may have, as defined in Rule 12.

11.2 A member of the Overview and Scrutiny Committee (or its sub-committees) will not be entitled to:

- a) Any document that is in draft form;
- b) Any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising, or intend to scrutinise; or
- c) The advice of a political assistant.

11.3 Timescale

Where a request for a document, to which a member of the Overview and Scrutiny Committee is entitled, is made, the executive must provide that document as soon as reasonably possible and, in any case, no later than 10 clear days after the executive receives the request.

11.4 Refusal

Where the executive determines that a member of the Overview and Scrutiny Committee is not entitled to a copy of the document, it must provide the Overview and Scrutiny Committee with a written statement setting out the reason for the decision.

12. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS

12.1 Material relating to previous business

All councillors will be entitled to inspect any document which is in the possession or under the control of the Cabinet, or its committees, and contains material relating to any business previously transacted at a private meeting; a decision made by an individual member; or a decision taken by an officer, in the circumstances mentioned in the agreed protocol, unless it contains:

- a) Exempt information, as defined in Rule 9, apart from information falling within categories 3 (except in relation to proposed contracts), 6 and
- b) The advice of a political assistant.

12.2 Timescale

Any document required to be available for inspection under Rule 12.1 must be made available for inspection, in any event, within 24 hours of the conclusion of the meeting on the decision being made, as the case maybe.

12.3 Material relating to key decisions

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control, of the Cabinet or its committees, which relates to any key decision, unless Rule 12.1 a) or b) applies.

12.4 Nature of rights

These rights of a councillor are additional to any other right he/she may have. A fuller statement of these rights is set out in the protocol on councillor and officer relations, contained in Part 8 to this Constitution.

PART 7.5 - OVERVIEW AND SCRUTINY INTER-AUTHORITY CO-OPERATION

1. AIM OF THE PROTOCOL

To ensure the overview and scrutiny committees of all Kent local authorities can review issues, of community interest, effectively and with efficient use of all local authority staff resources.

2. PRINCIPLES

2.1 All authorities should be supported in considering issues, of community well-being, wider than the responsibilities of their councils.

2.2 Authorities should work together to maximise the exchange of information and views, minimise bureaucracy and make best use of the time of members and officers of local and other authorities.

3. PROCEDURES

- 3.1** Authorities should seek to exchange information on programmes and results of reviews.
- 3.2** If an overview and scrutiny committee wishes to review an issue in which another authority has a statutory role, or in which evidence from the officers of another authority would be helpful, it should consult with that authority about:
 - a) The purpose of the review;
 - b) The areas of interest to the other authority;
 - c) The input that can be given by members or officers of the other authority.
- 3.3** Consideration should be given to whether the issue is more appropriately discussed in another forum, for example, a joint committee, or whether there is scope for joint action, including the co-opting of members of the other authority onto the overview and scrutiny committee for the purpose of the review.
- 3.4** Where a proposal is subject to a public consultation process, scrutiny is most helpful if conducted as part of that process e.g. allowing any findings and recommendations to be available in time to influence the final decision.
- 3.5** Subject to such prior consultation, authorities will seek to respond positively to requests for information; or for a member, or officer, to attend meetings of overview and scrutiny committees.
- 3.6** While it is ultimately for each authority to decide who it considers the most appropriate person(s) to speak, on its behalf, to an overview and scrutiny committee, consideration will be given to meeting specific requests.
- 3.7** Dates and times of member and officer attendance, at overview and scrutiny meetings, should be agreed with them.
- 3.8** Each authority will nominate a contact officer for the operation of these procedures.

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FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 8 – OFFICERS RULES AND PROCEDURES INCUDING DELEGATION TO OFFICERS

| CONTENTS | | |
|-----------------|------------------------------------|------------------|
| 8.1 | Scheme of Delegation to Officers | Part 8/1 |
| 8.2 | Officer Employment Procedure Rules | Part 8/20 |
| 8.3 | Code of Conduct for Officers | Part 8/25 |

PART 8.1 – DELEGATION TO OFFICERS

SCHEME OF DELEGATION TO OFFICERS

1. SCHEME OF DELEGATION TO OFFICERS

NOTE: This scheme of delegation does not include functions or powers delegated by the Council, Cabinet or regulatory committees to officers for a specified period not exceeding six months. The delegations to officers are made with the intent that they lead to a streamlining and simplification of the processes of the Council and accordingly should be interpreted widely rather than narrowly. In addition, under paragraph 1.4 below officers may authorise other officers to exercise their delegated powers and it is the intention for this scheme that powers are exercised at the most appropriate level.

- 1.1** Exercise of delegated powers: First Tier Officers , namely the Head of Paid Service), the Director of Strategy and Resources, Director of Housing and Operations and Interim Director -Governance and Finance the Second Tier Officers namely, , the Chief Officer People and Customer Services, the Chief Officer - Planning & Building Control, Chief Officer - Financial Services, Chief Officer – Place and Growth, Chief Officer – Regulatory and Community Services, Chief Officer – Housing, Chief Officer – Corporate Estates & Development and Head of Legal Services (all collectively referred to in this scheme of delegation as “the Senior Officers”) can discharge all functions where they have managerial or professional authority except for matters specifically reserved to the Cabinet, a cabinet member, cabinet committees (if any), committees or the Council.
- 1.2** They will not take decisions that are expressly reserved to another decision-making body under this Constitution however First Tier Officers, (or in the absence of all First Tier Officers either the Monitoring Officer or Chief Officer - Financial Services):
- May make key decisions, as defined in Article 12 of the Constitution, if it is impractical for the Cabinet to do so because of the urgent nature of the decision to be made; and
 - May take decisions that are reserved to Council or Cabinet under this Constitution in an emergency and if it is lawful for them to do so.
- 1.3** They may use whatever means they consider appropriate within budget and in accordance with financial regulations to discharge those functions, including:
- Incurring expenditure and collecting income.
 - Engaging and deploying staff.
 - Deploying other resources within their control; and

- Placing contracts and procuring other resources within or outside the Council.

In doing so, they must act within the law and the Council's Constitution and follow Council policy and the lawful instructions of Council committees and the Cabinet. If, exceptionally, they need to depart from Council policy or those instructions, they must report to the relevant body as soon as possible.

- 1.4 They may authorise other officers to exercise delegated powers on their behalf. They may also authorise appropriately experienced officers whose services are placed at the disposal of the Council pursuant to section 113 of the Local Government Act 1972 to exercise any powers or functions delegated to them or to specified officers.
- 1.5 Emergency action taken under delegated powers must be reported to the relevant body as soon as possible.
- 1.6 Significant decisions taken by Officers will be published and recorded in accordance with the Access to Information Procedure Rules. There will be no requirement to keep a written record of operational decisions within the budget and policy framework.
- 1.7 The Senior Officers of the Council shall be entitled to exercise the powers and functions set out below.
- 1.8 Decisions Delegated to the Senior Officers after appropriate consultation.

The Senior Officers, in respect of matters falling within their remit, may take any action on behalf of the Council, including action relating to executive and non-executive functions, where the proposed action conforms with the policy and budget framework but where in his or her opinion, the matter is politically sensitive or raises issues of public or local concern, after consultation with the Leader and/or relevant portfolio holder, or the chair of the appropriate non-executive committee in the case of non-executive functions, and may respond to consultation documents after consultation as set out above.
- 1.9 Decisions Delegated to Senior Officers without prior consultation.

The Senior Officers, in respect of matters falling within their remit, may take any action on behalf of the Council, including action relating to Executive and non-executive functions, where the proposed action conforms with the policy and budget framework and where in their opinion it is not of such political sensitivity or public concern that consideration by members is necessary.
- 1.10 The Head of Paid Service may discharge any of the functions of any other officer unless prohibited from doing so by any legislation or regulatory rule.

2. GENERAL DELEGATION TO THE SENIOR OFFICERS

In addition to those matters expressly delegated to individual officers, all the Senior Officers (save where expressly reserved to chief officers only) shall have the following delegated powers:

2.1 Power to Take Urgent Decisions

First Tier Officers (and in the absence of all First Tier Officers, either the Monitoring Officer or Chief Officer – Financial Services – Deputy s.151 Officer) may take urgent decisions if they are of the opinion that circumstances exist which make it necessary for action to be taken by the Council prior to the time when such action could be approved through normal council procedures. They shall, where practicable, first consult with the Leader and relevant portfolio holder or the chair of the appropriate non-executive committee in the case of non-executive functions.

2.2 Staffing Issues

The Senior Officers may deal with any matter relating to staffing other than those expressly reserved to Council, or the Head of Paid Service under paragraph 3.2 below, provided that they are in accordance with approved human resources policies, procedures and within the approved budget framework.

2.3 Orders/Agreements for Work, Goods and Services

In accordance with standing orders, financial regulations and codes of procedure relating to contracts:

- To issue orders for work, goods and services;
- To accept tenders;
- To sign agreements;
- Tenders or quotations may be submitted, and contractual arrangements entered into for carrying out work and / or providing services for other parties (in line with the rules set out in part 10 of the constitution) .
- To appoint specialist advisors or consultants.

2.4 Operational Decisions

To take decisions relating to all operational and professional matters within their remit.

2.5 Ombudsman Matters

To agree local settlements where they consider it in the interests of the Council to do so.

2.6 Land and buildings

In respect of any development of land and buildings which is proposed to be carried out for the purposes of statutory functions within the sphere of his/her responsibility, power to authorise an application for planning permission to

the Planning and Licensing Committee, or for any other permission for works or the use of land, and once such permission has been received, to authorise the carrying out of such development in accordance with the terms and conditions of such permission.

2.7 Legal Proceedings

In consultation with the Head of Legal Services (Solicitor to the Council), to:

-

- i. institute and defend legal proceedings on the Council's behalf; and
- ii. authorise any suitable officer of the Council to appear on the Council's behalf in proceedings before any Magistrates Court and/or County Court.

2.8 Fees and Charges

To exercise, in accordance with any current policy, all of the Council's functions relating to those fees and charges falling within their remit. This does not, for the avoidance of doubt, include the determination of fees.

2.9 Compensation

To pay compensation for service failure where they consider it appropriate up to a maximum amount of £1,000 in respect of any single issue.

- 2.10** In addition to the General Scheme of Delegation to the Senior Officers set out above, individual Senior Officers shall be entitled to exercise the powers and functions expressly delegated to them in the following paragraphs, subject to the conditions and restrictions set out above.

3. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE HEAD OF PAID SERVICE

- 3.1** To exercise the powers and responsibilities of the Head of Paid Service for the purpose of Section 4 of the Local Government and Housing Act 1989.

- 3.2** To determine and to amend staffing structures.

- 3.3** To give such directions as he/she may consider necessary:

- To secure the efficient management and execution of the Council's functions;
- To secure co-ordination of advice and forward planning of objectives and services;
- To secure a corporate approach to the affairs of the Council generally;
- To achieve the efficient and effective implementation of the Council's strategies and policies and the effective deployment of the Council's resources towards those ends;
- To maintain good internal and external relations;
- To determine the allocation of office accommodation

- 3.4** To take all such action as he/she considers appropriate in any emergency (as defined by the Head of Paid Service) including power to make or approve any necessary and urgent arrangements within the powers of the council for the protection of persons or property in any civil or other emergency.
- 3.5** To sign on behalf of the Council any document necessary to give effect to any resolution of the Council, the Cabinet, committees or sub-committees and/or officers acting under delegated powers.
- 3.6** To act as proper officer of the Council, except where legislation or this constitution names another officer or the Council has specifically determined otherwise.
- 3.7** In consultation with the other chief officers, settle employee and industrial relations matters, including issues involving the application or rates of pay, conditions of service or other staffing benefits etc.
- 3.8** To consider and approve applications and proposals for early retirement of staff who are subject to the Local Government Superannuation Regulations.
- 3.9** To determine and issue to officers general guidelines for the management of human resources in the areas of recruitment and planning; training and development; employee relations; health, safety and welfare (including occupational health); pay and performance and equality of opportunity.
- 3.10** To add posts to the list of politically restricted posts and to grant and supervise exemptions from political restriction under the Local Government and Housing Act 1989 (as amended).
- 3.11** To make any order requested by the chief constable and authorised by the Home Office prohibiting the holding of public processions or trespassory assemblies.
- 3.12** To provide assistance at elections to the county council, of the police and crime commissioner and to discharge functions relating to parliamentary, and local elections, referendums and polls (whether national or local) including appointment of staff and determination of fees payable to those staff.
- 3.13** To be the Council's Electoral Registration Officer pursuant to S 8(2) Representation of the People Act 1983 and to exercise all the functions of that post.
- 3.14** To be the returning officer pursuant to S 35(1) Representation of the People Act 1983.
- 3.15** To be the Returning Officer for the purpose of conducting parish polls pursuant to Rule 4 (1) of the Parish and Community Meetings (Polls) Rules 1987.
- 3.16** To exercise the powers and functions of the Council under S113 of the Local Government Act 1972 to enter into an agreement with another local authority;

- For the placing at the disposal of that authority for the purposes of their functions, the services of officers employed by the Council; and
- For the placing at the disposal of the Council for the purposes of its functions, the services of officers employed by that authority.

3.17 To exercise the powers and functions of the Council under the Local Authorities (Goods and Services) Act 1970.

3.18 To exercise the Council's powers to make appointments to committees or sub-committees at the request of the relevant political group leader subject to the conditions that (a) the appointed member shall be a replacement for a committee or sub-committee member from the same political group or the appointee is to fill a vacant seat on the committee/sub-committee allocated to the political group of which he/she is a member and (b) the changes shall be reported to the next available meeting of the council. This delegation shall only be exercisable in respect of councillors who are members of a political group.

3.19 To grant dispensations under the Local Authorities (Executive Arrangements) Meetings and Access to Information) (England) Regulations 2012 to in respect of any declared conflict of interest by a cabinet member.

3.20 To take the lead on organisational transformation initiatives.

3.21 To be the lead on matters relating to improvement, efficiency and organisational development.

3.22 To be responsible for the planning policy functions of the council as the local planning authority.

3.23 To nominate if he/she sees fit a deputy to exercise all the powers and functions of the Head of the Paid Service in his / her absence.

3.24 Where the post of Monitoring Officer or S151 Officer falls vacant to designate the Monitoring Officer or S151 Officer on a temporary basis pending the council's consideration of which officer to designate as one of the statutory officers.

3.25 To delegate any of the functions of Head of Paid Service subject to such conditions or limitations as he / she considers appropriate.

4. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE DIRECTOR of FINANCE

4.1 To carry out those of the council's duties and functions as are shown in the table in appendix 1 to this scheme of delegation against the post title of the director together with the functions specified below

4.2 To be and carry out the duties of the Chief Finance Officer Section 151 Officer, including ensuring the proper administration of the council's financial affairs.

4.3 To undertake the following specific roles:

- To be the Council's money laundering reporting officer
- To appoint the deputy money laundering reporting officer
- To set the council tax base
- To appoint the deputy Chief Finance Officer
- To agree external audit arrangements
- To be the council's lead on digital delivery

4.4 To write off bad debts, stores deficiencies and surplus goods or equipment up to £10,000 (higher value write-offs require the approval of the Chief Finance Officer in liaison with the Portfolio holder).

5. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE DIRECTOR OF STRATEGY AND RESOURCES

5.1 To carry out those of the council's duties and functions as are shown in the table in appendix 1 to this scheme of delegation against the post title of the director.

5.2 Monitoring officer

To be the Council's Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.

To be the Proper Officer for the purposes of receiving applications for dispensation pursuant to section 33(1) of the Localism Act 2011.

To grant dispensations to members pursuant to section 32(2) of the

Localism Act 2011 and paragraph 8 of the adopted code of conduct to

Speak only or to speak and vote where:

- (i) so many members of the decision-making body have Disclosable Pecuniary or Other Significant Interests in a matter that it would impede the transaction of the business; or
- (ii) without a dispensation, no member of the executive would be able to participate on a particular item of business.

In consultation with the Chair (or in his/her absence the vice-chair) of the Audit and Governance Committee to grant dispensations to speak and/or vote where it is not possible to convene a meeting of that committee where the application for dispensation is made on any of the following grounds:

- (i) Without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;

- (ii) That the authority considers that the dispensation is in the interests of persons living in its area; or
- (iii) Where the authority considers that it is otherwise appropriate to grant a dispensation.

In making the decision the Monitoring Officer shall have regard to the following criteria:

- a) The nature of the member's interest and allowing them to participate would not damage public confidence in the conduct of the authority's business.

If public confidence would be damaged, then such an application would be likely to be refused. It is unlikely that it would be appropriate therefore, for example, to grant a dispensation to a member who has an interest arising as a result of an effect on their personal financial position or on that of a relative.

- b) The interest is common to the member and a significant proportion of the general public.
- c) The participation of the member in the business that the interest relates to is justified by the member's particular role or expertise.
- d) The business that the interest relates is about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee and the member's interest is not a financial one.

In circumstances such as these, the committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

And that any dispensations granted shall be reported back to the next meeting of the Audit and Standards Committee.

To receive complaints relating to alleged breaches of the adopted Code of Conduct and to process complaints in accordance with the adopted arrangements for dealing with Code of Conduct complaints.

7.3 Land of community value

To hear appeals under the provisions relating to land of community value.

6. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE DIRECTOR – HOUSING AND OPERATIONS

- 6.1 To carry out those of the council's duties and functions as covered by the 1985 Housing Act and all other relevant housing legislation and as shown in

the table in appendix 1 to this scheme of delegation against the post title of the director

7. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE HEAD OF LEGAL SERVICES

7.1 To carry out those of the council's duties and functions as are shown in the table in appendix 2 to this scheme of delegation against the post title of the Second Tier Officer together with the functions specified below.

7.2 Solicitor to the council

To act as solicitor to the council in particular:

- To institute, defend, conduct and settle civil and criminal legal proceedings; and
- To sign or authenticate documents of any kind.

8. SPECIFIC POWERS AND FUNCTIONS DELEGATED TO THE CHIEF OFFICER – PLANNING AND BUILDING CONTROL

8.1 To carry out those of the council's duties and functions as are shown in the table in appendix 2 to this scheme of delegation against the post title of the Second Tier Officer subject to any condition or limitation shown below

8.2 Planning

To exercise all the Council's functions, including determining all consents, permissions, licenses under the planning (including control of advertisements) and listed building legislation, and taking enforcement action, in relation to town and country planning, in accordance with the specific scheme of delegation for planning in paragraph 8.3.

8.3 Specific scheme of delegation for town and country planning.

8.3.1 The Chief Officer (Planning and Building Control) is authorised to determine the categories of applications set out in paragraph 8.3.2 except those that:

- a) Have been called in to the committee at the request of any district councillor;
- b) Represent a significant departure from the development plan and which the Chief Officer - Planning considers should be approved;
- c) The Council has a substantial interest in, other than small-scale proposals, (e.g. extensions and alterations to council owned properties and means of enclosure, accesses, installation of windows);

- d) Relate to proposals submitted by or on behalf of any member (including any co-opted member) or employee of the Council other than small scale works to which there have been no objections and related renewals and amendments;
- e) The Chief Officer Planning and Building Control believes raise issues which should be considered by the Planning and Licensing Control Committee;
- f) Are planning applications where the view of the parish or town council differs strongly from that of the Chief Officer Planning and Building Control except where an objection:
 - i. relates to the principle of a proposal which already has outline planning permission; an issue determined at outline stage or an application of similar scale or character to one already approved;
 - ii. is for the renewal of a planning permission without stating what, in the view of the town or parish council, planning circumstances have changed since the grant of the original permission which would justify a refusal, is made without giving any reasons, or is only made on the basis that the work has already been implemented;
 - iii. is made without giving any reasons;
 - iv. is based upon a technical issue where the body responsible for providing advice on the issue is satisfied with the proposal subject to any evidence which contradicts that advice first being investigated;
 - v. is to minor operational development (e.g. domestic extensions, alterations to buildings, means of enclosures, accesses).
- g) Are planning applications where the view of a parish or town council differs strongly from that of the Chief Officer - Planning except where it expresses support for an application, but that application is clearly contrary to development plan policy and / or government guidance.

8.3.2 The categories of application which the Chief Officer Planning and Building Control may determine are:

- i. applications for planning permission under Section 70 Town and Country Planning Act 1990;
- ii. applications under Sections 73 and 73A of the Town and Country Planning Act 1990 to retain a building or to continue to use without complying with a condition subject to which planning permission has been granted;
- iii. applications to determine reserved matters and details arising from: grants of planning permission, e.g. landscaping schemes, details of external appearance, samples of materials, means of access,

including listed building consents, conservation area consents, advertisement consents and permissions under the above;

- iv. applications submitted under General Permitted Development Order requirements; and
- v. applications for listed building and conservation area consents, subject to the agreement of the Secretary of State in cases where this is necessary.

8.3.3 The Chief Officer Planning and Building Control is authorised to determine:

- i. notifications under Sections 198 and 211 to 213 of the Town and Country Planning Act 1990 Act for the felling, topping or lopping of trees; and
- ii. applications for minor amendments/revisions in substitution for approved plans, including those for listed building consent, conservation area consent, advertisement consent or for permission to lop, top or fell trees.

8.3.4 Subject to the limitations in paragraph 10.3.1, the Chief Officer Planning and Building Control is authorised to:

- i. approve submissions respect of developments under Regulations 3 and 4 of the Town and Country Planning General Regulations 1992 made by the council and to raise objection or raise no objection to such submissions made by Kent County Council; and
- ii. respond to formal consultations by statutory bodies and development proposals by government departments.

8.3.5 In cases of urgency or where the breach of planning control relates to householder development or development that has already been refused planning permission, after consultation (if practicable) with the Chair or vice Chair of the Planning and Licensing Committee, the Chief Officer Planning and Building Control - is authorised to:

- i. issue enforcement notices under Section 172 Town and Country Planning Act 1990;
- ii. serve a listed building preservation notice under 3 and 4 Planning (Listed Buildings and Conservation Area) Act 1990;
- iii. issue temporary stop notices under Section 171E Town and Country Planning Act 1990;
- iv. serve a stop notice under S183 Town and Country Planning Act 1990;
- v. make application for and serve injunctions under Section 187B Town and Country Planning Act 1990; and

- vi. serve urgent repairs notices under Section 54 Planning (Listed Buildings and Conservation Areas) Act 1990.

8.3.6 The Chief Officer Planning and Building Control is authorised to make directions under Article 4 Town and Country Planning (General Permitted Development) Order 1995 to take away rights conferred by Class A, part 2, Schedule 2 of the Order in relation to the erection, construction, maintenance, improvement or other alteration of a gate, fence, wall or other means of enclosure, subject to prior consultation with the relevant member of the Executive.

8.3.7 The Chief Officer Planning and Building Control is authorised to exercise all other functions relating to town and country planning.

8.3.8 The Chief Officer and Building Control Planning is authorised, after consultation (if practicable) with the Chair or vice-Chair of the Development Control Committee to arrange site visits for the committee where he/she considers it appropriate for the committee to visit the site. The Chief Officer Planning and Building Control can arrange such visits at any time during the processing of an application.

8.3.9 The Chief Officer Planning and Building Control may authorise other officers to exercise delegated powers on his/her behalf. In this case, the officers act in the name of the Chief Officer Planning and Building Control and he/she remains accountable for the action or decision.

8.4 Planning agreements

To negotiate Section 106 Agreements.

8.5 Listed buildings and conservation areas

To promote conservation of historic buildings and areas and make recommendations as to the designation of conservation areas.

8.6 Land of community value

To administer the list of land of community value.

9. SPECIFIC POWERS DELEGATED TO THE CHIEF OFFICER – PEOPLE & CUSTOMER SERVICE

9.1 To carry out those of the council's duties and functions as are shown in the table in appendix 2 to this scheme of delegation against the post title of the Second Tier Officer

APPENDIX 1 – Areas of Responsibilities – First Tier Officers

| Director of Finance | Director of Strategy and Resources | Director of Housing & Operations | |
|-------------------------------------|---|---|--------------|
| | Legal | Transportation | |
| Finance | Democratic services and Elections | Grounds Maintenance | Regeneration |
| Corporate Debt | Strategy and Policy (including Planning Policy) | Lifeline and Resilience and events | |
| Council Tax, Welfare and Benefits | Governance, Performance and Risk | Estates and Assets | |
| | Building Control | Engineering and Technical Services | |
| Procurement and Corporate Contracts | Development Management | Housing Landlord Functions | |
| | Customer Services | Housing Strategy and Needs | |
| | Human Resources | Strategic Development | |
| | Communication and Engagement | Environmental Enforcement and Protection | |
| | Waste and Street Cleansing/Waste Partnership | Environmental Health and Licensing | |
| | Digital and ICT Services | Community Partnerships | |
| | Corporate Health and Safety | Hythe Pool | |

APPENDIX 2 - Areas of Responsibilities – Second Tier Officers

| Chief Officer – People and Customer Services | Head of Corporate Policy | Head of Legal Services | Chief Officer – Planning and Building Control | Chief Officer – Place and Growth | Chief Officer - Regulatory and Community Services | Chief Officer – Corporate Estate and Development. | Chief Officer – Housing |
|---|--|-------------------------------|--|--|---|--|--|
| HR | Governance Performane and Risk (inc Information Management) | Legal Services | Development Management | Economic Growth, Business Development and Skills | Environmental Health and Licensing and Environment Protection | Regeneration and Development Programmes | Housing Landlord functions - HRA |
| Payroll | Policy & Strategy | | Planning Policy | Economic and place based Strategy | Lifeline and Resilience Events (Issuing of permits for events on Council land and Issuing of TPC road closures to events not held on council land but require a road closure). | HRA Regeneration and Development | Housing strategy, Housing Needs, Homeless-ness and Prevention. |
| OD and Engage-ment Training | | | Building Control | Town Centre Regeneration | Transportation | Corporate Estate and Asset Management | |
| Democratic Services & Elections | Leadership Support | | Sustainability and Climate Change Action | External funding | Waste Partnership (with DDC) | Engineering | |

| | | | | | | | |
|--------------------------|--|--|--|--|------------------------|--|--|
| Customer Services | | | | Grounds Maintenance & Technical Services | Community Partnerships | | |
| Digital and ICT services | | | | | Hythe Pool | | |

PART 8.2 – OFFICER EMPLOYMENT PROCEDURE RULES

1. RECRUITMENT AND APPOINTMENT

1.1 Declarations

All applicants for appointment to the Council will be required to disclose whether or not they are related to an officer and/or a councillor, or are the partner or married to a person who is related to an officer and/or a councillor.

No candidate so related to an officer and/or a Councillor will be appointed without the authority of the Head of Paid Service or an officer nominated by him or her.

1.2 Seeking support for appointment

Direct or indirect canvassing of officers and councillors in connection with an appointment will disqualify an applicant from that appointment.

Officers and councillors should not seek support for the appointment of any person to work within the Council, but this does not preclude a councillor or an officer from giving a written reference.

2. RECRUITMENT OF THE HEAD OF PAID SERVICE AND CHIEF OFFICERS

Where the Council proposes to appoint a Head of Paid Service or other chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

2.1.1 Draw up a statement specifying:

- a) The duties of the officer concerned; and
- b) Any qualifications or qualities to be sought in the person to be appointed.

2.1.2 Make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it.

2.1.3 Make arrangements for a copy of the statement in 2.1.1. above to be sent to any person on request.

2.2 Where a post has been advertised as set out in 2.1 above, the Council shall:

- a) Interview all qualified applicants for the post, or
- b) Select a shortlist of such qualified applicants and interview those included in the short list.

- 2.3** Where no qualified person has applied, the Council shall make further arrangements for advertisement in accordance with rule 2.1.2.

3. APPOINTMENT AND DISMISSAL OF THE HEAD OF PAID SERVICE

Appointment

- 3.1** The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a committee or sub-committee of the Council. That committee or sub-committee must include at least one Councillor from the Cabinet and shall be politically balanced. The Council must give approval before an offer of appointment is made.
- 3.2** The offer of an appointment to the post of Head of Paid Service must not be made by the Council until:
- 3.2.1** The relevant committee or sub-committee has notified the Chief People and Customer Services of the name of the person to be offered the post and any other information relevant to the appointment; and
- 3.2.2** The Chief People and Customer Services has notified every member of the Cabinet of:
- a) The name of the person recommended for appointment and any other information relevant to the appointment;
 - b) The period within which the Leader can make an objection to Chief Officer People and Customer Services about the person recommended for appointment, and either:
- 3.2.3** The Leader has, within the period specified in the notice in 3.2.2 b) above, notified the Council that neither he or she nor any other member of the Cabinet has any objection to the making of the offer; and
- 3.2.4** The Chief Officer People and Customer Services has notified the Council that no objection was received from the Cabinet within the relevant period, or
- 3.2.5** An objection is received from the Cabinet within the relevant period, but that the Council is satisfied, having taken advice from the Monitoring Officer, that the objection is not material to the appointment, or is not well founded.

Disciplinary Action

Decisions to initiate an investigation which might lead to disciplinary action, and the decision to suspend the Head of Paid Service will be made by the relevant committee (the committee established to fulfil this role is set out in Part 5 of this Constitution). The procedures the Council will follow in relation to action for disciplinary, capability or other reasons which may lead to dismissal, and the mechanism for appeals, will follow the relevant law and

the guidance issued by the Joint Negotiating Committee for Chief Executives of Local Authorities from time to time.

Dismissal

- 3.3** The full Council may approve the dismissal of the Head of Paid Service, monitoring officer, and Chief Finance Officer only following the recommendation of such a dismissal by a committee or sub-committee of the Council. That committee or sub-committee must include at least one councillor from the Cabinet and shall be politically balanced. The Council must agree to dismiss the Head of Paid Service, Monitoring Officer and Chief Finance Officer before a notice of dismissal is given.
- 3.4** Where the proposed dismissal arises from redundancy, permanent ill health or the expiry of a fixed term contract, the requirement to take into account the advice, views or recommendations of the Independent Panel as set out in rules 4 and 5 below do not apply. In all other cases, no dismissal of the Head of Paid Service, monitoring officer or chief finance officer can be considered by the Council unless the procedures in rules 4 and 5 have been followed.
- 3.5** A notice of dismissal from the post of Head of Paid Service must not be made by the Council until:
- 3.5.1** The relevant committee or sub-committee has provided the Chief Officer People and Customer Services with the relevant information about the proposed dismissal; and
- 3.5.2** The Chief Officer People and Customer Services has notified every member of the Cabinet of:
- a) The relevant information about the proposed dismissal;
 - b) The period within which the Leader can make an objection to the Chief Officer People and Customer Services to the proposed dismissal on behalf of the Cabinet, and either:
- 3.5.3** The Leader has, within the period specified in the notice in 3.6.2 b) above, notified the Council that neither he nor any other member of the Cabinet has any objection to the proposed dismissal; and
- 3.5.4** The Chief Officer People and Customer Services has notified the Council that no objection was received from the Cabinet within the relevant period, or
- An objection is received from the Cabinet within the relevant period, but that the Council is satisfied, having taken advice from the Monitoring Officer, or if the proposed dismissal is that of the monitoring officer, the deputy monitoring officer, that the objection is not material to the dismissal, or is not well founded.

4. APPOINTMENT AND DISMISSAL OF CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS

- 4.1** A committee or sub-committee of the Council will appoint or dismiss Chief Officers except where the dismissal is by reason of redundancy when it will be by the Head of Paid Service. The committee or sub-committee must include at least one member of the Cabinet and shall be politically balanced. A Chief Officer is an officer for whom the Head of Paid Service is directly responsible but does not include secretarial or administrative support officers reporting direct to the Head of Paid Service.
- 4.2** The Head of Paid Service and/or Chief Officers will appoint and dismiss deputy Chief Officers.
- 4.3** An offer of appointment to a chief officer or deputy chief officer post or a notice of dismissal from such a post must not be made by the committee or sub-committee or appointing officer or the person proposing to dismiss the officer until:
- 4.3.1** The committee or sub-committee or other appointing officer has notified the Head of Paid Service of the name of the person to be offered the post and any other information relevant to the appointment, or has provided the relevant information about the proposed dismissal; and
- 4.3.2** The Head of Paid Service has notified every member of the Cabinet of:
- a) The name of the person recommended for appointment and any other information relevant to the appointment, or the relevant information about the proposed dismissal, and
 - b) The period within which the Leader can make an objection (to the Head of Paid Service) to the person recommended for appointment, or to the proposed dismissal on behalf of the Cabinet, and either:
- 4.3.3** The Leader has, within the period specified in the notice in 4.3.2 b) above, notified the committee or sub-committee or appointing officer that neither s/he nor any other member of the Cabinet has any objection to the making of the offer or to the proposed dismissal; and
- 4.3.4** The Head of Paid Service has notified the committee or sub-committee or appointing officer that no objection was received from the Cabinet within the relevant period, or
- 4.3.5** An objection is received from the Cabinet within the relevant period, but that the committee or sub-committee or appointer is satisfied, having taken advice from the Monitoring Officer, that the objection is not material to the appointment or dismissal, or is not well founded.

5. OTHER APPOINTMENTS AND DISMISSALS

- 5.1** Appointments of or disciplinary action against officers at or below deputy chief officer are the responsibility of the Head of Paid Service or his nominee and may not be made by Councillors. Appointment of assistants to political groups will be made in accordance with the wishes of the relevant political

group. Such appointments and dismissals will be carried out in accordance with the appropriate policies and procedures of the Council.

6. DISMISSAL AND THE ROLE OF THE INDEPENDENT PANEL

- 6.1** The Head of Paid Service, the Monitoring Officer or the Chief Finance Officer (the relevant officer) may not be dismissed by the council unless the procedure set out below is followed.
- 6.2** The council has appointed a panel (the “Independent Panel”) or Independent Persons appointed under Section 28(7) Localism Act 2011.
- 6.3** Before the taking of a vote on whether or not to approve the dismissal of the relevant officer the council must take into account, in particular:
 - 6.3.1** any advice, views, or recommendations of the Independent Panel;
 - 6.3.2** the conclusions of any investigation into the proposed dismissal and;
 - 6.3.3** any representations from the relevant officer.
- 6.4.** The Council may pay remuneration, allowances or fees of the Independent Persons appointed to the Independent Panel provided that theses do not exceed the level of such remuneration, allowances or fees payable to those Independent Persons in respect of those persons’ role an Independent Person under the Localism Act 2011.

PART 8.3 – CODE OF CONDUCT FOR OFFICERS

1. INTRODUCTION

- 1.1** The public is entitled to expect the highest standards of conduct from all employees who work for local government. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist local authorities and their employees in their day-to-day work. The Code is produced in the light of the challenges that employees face in the new and more commercially orientated environment. This includes the introduction of, market testing, changes in the management of the housing services, management buy-outs, etc.

2. STANDARDS

- 2.1** Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality. Employees will be expected, without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to their chief officer or the monitoring officer any impropriety or breach of procedure.

3. DISCLOSURE OF INFORMATION

- 3.1** It is generally accepted that open government is best. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public. The Council itself may decide to be open about other types of information. Employees will be advised which information is and is not open and act accordingly.
- 3.2** Employees should not use any information obtained in the course of their employment for personal gain or benefit, and they should not pass it on to others who might use it in such a way. Any particular information received by an employee from a councillor which is of a purely personal nature and does not belong to the Council should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law.

4. POLITICAL NEUTRALITY

- 4.1** Employees serve the Council as a whole. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 4.2** Employees, whether or not politically restricted, must follow every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.

- 4.3** Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraphs 4.1 to 4.2.

5. RELATIONSHIPS

5.1 Councillors

Employees are responsible to the Council. For some, their role is to give advice to Councillors and all are there to carry out the Council's work. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

5.2 The Local Community and Service Users

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.

5.3 Contractors

All relationships of a business or private nature with external contractors, or potential contractors, should be made known (in accordance with the Council's Gifts and Hospitality rules, set out in paragraph 13). Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

5.4 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship. The declarations should be made, using the standard form, to:

- The appropriate Assistant Director or Chief Officer;
- The appropriate chief officer if the declaration is made by an assistant director or Chief Officer;
- The Head of Paid Service if the declaration is made by the chief officer.

5.5 All declarations are to be forwarded to the monitoring officer for retention centrally.

6. APPOINTMENT AND OTHER EMPLOYMENT MATTERS

6.1 Employees involved in appointments should ensure that these are made on the basis of merit in accordance with the Council's human resources policies. It would be unlawful for an employee to make an appointment, which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias,

employees should not be involved in an appointment where they are related to an applicant or have a close personal relationship outside work with him or her.

- 6.2** Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

7. OTHER EMPLOYMENT

7.1 Criteria for undertaking other employment

Employees wishing to undertake other employment in addition to their employment with this Council should not do so until approval has been given. All applications should be made, using the standard form, available from Human Resources.

- 7.2** As a general rule the Council will not prevent its employees from undertaking other employment providing the following criteria are satisfied.

- (a) Any such employment must not conflict or be detrimental to the Council's interests or in any way weaken public confidence in the conduct of the Council's business.
- (b) Employees working whole time will be limited to 10 hours additional employment a week with a maximum of 15 hours. Applications to work beyond the 10 hours will need to be considered by the Corporate Leadership Team.
- (c) Employees working part time will be limited to additional employment hours equivalent to whole time plus 10 hours per week with a maximum of 15 hours.
- (d) Applications to work beyond the 10 hours will be considered by the corporate leadership team.

- 7.3** Employees who wish to be able to work at other employment for ten hours or above per week should submit their application to the Chief Officer People and Customer Services for consideration by the Corporate Leadership Team. In respect of applications for less than ten hours employees should submit their applications, to the Chief Officer People and Customer Services.

- 7.4** In addition to the criteria outlined in 6.9 (a)-(d) other factors taken into account will include:

- (a) Whether the work will create a conflict of interest with the employee's duties for the Council;
- (b) The employee's work performance;
- (c) The employee's sickness absence record;

- (d) Whether the employee is studying for, or has failed to obtain, a professional qualification, which is being paid for by the Council.

7.5 Voluntary Work

Voluntary work is defined as any kind of work for which there is no payment and for which there is a significant, regular, or long-term commitment to undertake the work. Infrequent, short-term work such as a one-off fund-raising event, or occasional help would not fall within the definition of voluntary work and would, therefore, not be affected by this policy.

- 7.6** Employees wishing to be involved in voluntary work will not be subject to the same application requirement as for employees wishing to embark upon other paid employment.

- 7.7** Employees wishing to undertake voluntary work have a duty to register this as soon as it commences. Employees undertaking voluntary work have an obligation to inform their Assistant Director or Chief Officer on the standard form in writing, with details of the organisation and the nature of the work and the number of hours per week being worked.

- 7.8** In the case of employees undertaking voluntary work where the Assistant Director or Chief Service Officer is concerned that there is any:

- (a) Conflict of interests between the employee's official duties and the voluntary work;
- (b) Deterioration in the performance of the employee's official duties;
- (c) Likelihood of the employee failing to meet his/her obligations under the Council's Code of Conduct those cases will be referred to the Corporate Leadership Team for consideration and approval.

7.9 General Principles

- (a) Employees who commence other paid employment before approval is given will be subject to the Council's disciplinary procedure.
- (b) It will be the responsibility of the employee undertaking other employment, whether paid or on a voluntary basis to report any changes to his/her chief officer.
- (c) Applications approved and information regarding voluntary work will be kept on a central file together with an entry on the individual's personal file and will be reviewed on a six-monthly basis by Human Resources.
- (d) All applications to work above 10 hours, and registrations for voluntary work beyond 10 hours, or applications, which fall outside the policy criteria, will be considered by the Corporate Leadership Team.

8. PERSONAL INTERESTS

- 8.1** Employees must, on the standard form, declare to their Assistant Director or Chief Service Officer any non-financial interests that they consider could bring about conflict with the Council's interests.
- 8.2** Employees must ,on the standard form, declare to their Assistant Director or Chief Service Officer any financial interests which could conflict with the Council's interests.
- 8.3** Employees should, on the standard form, declare to their Assistant Director or Chief Service Officer of any membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.

9. EQUALITY ISSUES

- 9.1** All employees should ensure that the Council's Equality and Diversity Policy is complied with, in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

10. SEPARATION OF ROLES DURING TENDERING

- 10.1** Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 10.2** Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 10.3** Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 10.4** Employees contemplating a management buy-out should, as soon as they have formed a definite intent, inform their Assistant Director or chief Service officer and withdraw from the contract awarding processes.
- 10.5** Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

11. CORRUPTION

- 11.1** Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their

official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

12. USE OF FINANCIAL RESOURCES

- 12.1** Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

13. GIFTS AND HOSPITALITY AND OFFICERS' INTERESTS

13.1 Legal Position

The law relating to the acceptance of inducement or rewards is set out in the Bribery Act 2010. In summary this act provides that:

A person commits an offence if, directly or indirectly, they request, agree to or accept a bribe:

- Intending that a relevant function should be performed improperly, either by them or by a third party;
- When to do so, in itself, would be improper performance of a relevant function;
- As a reward for carrying out a relevant function improperly; or
- In anticipation or consequence that they (or someone else on their behalf) will perform a relevant function improperly.

In the last three cases, it does not matter if the person committing the offence knows or believes that the performance of the function was improper nor in the last case does it matter a person carrying out the action on their behalf was aware of this.

A relevant function is:

- Any function of a public nature;
- Any activity of connected with a business, trade or profession;
- Any activity carried out in the course of employment;
- Any activity carried out on behalf of a body of persons (corporate or unincorporated)

and is performed with one or more of the following expectations:

- It will be performed in good faith;
- It would be performed with impartiality;

- That by virtue of performing the activity the person doing so is in a position of trust.

The penalties on conviction, at the discretion of the court, are imprisonment with a maximum possible sentence on indictment of ten years or a fine.

There are, in addition, related common law criminal offences, as well as civil liability (on the part of both the receiver and the taker of a bribe) for any loss caused to the employing body. Staff will appreciate that the receipt of hospitality or acceptance of a gift is, in law, no different from the receipt of monies.

A gift or offer of hospitality may sometimes be so lavish that any reasonable person would consider that it is made with the intention of bribing. Even if it is not lavish, however, there may still be the possibility of bribery and each case would have to be taken on its merits.

13.2 Conduct of Public Service

Clearly, the duty of staff goes further than simply avoiding crime. As the Local Conditions of Service state:

“The public is entitled to demand of a Local Government Officer conduct of the highest standard, and public confidence in their integrity would be shaken were the least suspicion, however ill-founded, to arise that they could be in any way influenced by improper motives”.

The acceptance of gifts and hospitality, even on a modest scale may arouse suspicion and needs to be capable of public justification. If a member of staff is in any doubt about what to do about any offer of a gift or hospitality, the advice of a senior officer should be sought. The question to be considered is whether the acceptance is likely to raise reasonable doubts about the person's integrity.

The issue of integrity is of utmost importance. A number of employees are in the position where it would not be difficult for the public to perceive conduct of an improper nature. This ‘in fact’ may of course have no substance.

However, it is essential that employees must not place themselves in a position where they are taking improper advantage of this position. Examples of this might include use of Council equipment and other resources without the specific permission of their Assistant Director and chief officer. Such permission would normally be given for operational reasons.

13.3 Gifts

Although the offer of casual gifts by contractors, organisations, firms or individuals may not be in any way connected with the performance of a relevant function so as to constitute an offence, the offer should nevertheless, as a general rule, be declined. The only exceptions to the rule are:

- small gifts or office equipment or stationery given by way of trade advertisements to a range of officers or for use in the office. Nothing more elaborate than calendars, pocket diaries, rulers or blotters would fall within this exception;
- small gifts of only token value given on the conclusion of an official courtesy visit, e.g. to a factory or other premises;
- gifts to a member of staff or a member of their family where the donor is a personal friend. Extreme care needs to be taken with gifts in this category, bearing in mind the legal position described above. The section about Officers' Interests deals with the need to let senior officers know, in certain circumstances, about friendship with people likely to do business with the Council.

Gifts which do not fall clearly within these exceptions and which are offered in person to a member of staff should be politely declined, and the person or organisation offering it should be told of the Council's rule about gifts.

If a gift outside the exceptions arrives without warning it must be handed over to the appropriate Assistant Director/chief officer to decide whether the gift should be returned (or passed to some good cause) and to ensure that the donor is informed of what has happened.

These rules apply also, of course, to offers by firms to members of staff in a personal capacity, of discounts going beyond those on general offer.

13.4 Hospitality

Offers of hospitality should always be approached with caution. Members of staff should ask themselves what a member of the public, who may be critical or suspicious, might think; and offers of hospitality where any suggestion of improper influence is possible must be refused. Hospitality should only be accepted when it is reasonably incidental and on a scale appropriate to the occasion or the circumstances. Acceptance may make it difficult to avoid some obligation to the party offering it and might later be thought to have affected an officer's impartiality in dealing with official matters.

Some offers of hospitality are clearly unacceptable; an offer of holiday accommodation is one example. Invitations to sporting fixtures or evenings at the theatre are acceptable only when they are clearly required for the conduct of Council business. Any hospitality on a lower scale than this may also be unacceptable. No absolute dividing-line can be laid down.

There is an important difference between, for example, attendance in an official capacity at a function organised by a public authority and accepting hospitality from a private individual or firm standing to benefit from the goodwill of the Council. Particular care should be taken in dealing with contractors, developers and firms or individuals in a comparable position.

However, it will not always be possible or even desirable to reject offers of hospitality on a modest scale. Acceptable examples would include official

hospitality of a kind mentioned above, a drink and a sandwich following a site visit or a working lunch of a modest standard to enable the parties to continue to discuss business. The decision whether to accept or not must depend on the circumstances in each case. Where it is clearly evident that the work of the Council would be facilitated, invitations to attend receptions, luncheons, cocktail parties and the like may be accepted under the following rules:

- (a) No member of staff may accept an invitation without first obtaining the approval of the Assistant Director or chief officer as detailed below. A chief officer shall obtain the approval of the Head of Paid Service before accepting a personal invitation. In exceptional circumstances, where it is not possible to seek prior approval, the facts should be reported immediately afterwards.
- (b) Invitations involving attendance outside normal working hours may be accepted only on the authority of a chief officer. A chief officer shall obtain the approval of the Assistant Director or Chief Service Officer before accepting a personal invitation.

The declarations should be made, using the standard form, to:

- The appropriate Assistant Director or Chief Service Officer;
- The appropriate chief officer if the declaration is made by an Assistant Director or Chief Service Officer;
- The Head of Paid Service if the declaration is made by the chief officer.

13.5 All declarations are to be forwarded to the Monitoring Officer for retention centrally.

13.6 Officers' Interests or Personal Relationships with Outside Bodies

The Council has established a voluntary register of interests of staff, which is maintained by the monitoring officer. Those members of staff, including chief officers, whose responsibilities are such that they may be in a position to influence the selection of contractors or consultants, the granting of planning and other consents or the conduct of negotiations affecting land and property and those officers with responsibilities associated with confidential information concerning development are asked to complete returns for inclusion in the register. The list of officers is to be reviewed annually.

It is recommended that the following interests should be declared (indicating the existence of an interest rather than its detailed nature):

- (a) All paid employment and occupations including directorships, consultancies, and any sponsorship of a member of staff by any organisation or person;

- (b) All land or other real property in the area of the authority owned freehold or held on a lease granted for one year or more, or in respect of which an option to purchase is held;
- (c) Companies or other bodies where the member of staff has a beneficial interest in securities of a nominal value greater than £1,000 or 1/100th of the issued share capital, whichever is less, but the amount of the holding not to be stated;
- (d) Any tenancy of premises owned by the Authority;
- (e) Any membership, by election or co-option, of another authority.

Officers are advised that entries should include the interests of a spouse/partner where known to accord with the law relating to the declaration of pecuniary interests.

Interests which might conflict with the impartial performance of an officer's functions are not, however, confined to financial ones. Ties of blood or friendship or membership of clubs and organisations may be equally potent influences and should be declared. The following rules and guidance are aimed at avoiding conflict between interest and duty where possible.

No officer, partnership of which an officer is a partner or company of which an officer is a director, shall apply for this Council's Contracts.

All officers involved in the award or management of contracts shall declare on the standard form, or as set out below, any association or friendship with any contractor on any part of the Council's Select List of Contractors. This shall be recorded in the Register.

The declarations should be made, using the standard form, to:

- The appropriate Director or Chief Service Officer;
- The appropriate chief officer if the declaration is made by an Director or Chief Service Officer; or
- The Head of Paid Service if the declaration is made by the Chief Officer.

All declarations are to be forwarded to the monitoring officer for retention centrally.

Any officers engaged in the consideration or determination of any application for any contract, permission, grant, approval or consent is required to declare on the standard form, as set out below, any interest in or association or friendship with any person or body who is known to be, or who the officer considers may in the future be, an applicant in the field of work in which that officer is engaged.

The declarations should be made, using the standard form, to:

- The appropriate Director or Chief Service Officer;
- The appropriate chief officer if the declaration is made by a Director or Chief Service Officer; or
- The Head of Paid Service if the declaration is made by the chief officer.

All declarations are to be forwarded to the monitoring officer for retention centrally.

A Chief Officer to whom any such interest, association or friendship is declared shall take appropriate steps to ensure that the officer concerned is not placed in a position where private interests and official duties may conflict.

13.7 Disciplinary Procedure

Failure to comply with these guidelines is an offence and will be considered under the Council's Disciplinary Procedures. However, each case will be considered on its merits.

14. REGISTER

A register for use in accordance with this Code and the Gifts and Hospitality Policy will be maintained by the monitoring officer.

All employees should make appropriate declarations within this register.

In relating to every offer of a gift or hospitality (apart from the exceptions for gifts at the drink and sandwich level of hospitality), offered to a member of staff in their service unit, including themselves, the following information will be (briefly) recorded:

- The person or body making the offer;
- The name of staff to whom the offer was made;
- The nature of the offer, e.g. Gift or hospitality, offered and in what circumstances;
- The action taken by the officer concerned;
- The action taken by the Assistant Director /Chief Service Officer.

In general, gifts will either fall within the exceptions, or ought to be refused; so far as gifts are concerned, therefore, the register will mainly record offers.

Every member of staff who receives or is offered a gift or is offered hospitality which these guidelines require to be registered, is required to report the circumstances to their Director/Chief Service Officer and chief officer so that the record may be kept. Every member of staff is entitled to see what is recorded in the register against their name and the Head of Paid Service will also have access to the register.

FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 9 – COUNCILLORS

| CONTENTS | | Page Ref |
|-----------------|--|--------------------|
| 9.1 | Local Code of Conduct for Councillors | ‘Part 9/2’ |
| 9.2 | Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011 | ‘Part 9/16’ |
| 9.3 | Protocol for Councillor/Employee Relations | ‘Part 9/42’ |
| 9.4 | Planning Code | ‘Part 9/55’ |
| 9.5 | Licensing Code | ‘Part 9/66’ |
| 9.6 | Delegation to Ward Councillors | ‘Part 9/77’ |
| 9.7 | Ward Member Role Descriptions | ‘Part 9/78’ |
| 9.8 | Members’ Allowances’ Scheme | ‘Part 9/80’ |

PART 9 – COUNCILLORS

PART 9.1 – LOCAL CODE OF CONDUCT FOR COUNCILLORS

1. PREAMBLE

- 1.1** The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- 1.2** The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- 1.3** This Preamble and Annex 1 do not form part of the Code, but you should have regard to them, as they will help you to comply with the Code.
- 1.4** If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- 1.5** In accordance with Section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
- a) Fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming, or being re-elected or re-appointed, a Member or Co-opted Member of the Authority;
 - b) Fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered, or is not the subject of a pending notification to the Monitoring Officer;
 - c) Fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - d) Fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of disclosing it, at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
 - e) Take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
 - f) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- 1.6** Any written allegation, received by the Authority, that you have failed to comply with the Code, will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply

with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

THE CODE

1. INTERPRETATION

In this Code:

1.1 ‘Associated Person’ means (either in the singular or in the plural):

- a) A family member or any other person, or body, with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- b) Any person or body who employs or has appointed you or such persons, any firm in which you or they are a partner, or any company of which you or they are directors; or
- c) Any person or body in whom you or such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- d) Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- e) Any body in respect of which you are in a position of general control or management:
 - i. exercising functions of a public nature; or
 - ii. directed to charitable purposes; or
 - iii. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

1.2 ‘Authority’ means the District Council of Folkestone and Hythe.

1.3 ‘Authority Function’ means any one or more of the following interests that relate to the functions of the Authority:

- a) Housing – where you are a tenant of the Authority, provided that those functions do not relate particularly to your tenancy or lease; or
- b) School meals, or school transport and travelling expenses – where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;

- c) Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 – where you are in receipt of, or are entitled to the receipt of, such pay;
- d) An allowance, payment or indemnity given to members of the Authority;
- e) Any ceremonial honour given to members of the Authority;
- f) Setting council tax or a precept under the Local Government Finance Act 1992.

1.4 **‘Code’** means this Code of Conduct.

1.5 **‘Co-opted Member’** means a person who is not an elected member of the Authority but who is a member of:

- a) Any committee or sub-committee of the authority; or
- b) Represents the Authority on any joint committee, or joint sub-committee, of the Authority; and
- c) Who is entitled to vote on any question that falls to be decided at any meeting.

1.6 **‘Disclosable Pecuniary Interest’** means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time), as set out in Annex 2, and where either it is:

- a) Your interest; or
- b) An interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners, and provided you are aware that the other person has the interest.

1.7 **‘Interests’** means Disclosable Pecuniary Interests and Other Significant Interests.

1.8 **‘Meeting’** means any meeting of:

- a) The Authority;
- b) The executive of the Authority;
- c) Any of the Authority’s or its executive’s committees, sub-committees, joint committees and/or joint sub-committees.

1.9 **‘Member’** means a person who is a member of the Authority and includes a Co-opted Member.

1.10 **‘Other Significant Interest’** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the authority which:

- a) Affects the financial position of yourself and/or an Associated Person to a greater extent than the majority of:-
 - i. other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - ii. (in other cases) other council tax payers, ratepayers or inhabitants of the Authority’s area; or
- b) Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an Associated Person;

and which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

1.11 **‘Register of Members’ Interests’** means the Authority’s register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

1.12 **‘Sensitive Interest’** means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

2. SCOPE

A member must comply with this Code whenever he/she acts in their capacity as a Member or Co-opted Member of the Authority.

3. GENERAL OBLIGATIONS

3.1 A member must, when using or authorising the use by others of the resources of the Authority:

- a) Act in accordance with the Authority’s reasonable requirements; and
- b) Ensure that such resources are not used improperly for political purposes (including party political purposes).

3.2 A member must not:

- a) Bully any person;
- b) Intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any

investigation or proceedings, in relation to an allegation that a Member has failed to comply with this Code;

- c) Do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- d) Disclose information given to the member in confidence by anyone, or information acquired by the member which he/she believes, or ought reasonably to be aware, is of a confidential nature, except where:
 - i. he/she has the written consent of a person authorised to give it; or
 - ii. he/she is required by law to do so; or
 - iii. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - iv. the disclosure is:
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the Authority;
- e) Prevent another person from gaining access to information to which that person is entitled by law;
- f) Conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or the Authority into disrepute;
- g) Use or attempt to use his/her position as a Member improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

4. REGISTERING DISCLOSABLE PECUNIARY INTERESTS

- 4.1** A member must, before the end of 28 days beginning with the day he/she becomes a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
- 4.2** In addition, a Member must, before the end of 28 days beginning with the day that he/she becomes aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.

- 4.3** Where the Member has a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, he/she must notify the Monitoring Officer before the end of 28 days beginning with the day he/she becomes aware of the existence of the interest.

5. DECLARING INTERESTS

- 5.1** Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, the member must comply with the disclosure procedures set out below.

- 5.2** Where the member is present at a meeting and has a Disclosable Pecuniary Interest or Other Significant Interest (and he/she is aware that they have such an interest) in any matter to be considered, or being considered, at the meeting, the member must:

- a) Disclose the Interest; and
- b) Explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation:
- c) Not participate in any discussion of, or vote taken on, the matter at the Meeting; and
- d) Not seek improperly to influence a decision about that business; and
- e) Withdraw from the meeting room in accordance with the Authority's procedure rules whenever it becomes apparent that the business is being considered.

- 5.3** Where a member has an Other Significant Interest in any business of the Authority, he/she may:

- a) In accordance with the Authority's procedure rules attend and observe the meeting from the place reserved in the meeting room for the public but he/she may not participate in any discussions of, or vote taken on, the matter at the meeting (subject to the provisions of sub-paragraph b) below;
- b) Make representations, answer questions or give evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purposes. Having made his/her representations, given evidence or answered questions he/she must:
 - i. not participate in any discussions of, or vote taken on, the matter at the meeting; and

- ii. withdraw to the place in the meeting room reserved for the public in accordance with the Authority's procedure rules.

5.4 Where a member has a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where he/she is acting alone in the course of discharging a function of the Authority (including making an executive decision), the member must:

- a) Notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
- b) Not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
- c) Not seek improperly to influence a decision about the matter.

6. SENSITIVE INTERESTS

6.1 Where the member considers that the information relating to any of his/her Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

6.2 The member must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.

6.3 The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that the member will not be required to disclose the nature of the Sensitive Interest, but merely the fact that they hold an interest in the matter under discussion.

7. GIFTS AND HOSPITALITY

7.1 The member must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by him/her (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which he/she has been elected or appointed or when he/she are acting as representative of the Authority. The member must also register the source of the gift, benefit or hospitality.

- 7.2** Where any gift, benefit or hospitality the member has received or accepted relates to any matter to be considered, or being considered at a Meeting, he/she must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to him/her and how the business under consideration relates to that person or body. The member may participate in the discussion of the matter and in any vote taken on the matter, unless he/she has an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- 7.3** The member must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date he/she first registered the gift, benefit or hospitality.
- 7.4** The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

8. DISPENSATIONS

- 8.1** The Audit and Governance Committee may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a member with an Interest, grant a dispensation relieving the member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- 8.2** A dispensation may be granted only if, after having had regard to all relevant circumstances, the Audit and Governance Committee, considers that:
- a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
 - b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
 - c) granting the dispensation is in the interests of persons living in the authority's area; or
 - d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
 - e) it is otherwise appropriate to grant a dispensation.
- 8.3** The Monitoring Officer may also grant dispensations to members, to speak only, or to speak and vote where:

- a) so many members of the decision-making body have Disclosable Pecuniary or Other significant Interests in a matter that it would impede the transaction of the business; or
- b) without a dispensation, no member of the executive would be able to participate on a particular item of business;

8.4 The Monitoring Officer may, in consultation with the Chair (or in his/her absence the Vice-Chair) of the Audit and Governance Committee, grant dispensations to speak and/or vote, where it is not possible to convene a meeting of that committee and where the application for dispensation is made on any of the following grounds:

- a) Without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- b) That the Authority considers that the dispensation is in the interests of persons living in its area; or
- c) Where the Authority considers that it is otherwise appropriate to grant a dispensation.

8.5 In making the decision, the Monitoring Officer shall have regard to the following criteria:

- a) The nature of the member's interest and whether allowing them to participate would damage public confidence in the conduct of the authority's business.

If public confidence would be damaged then such an application would be likely to be refused. It is unlikely that it would be appropriate, therefore, to grant a dispensation to a member who has an interest arising as a result of an effect on their personal financial position or on that of a relative.

- b) The interest is common to the member and a significant proportion of the general public.
- c) The participation of the member, in the business that the interest relates to, is justified by the member's particular role or expertise.
- d) The business that the interest relates to is about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee, and the member's interest is not a financial one.

8.6 In circumstances such as these, the committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

- 8.7** Any dispensations granted shall be reported back to the next meeting of the Audit and Governance Committee.
- 8.8** A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- 8.9** Paragraph 5, above, does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

Reviewed 5 May 2021

ANNEX 1 – THE SEVEN PRINCIPLES OF PUBLIC LIFE

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, members are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached.

SELFLESSNESS: Members should act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate.

INTEGRITY: Members should exercise independent judgment and not compromise their position by placing themselves under obligations to outside individuals or organisations who might seek to influence him/her in the performance of their official duties. Members should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. Members should value their colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. Members should treat people with respect, including the organisations and public they engage with and those they work alongside.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, members should make choices on merit. Members should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. Members should champion the needs of the whole community and especially their constituents, including those who did not vote for them.

ACCOUNTABILITY: Members are accountable to the public for their decisions and actions and should fully co-operate with whatever scrutiny is appropriate to their office.

OPENNESS: Members should be as open and as transparent as possible about all the decisions and actions that they take to enable residents to understand the reasoning behind those decisions and to be informed when holding them and other Members to account. Members should give reasons for their decisions and restrict information only when the wider public interest or the law clearly demands it. Members should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

HONESTY: Members have a duty to declare interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. Members should not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing constituents'

casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

LEADERSHIP: Through leadership and example members should promote and support high standards of conduct when serving in their public post. Members should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

ANNEX 2 – DISCLOSABLE PECUNIARY INTERESTS, AS PRESCRIBED BY REGULATIONS, ARE AS FOLLOWS:

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

‘the Act’ means the Localism Act 2011

‘body in which the relevant person has a beneficial interest’ means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

‘director’ includes a member of the committee of management of an industrial and provident society

‘land’ excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

‘M’ means the person M referred to in section 30 of the Act

‘member’ includes a co-opted member

‘relevant authority’ means the authority of which M is a member

‘relevant period’ means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act

‘relevant person’ means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

‘securities’ means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

| Interest | Description |
|---|---|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | <p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour</p> |

| | |
|---------------------|--|
| | Relations (Consolidation) Act 1992. |
| Contracts | <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>a) under which goods or services are to be provided or works are to be executed; and</p> <p>b) which has not been fully discharged.</p> |
| Land | Any beneficial interest in land which is within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | <p>Any tenancy where (to M's knowledge):</p> <p>a) the landlord is the relevant authority; and</p> <p>b) the tenant is a body in which the relevant person has a beneficial interest.</p> |
| Securities | <p>Any beneficial interest in securities of a body where:</p> <p>a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> |

PART 9.2 - ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1. CONTEXT

These arrangements are made under section 28 of the Localism Act 2011. They set out the process that the District Council has adopted for dealing with complaints that an elected or co-opted member or parish/town councillor has failed to comply with the Code of Conduct.

2. INTERPRETATION

2.1 **‘District Council’** means the District Council of Folkestone and Hythe.

2.2 **‘Code of Conduct’** means the Code of Conduct, which the District (and Parish Council) has adopted under section 27(2) of the Localism Act 2011.

2.3 **‘Complainant’** means a person who has submitted a complaint, in accordance with these Arrangements, alleging that a Subject Member has breached the Code of Conduct.

2.4 **‘Disclosable Pecuniary Interest’** means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time), as set out in Annex 2 to the Code of Conduct.

2.5 **‘Independent Person’** means a person, or persons, appointed by the District Council under section 28(7) of the Localism Act 2011:

a) Whose views must be sought and taken into account by the District Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;

b) Who may be consulted by the Subject Member about the complaint.

2.6 **‘Investigating Officer’** means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the District Council, an officer of another authority or an external investigator.

2.7 **‘Monitoring Officer’** is a senior officer of the District Council who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the District Council nominated by the Monitoring Officer to act on their behalf.

2.8 **‘Parish Council’** means the relevant parish/town council within the District of Folkestone and Hythe.

2.9 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.

2.10 'Subject Member' means an elected member or co-opted member of the District [or Parish Council], against whom a complaint has been made alleging a breach of the Code of Conduct.

3. APPOINTMENT OF INDEPENDENT PERSON(S)

3.1 The District Council shall appoint the Independent Person(s) (and any substitute), in accordance with the requirements of section 27 (7) of the Localism Act 2011, and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 upon such terms as to remuneration and expenses as may be determined by the District Council from time to time.

3.2 The Independent Person(s) shall be treated as if they were a member of the District Council for the purposes of the District Council's arrangements for indemnifying and insuring its Members.

4. MAKING A COMPLAINT

4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the complaint form at the end of Annex 1 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance. Complaints can also be made using the online form, which can be found at <https://www.folkestone-hythe.gov.uk/your-council/your-councillors/complaints-against-councillors>

4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld, at the Complainant's request, if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 1 to these Arrangements).

4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex 1 to these Arrangements.

5. CRIMINAL CONDUCT

5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, a member:

- a) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;

- b) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
- c) Fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- d) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day it is disclosed at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- e) Take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- f) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 1 to these Arrangements.

6. ANONYMOUS COMPLAINTS

Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer in consultation with the Independent Person, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint.

7. ROLE OF INDEPENDENT PERSON

The Independent Person must be consulted and have his/her views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

8. PRELIMINARY TESTS

8.1 The Monitoring Officer will, in consultation with the Independent Person, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 1 to these Arrangements.

- 8.2** In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 1 may either be extended by the Monitoring Officer, or the Monitoring Officer may act alone in taking the decision or action.

9. INFORMAL RESOLUTION

The Monitoring Officer, in consultation with the Independent Person, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements.

10. INVESTIGATION

- 10.1** If the Monitoring Officer, in consultation with the Independent Person, decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.

- 10.2** The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

11. HEARING

If the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Audit and Governance Committee to determine the outcome of the complaint, in accordance with Annex 3 to these Arrangements.

12. SANCTIONS

Where a Subject Member has been found by the Audit and Governance Committee to have breached the Code of Conduct, the Audit and Governance Committee may apply any one or more sanctions in accordance with paragraph 4 of Annex 3 to these Arrangements.

13. APPEAL

There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Audit and Governance Committee.

14. REVISION OF THESE ARRANGEMENTS

The District Council may, by resolution, agree to amend these Arrangements and has delegated to the Monitoring Officer, and the Audit and Governance Committee, the right to depart from these Arrangements, where considered expedient to do so, in order to secure the effective and fair consideration of any matter.

ANNEX 1 – PROCEDURE ON RECEIPT OF A COMPLAINT

1. PRELIMINARY TESTS

1.1 The complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below:

1.2 Legal jurisdiction criteria test:

- a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- b) Was the person complained of a member of the District or Parish Council at the time of the alleged conduct?
- c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- f) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities, etc.

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 30 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

1.4 Local assessment criteria test:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';

- e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- f) The alleged misconduct happened more than 3 months ago;
- g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- k) The complaint is about a deceased person;
- l) The complaint is about a person who is no longer a District or Parish Councillor or Co-opted Member.

1.5 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly, with reasons, normally within 30 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

2. NOTIFICATION OF COMPLAINT TO SUBJECT MEMBER

2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member (and, if applicable, the Parish Clerk).

2.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

3. ASKING FOR ADDITIONAL INFORMATION

The Monitoring Officer may ask the Complainant and the Subject Member (and, if applicable, the Parish Clerk) for additional information before deciding how to deal with the complaint.

4. WHAT PROCESS TO APPLY – INFORMAL RESOLUTION OR INVESTIGATION AND/OR NO ACTION

4.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation [or following an investigation] (see paragraph 6 below). Where the Subject Member or the Monitoring Officer or the District or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Monitoring Officer, in consultation with the Independent Person, may refer the complaint for investigation when:

- a) It is serious enough, if proven, to justify the range of sanctions available to the Audit and Governance Committee (see paragraph 4 of Annex 3 to these Arrangements);
- b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the District or Parish Council and there is no other avenue left to deal with it, short of investigation, and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

4.3 Where the complaint is referred for investigation, the Monitoring Officer may appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 2 to these Arrangements.

4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and, if the complaint passes that test, he may pass the complaint to the police. Where a Complainant has been advised to refer a matter to the police, or the Monitoring Officer has referred the matter to the police, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.

4.5 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:

- a) On-going criminal proceedings or a police investigation into the Subject Member's conduct;

- b) Investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
- c) The investigation might prejudice another investigation or court proceedings;
- d) On-going investigation by another prosecuting or regulatory authority;
- e) Genuine long term (3 months or more) unavailability of a key party;
- f) Serious illness of a key party.

4.6 Normally within 60 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template below:

- a) Not to refer the complaint for investigation; or
- b) To refer the complaint for investigation; or
- c) To apply the informal resolution process either before or after an investigation; or
- d) Following investigation, to refer the complaint to the Audit and Governance Committee; or
- e) To take no action and close the matter; or
- f) To refer the complaint to the relevant political group leader for action.

4.7 The decision notice will be published on the District Council's website. There is no right of appeal against the Monitoring Officer's decision. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

5. CONFIDENTIALITY

5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assesses the complaint (see paragraph 1 above).

5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an

investigation. The Monitoring Officer may withhold the Complainant's identity if they are satisfied that the Complainant has reasonable grounds for believing that they or any other person (e.g. a witness):

- a) Is either vulnerable or at risk of threat, harm or reprisal;
- b) May suffer intimidation or be victimised or harassed;
- c) Works closely with the Subject Member and are afraid of the consequences, e.g. fear of losing their job;
- d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- e) May receive less favourable treatment, because of the seniority of the person they are complaining about, in terms of any existing District or Parish Council service provision or any tender/contract they may have with, or are about to submit to the District or Parish Council.

OR where early disclosure of the complaint:

- a) May lead to evidence being compromised or destroyed; or
- b) May impede or prejudice the investigation; or
- c) Would not be in the public interest.

5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;
- b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, by the

Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. INFORMAL RESOLUTION

6.1 The Monitoring Officer may, in consultation with the Independent Person, seek to resolve the complaint informally, without the need for an investigation or a hearing (following an investigation). The Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related District or Parish Council procedures; or
- b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- d) The conduct complained of appears common to a number of members of the District or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other District or Parish Council procedures, etc; or
- e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the District or [Parish Council]; or
- g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- h) The complaint consists of allegations and retaliatory allegations between councillors; or
- i) The complaint consists of allegations about how formal meetings are conducted; or
- j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to

other councillors, including the whole District or Parish Council, where it may be useful to address systemic behaviour:

- a) Training;
- b) Conciliation/mediation;
- c) Mentoring;
- d) Apology;
- e) Instituting changes to the District or Parish Council's procedures;
- f) Conflict management;
- g) Development of the District or Parish Council's protocols;
- h) Other remedial action by the District or Parish Council;
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

6.4 If the Subject Member is agreeable to, and complies with, the informal resolution process, the Monitoring Officer will report the matter to the Audit and Governance Committee and, if applicable, the Parish Council for information, but will take no further action against the Subject Member.

6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Audit and Governance Committee.

Councillors' Code of Conduct Complaint Form

Your Details

1. Please provide us with your name and contact details.

Your address and contact details will not usually be released, unless it is necessary to deal with your complaint. However, we will tell the following people that you have made this complaint:-

The member(s) you are complaining about;
The Monitoring Officer;
The parish or town clerk (if applicable).

We will provide them with your name and a summary of your complaint. In certain circumstances, it may be necessary or appropriate for us to give them full details of your complaint, if this enables us to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 5 of this form.

| | |
|---------------------------|--|
| Title: | |
| First name: | |
| Last name: | |
| Address: | |
| Daytime telephone: | |
| Evening telephone: | |
| Mobile telephone: | |
| Email address: | |

2. Please tell us which complainant type best describes you:

- ☐ Member of the public
- ☐ An elected or co-opted member of an authority
- ☐ An independent member of the Audit and Governance Committee
- ☐ Member of Parliament
- ☐ Local authority Monitoring Officer
- ☐ Other council officer or authority employee
- ☐ Other (please give details) _____

- 3. Please provide us with the name of the councillor(s) you believe has/have breached the Code of Conduct and the name of his/her/their authority/authorities:**

| Title | First name | Last name | Council or authority name |
|--------------|-------------------|------------------|----------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

- 4. Please explain, in this section, what the councillor has done that you believe breaches the Code of Conduct.**

If you are complaining about more than one councillor, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when s/he (acting in consultation with the Independent Person) decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted him/herself in a manner which could reasonably be regarded as bringing his/her office, or the authority, into disrepute, you should state what it was that s/he said or did.
- You should provide the dates of the alleged incidents, wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details, if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

5. Only complete this section if you are requesting that your identity is kept confidential.

In the interests of fairness and natural justice, we believe that members, who are the subject(s) of a complaint, have a right to know who has made the complaint and be provided with a summary of the complaint. We are unlikely to withhold your identity, or the details of your complaint, unless you have good reason to believe that we should.

Please note that requests for confidentiality, or requests for suppression of complaint details, will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that, in certain exceptional circumstances, where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name, even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

- 6. Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.**

If you need any support in completing this form, please let us know as soon as possible by telephoning 01303 853000.

Signed: _____

Date: _____

Return address: The Monitoring Officer
Folkestone and Hythe District Council
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY

ANNEX 2 – PROCEDURE FOR INVESTIGATING THE COMPLAINT

1. PRELIMINARIES

- 1.1** The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2** The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3** The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4** Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5** The Investigating Officer will not make recommendations on sanctions.
- 1.6** Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
 - a) provide details of the complaint to the Subject Member;
 - b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
 - c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
 - d) request contact details of any potential witnesses;
 - e) require that confidentiality is maintained and that the complaint not be disclosed, members or otherwise, as may be required by law or regulation – the fact that an investigation is being conducted does not need to remain confidential.
- 1.7** It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8** The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Audit and Governance Committee.

2. THE DRAFT REPORT

- 2.1** On the conclusion of their investigation and/or when the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT), to the Monitoring Officer, for review.
- 2.2** Following review of the draft report by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be marked 'confidential' and will detail:
- a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
 - b) A summary of the complaint;
 - c) The Subject Member's response to the complaint;
 - d) Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
 - e) A list of any documents relevant to the matter;
 - f) A list of those persons/organisations who have been interviewed;
 - g) A statement of the Investigating Officer's draft findings of fact and reasons;
 - h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
 - i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 2.3** Once the Investigating Officer has determined that the responses received from the Subject Member and/or the Complainant add nothing of substance to the investigation, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled FINAL.

3. CONSIDERATION OF INVESTIGATING OFFICER'S FINAL REPORT

- 3.1** The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.
- 3.2** Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct, they will

inform the Parties, in writing, that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

- 3.3** Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either take no action or seek informal resolution or refer the matter for consideration by the Audit and Governance Committee in accordance with the relevant procedure detailed in this Annex.

ANNEX 3 – HEARING PROCEDURE

1. RULES OF PROCEDURE

- 1.1** These rules of procedure shall apply to the Audit and Governance Committee and the Joint Standards Hearing Committee when considering the Investigating Officer's report under these arrangements.
- 1.2** Where the Subject Member is a Parish Councillor the hearing will be conducted by the Joint Standards Hearing Committee. The Joint Committee consists of two voting elected district councillors drawn from the Audit and Governance Committee and two voting parish/town representatives appointed by the parish/town councils. Reference to the Audit and Governance Committee in these arrangements shall be deemed, where appropriate, to be a reference to the Joint Standards Hearing Committee.
- 1.3** The quorum for a meeting of the Audit and Governance Committee, under these rules of procedure, is two elected Members. The quorum for a meeting of the Joint Standards Hearing Committee is two, with a district councillor and parish/town representative present. The Chairship of the joint committee shall alternate between a district councillor and a parish/town representative, with the Chairship taken first by a district councillor.
- 1.4** The Independent Person's views must be sought and taken into consideration before the Audit and Governance Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Audit and Governance Committee in private) but in the event that this is not possible, may submit their views on the complaint to the Audit and Governance Committee in writing instead.
- 1.5** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Audit and Governance Committee. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A of the Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Audit and Governance Committee, where it is likely that confidential or exempt information will be disclosed.
- 1.6** Once a hearing has started, the District Council's rules of substitution do not apply to the Audit and Governance Committee proceedings.
- 1.7** All matters/issues before the Audit and Governance Committee will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 1.8** Where the Subject Member fails to attend the Audit and Governance Committee and where the Audit and Governance Committee is not satisfied

with their explanation for their absence from the hearing, the Audit and Governance Committee may, in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Audit and Governance Committee may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.

2. RIGHT TO BE ACCOMPANIED BY A REPRESENTATIVE

The Subject Member may choose to be accompanied and/or represented at the Audit and Governance Committee by a fellow councillor, friend or colleague.

3. THE CONDUCT OF THE HEARING

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- a) Elect a Chair (in the case of the Audit and Governance Committee, only if the Chair and Vice-Chair are absent);
- b) Apologies for absence;
- c) Declarations of interests;
- d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.8 above);
- e) Introduction by the Chair, of members of the Audit and Governance Committee, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- f) To receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

3.2 The Chair may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

3.3 The Audit and Governance Committee may adjourn the hearing at any time.

3.4 Presentation of the complaint

- a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted;
- b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- c) The Audit and Governance Committee may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

3.5 Presentation of the Subject Member's case

- a) The Subject Member or their representative presents their case and calls their witnesses;
- b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- c) The Audit and Governance Committee may question the Subject Member and any witnesses called by the Subject Member.

3.6 Summing up

- a) The Investigating Officer sums up the complaint;
- b) The Subject Member or their representative sums up their case.

3.7 Views/Submissions of the Independent Person

The Chair will invite the Independent Person to express his/her view on whether he/she considers that, on the facts presented to the Audit and Governance Committee, there has been a breach of the Code of Conduct or no breach as the case may be.

3.8 Deliberations of the Audit and Governance Committee

- 3.8.1(a)** The Audit and Governance Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- 3.8.1(b)** Prior to reaching a decision, the Audit and Governance Committee will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the District or Parish Council or Monitoring Officer.
- 3.8.1(c)** Where the complaint has a number of aspects, the Audit and Governance Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.

- 3.8.1(d)** The Audit and Governance Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- 3.8.1(e)** The Audit and Governance Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information, to assist the committee, cannot be presented, then the committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- 3.8.1(f)** If evidence presented to the Audit and Governance Committee highlights other potential breaches of the District or Parish Council's Code of Conduct, then the Chair will outline the committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.
- 3.8.2(a)** Having deliberated on its decision and/or recommendations and the application of any sanctions, the Audit and Governance Committee will reconvene the hearing in public and the Chair will announce that on the facts presented, the committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be. The Chair will announce the sanctions the committee is minded to apply and/or any recommendations to the District or Parish Council and/or Monitoring Officer.
- 3.8.2(b)** The Chair will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanctions should apply and what form they should take. The Independent Person will be invited to express their view on any recommendations to the District or Parish Council or Monitoring Officer.
- 3.8.2(c)** Having heard the representations/views, the Audit and Governance Committee will adjourn and deliberate in private.
- 3.8.3** Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Audit and Governance Committee will reconvene the hearing in public and the Chair will announce:
- a) the Audit and Governance Committee decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - b) the sanctions (if any) to be applied;
 - c) the recommendations (if any) to be made to the District or Parish Council or Monitoring Officer;
 - d) that there is no right of appeal against the Audit and Governance Committee decision and/or recommendations.

4. RANGE OF POSSIBLE SANCTIONS

4.1 Subject to paragraph 4.4 below, where the Audit and Governance Committee determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:

- a) Recommending to the District or Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a ungrouped Subject Member, to the District or Parish Council, that they be removed from committees or sub-committees of the Council;
- c) Recommending to the Leader of the District Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- d) Instructing the Monitoring Officer [or recommendation to the Parish Council] to arrange training for the Subject Member;
- e) Recommending to the District or Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the District or Parish Council;
- f) Recommending to the District or Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- g) Recommending to the District or Parish Council the exclusion of the Subject Member from the District or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for District or Parish Council committee and sub-committee meetings;
- h) Reporting the committee's findings to the District or Parish Council for information;
- i) Instructing the Monitoring Officer to apply the informal resolution process;
- j) Sending a formal letter to the Subject Member;
- k) Recommending to the District or Parish Council to issue a press release or other form of publicity;
- l) Publishing its findings in respect of the Subject Member's conduct in such manner as the committee considers appropriate.

4.2 The Audit and Governance Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

4.3 The Audit and Governance Committee may specify that any sanction takes effect immediately or takes effect at a later date and that the sanction be time-limited.

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Audit and Governance Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Audit and Governance Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- a) What was the Subject Member's intention and did they know that they were failing to follow the District or Parish Council's Code of Conduct?
- b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- c) Has there been a breach of trust?
- d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- e) What was the result/impact of failing to follow the District or Parish Council's Code of Conduct?
- f) How serious was the incident?
- g) Does the Subject Member accept that they were at fault?
- h) Did the Subject Member apologise to the relevant persons?
- i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- j) Has the Subject Member previously breached of the District or Parish Council's Code of Conduct?
- k) Is there likely to be a repetition of the incident?

5. PUBLICATION AND NOTIFICATION OF THE AUDIT AND GOVERNANCE COMMITTEE DECISION AND RECOMMENDATIONS

5.1 Within 10 working days of the committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Audit and Governance Committee's decision and recommendations, and reasons for the decision and recommendations, on the District Council's website.

5.2 Within 10 working days of the announcement of the Audit and Governance Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

- a) The Subject Member;
- b) The Complainant;
- c) The Clerk to the Parish Council (if appropriate);
- d) Kent County Council's standards committee (applicable only where the Subject Member is serving at both District and County level);

PART 9.3 - PROTOCOL FOR COUNCILLOR / EMPLOYEE RELATIONS

1. INTRODUCTION

1.1 The purpose of this protocol is to guide councillors and employees of the Council in their relations with one another. It aims to promote the high standards in public office that are required for a modern local government.

1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to set out the general principles to be observed and to offer guidance on some of the issues which most commonly occur.

2. PRINCIPLES

2.1 This protocol seeks to establish the roles and responsibilities of councillors and employees to avoid confusion and misunderstanding. Both employees and councillors need to understand the pressures both sides are under. Most problems between councillors and employees arise not from disagreements about policy but from a failure to understand the pressures that each other face when trying to make and implement policy.

2.2 The basic principles underlying the councillor/employee relationship in both directions should be:

- a) Honesty;
- b) Openness;
- c) Respect for the different roles; and
- d) Courtesy and manners.

2.3 In addition, both councillors and employees have their own personal lives which should be respected. Except in cases of urgency or emergency, contact between councillors and employees out of office hours, on matters relating to Council business, should be avoided.

2.4 A councillor should not attempt or purport to give instructions to any employee or to involve him/herself in staffing matters other than as part of the Council employment practices.

2.5 Councillors should appreciate that employees are responsible for their conduct to their line manager. Information given by employees to councillors will routinely be passed on to other employees in the Council. Councillors should therefore not expect or ask that information, given to them by employees, should be kept confidential, as this would conflict with employees responsibilities to their managers and the Head of Paid Service

2.6 Where any complaints or concerns appear to be justified, these will be dealt with in accordance with the Council's policies relating to employee relations. The executive is politically accountable for strategic personnel issues and the Head of Paid Service is responsible for the management of staff, including disciplinary and other operational matters.

3. ROLES OF COUNCILLORS

- 3.1** Councillors are responsible to the electorate and serve so long as their term of office lasts.
- 3.2** Councillors have a variety of roles, which will differ, depending on their particular role within the Council (e.g. Chair or as a member of the executive).
- 3.3** The Council has agreed a list of key roles and tasks for councillors.
- 3.4** In brief, the councillor's role involves:
- a) As a member of the full Council, considering and approving Council's plans and strategic Policy Framework, its Budget and council tax;
 - b) As a member of the executive, taking executive decisions;
 - c) As a member of the Overview and Scrutiny Committee, scrutinising the work of the executive and recommending policy developments;
 - d) As employer of staff, serving on appointment, disciplinary and grievances committees or sub – committees etc;
 - e) Representing the Council on outside bodies, including management boards of voluntary bodies, school governors and partnership boards;
 - f) Having a representational role, undertaking casework on behalf of the wards of the district;
 - g) Fulfilling civic and ceremonial roles.

4. ROLE OF EMPLOYEES

- 4.1** Through the management structures, employees are responsible to the Council as a whole, which is their employer.
- 4.2** Whether or not employees hold politically restricted posts they must be seen to be politically impartial and must not allow their political views to influence their actions.
- 4.3** Employees are responsible for giving advice to councillors and for implementing the proper decisions of the Council.
- 4.4** Employees have various roles, depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs, and managing other employees.
- 4.5** The Head of Paid Service and chief officers are responsible for the day to day running of the Council, in accordance with the decisions of the Council or executive and, under delegated authority, the Head of Paid Service, the chief officers are, therefore, responsible for the management of the

employees and are responsible, consequently, for giving instructions and disciplining employees.

- 4.6** Employees, if they are members of a professional body, will also be subject to the rules and codes of his or her particular profession.

5. CHAIR OF THE COUNCIL

- 5.1** The Chair of the Council should, during his/her term of office, not engage in any controversial activity which could call into question the integrity or impartiality of the office.
- 5.2** The role of the Chair is shown in greater detail in Part 2, Article 2 of the Constitution.
- 5.3** The support provided to the Chair of the Council should be used solely in discharging the civic functions associated with the office.
- 5.4** The Chair of the Council should be careful not to engage in activities which are properly the function of the Leader of the Council (and vice versa).
- 5.5** The Head of Paid Service, or such other employees as s/he shall decide, should go through the agenda of Council meetings with the Chair and shall help him or her answer questions to the extent of supplying him or her with facts. Employees must avoid straying into areas of politics or personalities.

6. THE EXECUTIVE AND EMPLOYEES

- 6.1** Executive councillors are elected councillors to whom have been given the responsibility for providing the Council's political administration. It is their role to develop and formulate policies which help guide employees in carrying out the Council's activities and the provisions of services. They also have responsibility for matters of major principle. They are politically accountable to the Council and the electorate for the functions contained within their individual portfolio of responsibilities, severally and jointly. It is therefore necessary for executive councillors to have timely access to advice, support and relevant information to fulfil this role effectively.
- 6.2** The Head of Paid Service, with the support of other chief officers, is responsible for the management of staff, the implementation of policies approved by, or on behalf of, the Council, and for securing the proper undertaking of all operational matters. They are responsible for providing advice and guidance to the executive councillors in their respective professional and managerial fields.
- 6.3** In this role, the Head of Paid Service, and other chief officers are supported by Assistant Directors and directly reporting managers. The latter provide more specialised and detailed advice and guidance in their field of knowledge, which is normally provided to executive councillors through the Head of Paid Service or corporate directors. The Assistant Directors/Chief service officers are primarily responsible for the management of staff within units and the operation of Council services on a day-to-day basis.

- 6.4** In the performance of their functions, executive councillors should normally seek advice, assistance, and such other appropriate support, from the relevant chief officer, in order to ensure that executive councillors' needs are dealt with as a priority, at the appropriate level within the organisation. In the Head of Paid Service's or chief officer's absence, contact will normally be with the Assistant Director or Chief Service Officer. This support will relate to those matters of policy and principle for which the executive councillors are responsible, but will not include matters of a political nature.
- 6.5** Employees are equipped with the professional and technical competencies, trained professionally to carry out the operations for which they are responsible in accordance with Council policy. They are insured for this activity and are entitled to certain indemnity in the event of legal challenge or claim: the distinction between policy and operations issues is therefore a significant one.
- 6.6** The responsibilities of executive councillors are significant and they require assistance and support of a highly professional nature from employees. If any member of the executive feels that the support he/she has received falls short of the expected standard, or he/she has concerns about the performance of a member of staff, this should be raised with either the relevant chief officers or with the Head of Paid Service and every effort will be made to resolve the problem.

7. OVERVIEW AND SCRUTINY

- 7.1** When attending Overview and Scrutiny Committee meetings, employees should be questioned only on facts and explanations relating to policies and decisions.
- 7.2** Employees may be asked to explain and justify advice they have given to executive councillors and may also be asked to explain and justify decisions taken under delegated powers.
- 7.3** However, any questions should avoid drawing into question employees' impartiality, and questions on the merits of alternative policies should be avoided where they are politically contentious.
- 7.4** Councillors on the Overview and Scrutiny Committee are entitled to expect the same level of help and advice from employees as is given to the executive.
- 7.5** The Overview and Scrutiny Committee should particularly bear in mind the Human Rights Conventions, specifically Article 8 – respect for private life.
- 7.6** Where the Council engages employees to support the overview and scrutiny function, councillors should recognise that these employees continue to be responsible to the Council as a whole and not to one particular part of it.

8. PERSONAL RELATIONSHIPS

8.1 Good working relationships between employees and councillors are at the heart of good local government.

8.2 Mutual respect between councillors and employees is essential to good local government. Close personal familiarity between individual councillors and employees can damage this relationship and prove embarrassing to other councillors and employees. The Nolan report provides the following quote to illustrate its view of the correct spirit of Member-Employee relations:

‘I do not think it is part of the proper relationship between Employees and Councillors if Employees are somehow seen in public as people who can be appropriately harangued or criticised or told that they do not know what they are doing. I think that the best relationship between officers and councillors is much more a partnership relationship’ (Gerry Stoker, Professor of Government, University of Strathclyde). This applies equally to unattributed comments through the media.

8.3 There is potential for improper behaviour if the normal professional relationship becomes either too cosy or too combative.

9. EXCESSIVE FAMILIARITY

9.1 Councillors and employees will often work closely together and develop good relationships. This can be beneficial, but there are limits and risks for all concerned in this area and it is not enough to avoid actual impropriety. Councillors and employees should, at all times, avoid any situation which can give rise to suspicion and any appearance of improper conduct. This includes excessive socialising between employees and individual councillors. The use of first names between councillors and employees, and between councillors, is normally to be avoided at Council and committee meetings.

9.2 Councillors must declare to their group leader, and to the Head of Paid Service, any relationship with an employee which might be seen as influencing their work as member. This includes any family, business or sexual relationships. Employees, too, have a duty to declare any such relationship to their corporate director or to the Head of Paid Service.

9.3 Councillors must not sit on, or participate in decisions by any Council committee or other Council body which directly affects an employee to whom they are:

- a) The partner;
- b) Otherwise closely related; such as sisters, brothers, parents and grandparents;

- c) In any other relationship which would jeopardise the work of the Council or make their attendance improper under the Code of Conduct.

10. COMBATIVENESS AND PRESSURE

- 10.1** It is important that any dealings between councillors and employees, both written and oral, should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 10.2** Councillors must remember that employees cannot respond to personal criticism in the same way that politicians can and should make their comments accordingly. Councillors need to be especially careful about contact with less senior staff and must avoid deliberately or unwittingly intimidating staff. Councillors and employees should be aware that problems often arise in informal situations, where councillors and employees are sometimes prone to lose their inhibitions. This should not prevent reasonable constructive criticism of the work of employees by councillors.
- 10.3** Councillors should not put pressure on an employee on matters where employees make decisions, whether these matters have been delegated to that employee, or it is one that an employee must make by virtue of statutory provisions or for the proper performance of his/her duties. This might lead employees to make decisions that:
 - a) Are not objective and cannot be accounted for;
 - b) Favour unfairly one member of the public over another.
- 10.4** Councillors should not bring undue influence to bear on an employee to take any action which is against procedure or policy, or which seeks to obtain improper advantage for a particular group, such as:
 - a) A breach of human resources procedures;
 - b) Conflict with standing orders or;
 - c) Conflict with planning procedures and policies.
- 10.5** Councillors, also, should not seek to use undue pressure to influence an employee's judgement about an issue. This is particularly important in relation to report writing (see sub-paragraph 10.6).
- 10.6** Discussions between employees and councillors on policy issues are quite proper. Employees will often wish to seek political guidance in framing policy proposals. When employees write committee reports for member decision, they have a duty to give the advice dictated by their professional expertise. Councillors should not, therefore, seek to influence the content of the reports to the Council, the executive or to committees.

10.7 Employees must be able to report as they see fit, although councillors are equally entitled to reject proposals and recommendations which are put to them.

10.8 Councillors must declare any special relationships with members of the public when dealing with council employees. Although councillors are elected to represent the interests of members of the public, they should not seek special treatment for any individual if that special treatment would be against council policy.

11. SUMMARY OF COUNCILLOR EXPECTATIONS

11.1 In summary, both councillors and employees can expect of each other reasonable standards of conduct and support. Thus councillors can reasonably expect from employees:

- a) A commitment to the authority as a whole, and not to any political group;
- b) Respect, dignity and courtesy;
- c) A working partnership;
- d) That they do their job effectively and efficiently, and provide best value services;
- e) An understanding of, and support for, respective roles, workloads and pressures;
- f) Training and development in order to carry out their roles, workloads and pressures effectively;
- g) Assistance in carrying out their role, as members dealing with council business;
- h) Timely response to enquiries and complaints;
- i) That they deal with members' enquiries fairly, efficiently, truthfully and without omission of reasonably relevant information;
- j) Preparedness to work with all members equally and fairly;
- k) Advice or recommendations based on reasoned options, to ensure that members have all information reasonably necessary to make informed judgements;
- l) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of employees;

- m) Regular, up-to-date information on matters that can be considered appropriate and reasonably relevant to their needs, having regard to any individual responsibilities that they have.

12. SUMMARY OF EMPLOYEE EXPECTATIONS

Similarly, members of staff can reasonably expect of councillors:

- a) Respect, dignity and courtesy;
- b) A working partnership;
- c) Political leadership and direction;
- d) An understanding of, and support for, respective roles, workloads and pressures;
- e) Honesty and openness;
- f) Integrity, mutual support and appropriate confidentiality;
- g) Full consideration of advice and recommendations for the purpose of making informed judgements
- h) An acceptance that employees are accountable to their manager and act independently of political bias;
- i) That they avoid getting involved in the day-to-day management of the Council;
- j) That they should never ask employees to breach council policy or procedures, to act unlawfully, or outside the terms of their job;
- k) Not to be subject to bullying or to be put under pressure;
- l) Regard to the seniority of employees in determining what are reasonable requests and to the power relationship between councillors and employees, and to the vulnerability of employees, particularly at junior levels.

13. EMPLOYEE/CHAIR RELATIONSHIPS

13.1 It is especially important that there should be a professional working relationship, between the Chair of the committee and employees servicing that committee, on a regular basis. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the employee's ability to deal impartially with other councillors and other party groups.

13.2 In relation to action between meetings, it is important to remember that the law only allows for non-executive decisions (relating to the discharge of any

of the Council's non-executive functions) to be taken by a committee, a sub-committee or an employee acting under delegated powers.

- 13.3** The Chair's role is primarily to ensure that the business transacted at a meeting is done efficiently and effectively, ensuring that members of the committee can participate equally in the discussions of the committee.
- 13.4** The employee's relationship with the Chair should reflect the primary purpose in paragraph 13.3.
- 13.5** Finally, it must be remembered that employees are accountable to their Head of Paid Service and that, whilst employees should always seek to assist the Chair (or indeed any councillor), they must not, in doing so, go beyond the bounds of whatever authority they have been given by their director.

14. MONITORING THE PERFORMANCE OF EMPLOYEES

- 14.1** Councillors should set the parameters for council work and then let employees get on with running things, as much as possible, whilst guaranteeing that strong scrutiny and performance management systems are in place.
- 14.2** Councillors have a right to criticise reports, or the actions taken by employees, but they should always:
 - a) Avoid personal attacks on employees;
 - b) Ensure that criticism is constructive and well-founded.
- 14.3** Complaints about employees or council services should be made to the appropriate corporate director where a councillor feels the fault lies, or to the Head of Paid Service, Monitoring Officer or Chief Finance Officer, as appropriate. Councillors have a duty to raise any issues that they have reason to think might involve fraud or corruption of any sort.
- 14.4** Councillors should avoid undermining respect for employees at committee meetings, or in any public or private forum. This would be damaging both to effective working relationships and to the public image of the Council. In general, employees are unable to 'answer back' or defend themselves against criticism in a public forum.
- 14.5** Councillors should remember that employees work for the Council, as a whole, and not for one particular part of it.

15. STRATEGIC AND OPERATIONAL MATTERS

- 15.1** The roles of councillors are set out in paragraph 3 of this protocol. The role of the executive is further elaborated in paragraph 6. The roles of employees are shown in paragraph 4 and, in relation to the executive, paragraph 6. It is important that there is no confusion in these roles.

15.2 Councillors on the executive provide the strategic political leadership of the Council. Employees undertake the operational running of the Council, carrying out the lawful decisions of the Council and ensuring that the Council acts correctly.

15.3 An executive councillor, with a portfolio, must make decisions on issues affecting that portfolio. It is, however, not his/her job to manage the staff charged by the Head of Paid Service, and chief officers, to undertake those tasks.

15.4 The Head of Paid Service and chief officers are responsible for the operational running of the Council and the performance of employees. Anything which confuses this accountability is counter-productive.

16. PARTY GROUPS

16.1 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of council business in advance of such matters being considered by the relevant council decision-making body. However, party groups may not call on employees to support and contribute to such deliberations.

16.2 Councillors must not ask employees to act in any way which would conflict with the employee's code of conduct or which would affect, or be seen to affect, the political impartiality of employees.

17. WARD COUNCILLORS

17.1 Whenever a public meeting is organised by the Council, to consider a local issue, all the councillors representing the ward or wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward councillors should be notified at the outset of the exercise.

17.2 Employees may only attend meetings, called by ward councillors, if this attendance is approved by a corporate director or the Head of Paid Service.

17.3 Ward councillors may not ask employees to provide advice, or undertake work, for organisations with which they are involved, unless that service has been approved by the relevant corporate director or Head of Paid Service.

17.4 In dealings with local groups employees should, as far as possible, respect the representational role that councillors have in their wards.

18. COUNCILLORS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

18.1 Councillors are free to approach any service unit to provide them with such information, explanation and advice (about that unit's functions) as they may reasonably need, in order to assist them discharging their role as councillors. This can range from a request for general information about some aspect of a unit's activities to a request for specific information on

behalf of a constituent. Such approaches should normally be in accordance with any employee contact list.

18.2 The legal rights of councillors, to inspect council documents, are covered partly by statute and partly by common law.

18.3 Councillors have a statutory right to inspect any council document, which contains material relating to any business which is to be transacted:

- a) At the Council or at a committee or sub-committee or;
- b) At a public meeting of the executive.

In the case of a private meeting of the executive, or any individual decision by an executive councillor, councillors have a statutory right to inspect documents which contain material relating to any business which has been transacted at a meeting.

18.4 The right applies irrespective of whether the councillor is an executive councillor or a member of the committee, or sub-committee, concerned and extends not only to reports, which are to be submitted to the meeting, but also to any relevant background papers.

18.5 The common law right of members is based on the principle that any councillor has, on the face of it, the right to inspect council documents so far as his/her access to the documents is reasonably necessary to enable the councillor properly to perform his/her duties as a councillor. This principle is commonly referred to as the 'need to know' principle.

18.6 The exercise of this common law right depends, therefore, upon the councillor's ability to demonstrate that he/she has a 'need to know'. This question must initially be determined by the particular corporate director whose unit holds the document in question (with advice from the Council's Monitoring Officer).

18.7 In some circumstances (e.g. a committee member wishing to inspect documents relating to the functions of the committee) a councillor's 'need to know' will normally be presumed. In other circumstances (e.g. a councillor wishing to inspect documents which contain personal information about third parties) a councillor will normally be expected to justify the request in specific terms.

18.8 Whilst the term 'council document' is very broad and includes, for example, any document produced with council resources, it is accepted by convention that a member of one party group will not have a 'need to know', and, therefore, a right to inspect a document which forms part of the internal workings of another party group.

18.9 Further and more detailed advice regarding members' rights to inspect council documents may be obtained from the Council's Monitoring Officer .

- 18.10** Finally, any council information provided to a councillor must only be used by the councillor for the purpose for which it was provided i.e. in connection with the proper performance of the councillor's duties as a member of the Council.

19. THE MEDIA

Dealing with the media must comply with the Code on Local Authority Publicity and the Council's current media relations policy.

20. CORRESPONDENCE

- 20.1** Where it is necessary for an employee to copy his/her correspondence to another councillor, this should be made clear to the original councillor. In other words, a system of 'silent copies' or 'blind copies' should not be employed.

- 20.2** Official letters, on behalf of the Council, which create legally binding obligations or give instructions on behalf of the Council, should never be sent out over the name of a councillor.

21. SUPPORT SERVICES TO COUNCILLORS

- 21.1** Dealings with the media must comply with the Code on Local Authority Publicity and in the Council's current Media Protocol.

- 21.2** The only basis on which the Council can provide support services, of this kind, to councillors, is to assist them discharge their role as members of the Council. They are for use on council business and to help councillors in their roles as advocates for their local communities. They should not be used in connection with party political campaigning.

22. REPORTING IMPROPER CONDUCT: ALLEGED MISCONDUCT BY COUNCILLORS OR EMPLOYEES

- 22.1** A councillor or an employee may, if he/she thinks fit, report to the Audit and Governance Committee, any councillor whom he/she reasonably believes to have failed to comply with the provisions of the Code.

- 22.2** Complaints, by a councillor, of misconduct by another councillor not involving a breach of the Code, or involving a breach of the Code too trivial to justify consideration by the Audit and Governance Committee, should be resolved by the Group Leader of the councillor complained of, in conjunction with the Group Leader of the Complainant.

- 22.3** Complaints, by an employee, of misconduct by a councillor, if not referred to the Audit and Governance Committee, should be resolved by the Group Leader of the councillor complained of.

- 22.4** Complaints, by a councillor, of misconduct by an employee, should be directed to the employee's line manager or corporate director and will be dealt with in accordance with the Council's disciplinary procedures. A copy

of these procedures is available for inspection in the Council's human resources policies.

PART 9.4 - PLANNING CODE

1. PLANNING CODE

1.1 Background

The Planning Code of Good Practice has been prepared in response to the changes introduced by the Localism Act 2011. It also reflects the Council's own Code of Conduct for councillors, adopted under the provisions of the 2011 Act.

1.2 Introduction

1.2.1 The aim of this code of good practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.

1.2.2 The key purpose of Planning is to control development in the public interest.

1.2.3 Your role as a member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

1.2.4 When the Code of Good Practice applies: this Code applies to members at all times when involving themselves in the planning process. (This includes when taking part in the decision-making meetings of the Council, in exercising the functions of the Planning Authority (including substitutes on committees) or when involved on less formal occasions, such as meetings with officers, or the public, and consultative meetings). It applies as equally to planning enforcement matters, or site specific policy issues, as it does to planning applications.

1.2.5 If you have any doubts about the application of this Code to your own circumstances, you should seek advice early, from the Monitoring Officer, or one of his or her staff, and preferably well before any meeting takes place.

1.3 Relationship to the Members' Code of Conduct

- **Do** apply the rules in the members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
 - The Council at risk of proceedings on the legality or maladministration of the related decision; and
 - Yourself at risk of either being named in a report made to the Audit and Governance Committee or Council, or, if the failure is also

likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.

1.4 Development proposals and interests under the Members' Code

1.4.1 Where you have an interest:

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly.

1.4.2 Where you have a Disclosable Pecuniary Interest or an Other Significant Interest:

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority.
- **Don't** try to represent ward views; get another ward member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a Disclosable Pecuniary Interest or an Other Significant Interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal, in which you have a Disclosable Pecuniary Interest or an Other Significant Interest, to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room, in the case of a Disclosable Pecuniary Interest, or sit in the public gallery, in the case of an Other Significant Interest, while the meeting considers it.
- **Do** notify the Monitoring Officer in writing and note that:
 - You should send the notification no later than submission of that application, where you can;
 - Where you are the applicant (alone or with an other(s)) the application will always be reported to the committee as a main

item and not dealt with by officers under delegated powers, unless the proposal falls within the exceptions shown in the delegation scheme.

1.5 Fettering discretion in the planning process

- **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at this council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter, prior to formal consideration of the matter at the meeting of the Planning Authority and of your hearing the officer's presentation and evidence and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings, on the grounds of there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- Do distinguish between predetermination or bias on the one hand and predisposition on the other. Clearly expressing an intention to vote in a particular way, before a meeting (predetermination), is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee, before deciding on how to vote (predisposition). The latter is alright; the former is not and may result in a Court quashing such planning decisions. The example in Appendix 1 may assist you.
- Do remember that public statements, by councillors, about their approach to matters of council business, will not of themselves preclude councillors from participating in the decision-making process relating to that matter. See Section 25 of the 2011 Act which provides that a councillor should not be regarded as having a closed mind, simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member

of the parish council, for example, or both a district and county councillor), provided:

- The proposal does not substantially affect the well-being or financial standing of the consultee body;
 - You make it clear to the consultee body that:
 - Your views are expressed on the limited information before you only;
 - You must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the committee and you hear all of the relevant information; and
 - You will not in any way commit yourself as to how you or others may vote when the proposal comes before the committee; and
 - You disclose a Voluntary Announcement of Other Interests, regarding your membership or role, when the committee comes to consider the proposal.
- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
 - **Do** explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
 - **Do** take the opportunity to exercise your separate speaking rights as a ward/local member where you have represented your views, or those of local electors, and fettered your discretion, but do not have a Disclosable Pecuniary Interest or Other Significant Interest. Where you do,:
 - Advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
 - Remove yourself from the member seating area for the duration of that item and ensure that your actions are recorded.

1.6 Contact with applicants, developers and objectors

- **Do** refer those who approach you, for planning, procedural or technical advice, to officers.

- **Don't** agree to any formal meeting with applicants, developers or groups of objectors, otherwise than in accordance with this Code. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning to organise it. The officer(s) will then ensure that those present at the meeting are advised, from the start, that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the committee.
- **Do** otherwise:
 - Follow the rules on lobbying;
 - Consider whether or not it would be prudent, in the circumstances, to make notes when contacted; and
 - Report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

1.7 In addition, in respect of presentations by applicants/developers:

- Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.
- Do ask relevant questions for the purposes of clarifying your understanding of the proposals.
- Do remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning and Licensing Committee of the Planning Authority.
- Do be aware that a presentation is a form of lobbying and you must not express any strong view, or state how you, or other members, might vote.

1.8 Lobbying of councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and, therefore, your ability to participate in the committee's decision-making to express an intention to vote one way or another, or express such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community, not just to the people in your ward and, taking account of the need to make

decisions impartially, that you should not improperly favour, or appear to improperly favour, any person company, group or locality.

- **Don't** accept gifts or hospitality from any person involved in, or affected by, a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, and remember to register interests where its value is over £100 (in accordance with the authority's Code of Conduct).
- **Do** copy, or pass on, any lobbying correspondence you receive to the Head of Planning, at the earliest opportunity.
- **Do** promptly refer, to the Head of Planning, any offers made to you of planning gain or constraint of development through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a Disclosable Pecuniary Interest, or Other Significant Interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
 - Listening or receiving viewpoints from residents or other interested parties;
 - Making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of, or amount to, pre-judging the issue and you make clear you are keeping an open mind;
 - Seeking information through appropriate channels; or
 - Being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting, or item, and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind, having heard all the facts and listened to the debate.

1.9 Lobbying by councillors

- **Don't** become a member of, lead, or represent an organisation whose primary purpose is to lobby, to promote, or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a Disclosable Pecuniary Interest or an Other Significant Interest.

- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a Voluntary Announcement of Other Interests where that organisation has made representations on a particular proposal, and make it clear to that organisation, and the committee, that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application, at any sort of political group meeting, or lobby any other member to do so. Political Group meetings should never dictate how members should vote on a planning issue.

1.10 Site visits and inspections

- **Do** try to attend site visits organised by the Council where possible.
- **Do** abide by the procedure for committee site visits shown in paragraph 1.15.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - There are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the committee, so that all members have the same information.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the ward member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party,

- Advise them that they should make representations, in writing, to the authority and direct them to, or inform, the officer present.
- **Don't** express opinions or views to anyone.
- **Don't** enter a site, which is subject to a proposal, other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - You feel it is essential for you to visit the site other than through attending the official site visit;
 - You have first spoken to the Head of Planning about your intention to do so and why (which will be recorded on the file); and
 - You can ensure you will comply with these good practice rules on site visits.
- **Do** inspect a site if you consider that this is necessary for your understanding of the application, provided you can do so from a public place.

1.11 Public speaking at meetings

- Don't allow members of the public to communicate with you during the committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- Do ensure that you comply with the Council's procedures in respect of public speaking, shown in Part 4 of this Constitution.

1.12 Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Assistant Director or Chief Service Officer, or those officers who are authorised by their Assistant Director to deal with the proposal at a member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at

odds with the views, opinions or decisions of the committee or its members.

1.13 Decision-making

- **Do** ensure that, if you request a proposal to go before the committee rather than be determined through officer delegation, that you put your reasons for your request in writing.
- **Do** ensure that the reasons for your request, for the matter to be considered by committee, are material planning issues.
- **Do** ensure that you submit your request for the matter to be brought before the committee prior to the expiry of the request period; otherwise the application may be dealt with under delegated powers by officers.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan, unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** read a prepared statement to the committee, as this makes it appear that you have predetermined the application.
- **Don't** vote or take part in the meeting's discussion on a proposal, unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for the committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision, contrary to officer recommendations or the development plan, that you understand the planning reasons leading to this conclusion/decision. The proposer must specify the reasons for refusal. These reasons must be given, prior to the vote, and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

1.14 Training

- **Do** endeavour to attend training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, codes of practice and the development plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that members' judgements have been based on proper planning considerations.

1.15 Procedure for committee site visits

- Site visits will only take place where the expected benefit is substantial.
- Reasons for holding site visits will be fully minuted.
- Wherever possible, the committee will visit the site unaccompanied, other than by Folkestone and Hythe District ward members, and the relevant officers of the Council.
- If third parties are found to be present, they will not be allowed to speak.
- The Head of Democratic Services and Law, in consultation with the Head of Planning, will be responsible for formal notification of site visits.
- At site visits, members and officers will abide by the adopted code of conduct.
- No decisions will be taken at site visits.
- Folkestone and Hythe District Council ward members will be advised that they may be asked if there are any physical features which the committee should note, e.g. trees, topography, adjacent dwellings, position of windows etc; will be able to comment on whether the officer report has attached too much or too little weight to the physical characteristics of the site or the development and/or the relationship with the surrounding area or has overlooked other relevant site related matters; should not attempt to persuade committee members to vote in a particular way, i.e. they should not attempt to lobby them.

1.16. Principles of the operation of public speaking

- 1.16.1** Public speaking applies only to those applications for planning permission reported in the schedule to the Planning and Licensing Committee and not to main agenda items.

- 1.16.2** The following speakers will be allowed to address the meeting and in this order:
- A member of the public against the proposal;
 - A member of the public in favour of the proposal;
 - A representative of a town or parish council, a parish meeting (to represent the view of that body and not the personal view of the representative);
 - Folkestone and Hythe District ward member(s); when a ward member is unable to attend, the group leader of that councillor's political party may nominate another councillor to act as a substitute for the purpose of public speaking.
 - The applicant or his agent.
- 1.16.3** The above will be advised of the arrangements for public speaking after the agenda for a particular meeting has been finalised. Those wishing to speak must give notice by 5.00pm on the Thursday before the date of a committee meeting.
- 1.16.4** The speakers will have to put their request in writing to the Head of Planning, together with a summary of the points to be made.
- 1.16.5** If there are no public speakers on a particular application, no late requests to speak will be accepted.
- 1.16.6** Objectors/supporters will be allowed to speak on a 'first come, first served' basis, unless otherwise agreed between the objectors themselves. However, priority will be given to immediate neighbours over objectors with a more general interest.
- 1.16.7** At the meeting, the committee will consider the items with public speaking first.
- 1.16.8** Each speaker will be invited in turn to come into the chamber to address the committee.
- 1.16.9** Each speaker will be able to speak for a maximum of 3 minutes and the committee officer will indicate when 2.5 minutes have elapsed.

APPENDIX 1: EXAMPLE OF PREDETERMINATION OR PREDISPOSITION

A councillor who states "windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a councillor who states: "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area."

PART 9.5 – LICENSING CODE

1. LICENSING CODE

1.1 Introduction

1.1.1 The aim of this Code of Good Practice: to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.

1.1.2 Your role as a member of the Planning and Licensing Committee (which in this Code is a reference to its sub – committees): to make licensing decisions openly, impartially, with sound judgement and for justifiable reasons.

1.1.3 When the Code of Good Practice applies: this Code applies to members at all times when involving themselves in the licensing process. (This includes when taking part in the decision-making meetings of the Council in exercising the licensing functions of the Council (including substitutes on committees) or when involved on less formal occasions, such as meetings with officers or the public). It applies as equally to licensing enforcement matters as it does to licensing applications.

1.1.4 If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

1.2 Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Licensing Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of licensing. If you do not abide by this Code of Good Practice, you may put:
 - The Council at risk of proceedings on the legality or maladministration of the related decision; and
 - Yourself at risk of either being named in a report made to the Audit and Governance Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer.

1.3 Licensing and interests under the Members' Code

1.3.1 Where you have an interest:

- **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Preferably, disclose your interest at the beginning of the

meeting and not just at the commencement of discussion on that particular matter.

- **Do** then act accordingly.

1.3.2 Where you have a Disclosable Pecuniary Interest or an Other Significant Interest:

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the authority.
- **Don't** try to represent ward views; get another ward member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a Disclosable Pecuniary Interest or Other Significant Interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary Interest or Other Significant Interest, to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the committee but only to make a presentation in the same manner that would apply to a normal member of the public, after which you must leave the room, in the case of a Disclosable Pecuniary Interest, or sit in the public gallery, in the case of an Other Significant Interest, while the meeting considers it.

1.4 Fettering discretion in the licensing process

- **Don't** fetter your discretion and therefore your ability to participate in licensing decision-making at this council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group) on how you will vote on any licensing matter, prior to formal consideration of the matter at the meeting of the Licensing Committee and of your hearing the officer's presentation and evidence, and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings, on the grounds of there being a danger of bias or pre-determination, or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and licensing determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)
- **Do** distinguish between predetermination or bias on the one hand and predisposition on the other. Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations, presented at the committee, before deciding on how to vote (predisposition). The latter is alright; the former is not and may result in a Court quashing such licensing decisions.
- **Do** remember that public statements, by councillors, about their approach to matters of council business, will not of themselves preclude councillors from participating in the decision-making process relating to that matter. See Section 25 of the Localism Act 2011, which provides that a councillor should not be regarded as having a closed mind, simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district and county councillor), provided:
 - The proposal does not substantially affect the well-being or financial standing of the consultee body;
 - You make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, applying the rules of natural justice (shown in paragraph 1.13 below), as and when it comes before the committee and you hear all of the relevant information; and
 - you will not in any way commit yourself as to how you, or others, may vote when the proposal comes before the committee; and
 - you disclose a Voluntary Announcement of Other Interests, regarding your membership or role, when the committee comes to consider the proposal.

- **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **Do** explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

1.5 Contact with applicants and objectors

- **Do** refer those who approach you, for procedural or technical advice, to officers.
- **Don't** agree to any formal meeting with applicants, or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Senior Licensing Officer to organise it. The officer(s) will then ensure that those present at the meeting are advised, from the start, that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file, and the record of the meeting is disclosed when the application is considered by the committee. If you feel you cannot participate as a member of a committee because of your involvement in a residents' meeting, or if you are not sure, speak to the Senior Licensing Officer, or Committee Services Manager, as soon as possible.

Do otherwise:

- Follow the rules on lobbying;
- Consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- Report to the Head of Communities any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the file.

In addition, in respect of presentations by applicants:

- **Don't** attend a presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out by the Planning and Licensing Committee.

- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you, or other members, might vote.

1.6 Lobbying of councillors

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality, and therefore your ability to participate in the committee's decision-making, to express an intention to vote one way or another, or express such a firm point of view that it amounts to the same thing.
- **Do** remember that you need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in, or affected by, a proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register interests, where its value is over £100 (in accordance with the authority's rules on gifts and hospitality).
- **Do** copy or pass on any lobbying correspondence you receive to the Head of Communities, at the earliest opportunity.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** complete a declaration of lobbying sheet if necessary.
- **Do** note that, unless you have a Disclosable Pecuniary Interest or an Other Significant Interest, you will not have fettered your discretion or breached this Licensing Code of Good Practice through:
 - Listening or receiving viewpoints from residents or other interested parties;
 - Making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of, or amount to, pre-judging the issue, and you make clear you are keeping an open mind;
 - Seeking information through appropriate channels; or
 - Being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting, or item, and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up

your own mind, having heard all the facts and listened to the debate.

1.7 Lobbying by councillors

- **Do** note that membership of a lobby group gives you a Voluntary Announcement of Other Interests, which you must declare at the start of the meeting. However, you can still participate and vote at the meeting, unless your interest is also a Disclosable Pecuniary Interest or an Other Significant Interest.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular proposals, such as a local civic society, but be aware that you may not be able to participate in any determination of a licensing application because of the rules of natural justice
- **Don't** decide or discuss how to vote on any application, at any sort of political group meeting, or lobby any other member to do so. Political Group meetings should never dictate how members should vote on a licensing issue.

1.8 Site visits

- **Do** try to attend site visits organised by the Council where possible.
- **Do** abide by the procedure for committee site visits shown in paragraph 1.14.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - There are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that any information which you gained from the site visit is reported back to the committee, so that all members have the same information
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers, at the site visit, questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** express opinions or views to anyone.

- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - You feel it is essential for you to visit the site, other than through attending the official site visit,
 - You have first spoken to the Head of Communities about your intention to do so and why (which will be recorded on the file) and
 - You can ensure you will comply with the rules on site visits.
- **Do** inspect a site if you consider that this is necessary for your understanding of the application, provided you can do so from a public place.

1.9 Procedure at meetings

- **Don't** allow members of the public to communicate with you during the committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures shown in Part 5 of this Constitution.

1.10 Officers

- **Don't** put pressure on officers to put forward a particular recommendation.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with an Assistant Director or Chief Service Officer or those officers who are authorised by their Assistant Director or Chief Service Officer to deal with the proposal at a member level.
- **Do** recognise and respect that officers, involved in the processing and determination of licensing matters, must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. As a result, officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the committee or its members.

1.11 Decision-making

- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with the rules of natural justice.

- **Do** consider the human rights issues - these are explained in paragraph 1.16 below.
- **Do** come to your decision only after due consideration of all of the information, reasonably required, upon which to base a decision.
- **Don't** vote or take part in the meeting's discussion on a proposal, unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** have recorded the reasons for committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision, that you clearly identify and understand the reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

1.12 Training

- **Do** endeavour to attend training sessions provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures, codes of practice and the licensing policy of the Council, beyond the minimum referred to above, and thus assist you in carrying out your role properly and effectively.
- **Do** participate in any annual review of a sample of licensing decisions to ensure that members' judgements have been based on proper licensing considerations.

1.13 Rules of natural justice

- 1.13.1** The rules of natural justice are not obscure legalities. They are what any reasonable person would expect to see being applied in the circumstances which usually attach to the consideration of licensing applications. In basic terms, it is a duty to act fairly.
- 1.13.2** The first element of natural justice is that those, who will be affected by a decision, should be allowed the opportunity of a hearing before the decision is made. This will normally extend not only to the applicant himself/herself but also to those who might wish to make representations about the application.
- 1.13.3** It follows that the applicant must be given as much information as practicable of the nature of any representations about his application, in advance of the hearing, so that he may prepare his/her response, but also that every member of the committee should be provided with copies of all the submissions and observations which have been received.

1.13.4 In addition, every member of the committee present should hear all the evidence and not be absent during any part of the hearing.

1.13.5 The second element of natural justice is that no person should be a judge in his/her own cause. This aspect is considered more fully above under 'Licensing and interests under the members' Code'.

1.13.6 However, it should be noted that it is not necessary for actual bias to be proved to cause a decision to fail. It is sufficient if 'a reasonable man with no inside knowledge might well think that [the committee] might be biased.'

1.14 Procedure for committee site visits

1.14.1 Site visits will only take place where the expected benefit is substantial.

1.14.2 Reasons for holding site visits will be fully minuted.

1.14.3 Wherever possible, the committee will visit the site unaccompanied, other than by the relevant officers of the Council.

1.14.4 If third parties are found to be present, they will not be allowed to speak.

1.14.5 The Head of Democratic Services and Law, in consultation with the Head of Communities will be responsible for notification of site visits.

1.14.6 At site visits, members and officers will abide by the adopted Code of Conduct.

1.14.7 No decisions will be taken at site visits.

1.14.8 At site visits, councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or other third parties who may be present. Any third parties present will not be allowed to speak. Their opportunity to speak will be at the committee, or sub-committee meeting, when the proposal is considered formally.

1.14.9 No hospitality should be accepted at site visits, in order to be seen to maintain impartiality.

1.15 Procedures at committee meetings

1.15.1 At a meeting of the Planning and Licensing Committee, or a sub-committee, where applications for licences are to be determined, the Chair will turn to the schedule of applications and invite the applicant, responsible authorities and interested parties to enter the meeting room and be seated.

1.15.2 The Chair will explain the format for the meeting, as shown below, and ask everyone to introduce themselves:

- The Senior Licensing Officer introduces the application.

- If any party intends to call any witnesses, that party must seek the permission of the committee. Such consent will not be withheld unreasonably.
- The applicant or applicant's representative is asked to speak in support of their application.
- The committee members are asked if they wish to put questions to the applicant or the applicant's representative.
- Other parties may be given permission by the committee to ask questions of the applicant. However, cross-examination will not normally be permitted.
- Responsible authorities, responsible authorities' representatives, interested parties and interested parties' representatives are invited to present their representations.
- The applicant, or applicant's representative, is asked to respond to the representations of the responsible authorities and interested parties.
- The applicant, responsible authorities and interested parties may be given permission, by the committee, to ask questions of the other parties. However, cross-examination will not normally be permitted.
- The committee members are asked if they wish to put questions to any of the parties present.
- All parties are asked if they wish to add anything further.
- The Senior Licensing Officer is asked if he or she wishes to add any comments.
- The Chair asks the committee, legal officer and committee administrator to retire to another room in order to reach a decision.
- All parties will be invited to return to receive the decision and the reasons for that decision.

1.16 Human Rights

1.16.1 Article 6 of the European Convention on Human Rights provides (in part):

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'

The Licensing Committee's decision, on most licensing functions, are subject to independent tribunals, usually the magistrates' or Crown courts, so satisfying the provisions of Article 6.

The committee, however, must conduct a fair hearing in accordance with the rules of natural justice.

1.16.2 Article 1 of the First Protocol also has relevance to the licensing function. This states:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principals of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

An existing licence is a possession under Article 1 of the First Protocol.

Any decision to, for example, revoke a licence must be according to the law. Any decision, to impose terms and conditions on the grant of a licence, will need to be proportionate and necessary to protect the interests of a democratic society.

Article 1 of the First Protocol also has relevance in respect of third parties objecting to a licensing application because of the right to the enjoyment of their property. The impact of a decision on a neighbouring property brings into play the right to respect for home, privacy and family life (Article 8)

Article 8 reads:

‘Article 8: Right to respect for private and family life.

1. Everyone has the right to respect for his private and family life, his home and his correspondence
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.’

PART 9.6 - DELEGATION TO WARD COUNCILLORS

1. WARD COUNCILLOR BUDGETS

- 1.1** Ward Councillor Budgets are allocated at the start of the financial year to be spent on supporting ward initiatives, in accordance with the approved Ward Budget Scheme ('the approved Scheme').
- 1.2** Ward councillors are authorised to spend up to the amount in the approved ward budgets, subject to complying with the requirements of the approved Scheme and with the ward councillor decision rules contained in the Constitution.

2. WARD PLANS

- 2.1** Ward councillors are authorised to develop, agree and adopt an annual ward plan for their ward.
- 2.2** Ward plans are formally adopted through a published decision notice. In a single member ward, this requires the signature of the ward councillor in question. In multi-member wards, this requires the unanimous agreement of both/all three councillors, in order for the ward plan to be formally adopted.
- 2.3** Ward councillors, subject to obtaining the agreement of all their fellow ward members (if any), are able to submit funding bids to the executive, in accordance with the current ward plans funding scheme, to support projects that deliver against the priorities identified in their ward plans.
- 2.4** Councillors may not participate in the decision-making process on any funding bid pertaining to their own ward or where they have a Disclosable Pecuniary Interest or an Other Significant Interest under the Council's Code of Conduct for councillors.

PART 9.7 - WARD MEMBER ROLE DESCRIPTIONS

1. Purpose

The main purpose of the role is to act as a:

- a) **'Political representative'** – to support and help deliver the priorities of their political party, including commitments made in manifestos;
- b) **'Community advocate'** – to speak up on behalf of their community about issues which affect local people and to promote community causes;
- c) **'Community leader'** – provide long-term direction in terms of community development and to be someone who brings local communities together;
- d) **'Service transformer'** – help to improve the quality of local services in their ward and to hold service providers to account for poor quality services or service failure;
- e) **'Fixer'** – identify what things need to improve in their ward and work with officers, partners and communities to bring about change (i.e. make things happen);
- f) **'Supporter'** – support local projects and initiatives; and
- g) **'Knowledge champion'** – understand what is going on in the ward and ensure good exchange of information between the Council and the local community.

2. Responsibilities

- a) To manage the allocation/award of an annual ward budget.
- b) To develop and agree an annual ward plan, through public consultation, which identifies the community priorities which the Council will address during the course of the financial year.
- c) To develop and submit business cases, in order to receive funding to support community priorities identified in the ward plan ('Ward Plans' Scheme').
- d) To take oversight of, and responsibility for, the delivery of council actions, and council-funded projects, to deliver the identified priorities in the published ward plans.

3. Decision-making

To agree an annual ward plan, which sets out the local community priorities that the Council will work towards delivering during the course of the year.

4. Ways of working

- a) To take collective responsibility, and be accountable, for priorities, projects and actions agreed through ward plans.
- b) To comply with the Council's Code of Conduct for councillors and its other rules governing behaviour.
- c) To comply with the councillor/employee code of conduct contained in the Constitution.
- d) To take part in training and development, to ensure that the role is undertaken effectively.
- e) To champion equalities duties.
- f) To use technology wherever possible.

5. Skills and knowledge required

- a) Local leadership – engage with the community to learn about issues of local concern and develop a vision for the future.
- b) Partnership working – build good relationships with others to identify issues and work together towards shared goals.
- c) Communication and interpersonal skills – communicate regularly and effectively with all parts of their community, using different forms of media and communication channels.
- d) Scrutiny and challenge – ability to analyse information and present arguments that are concise, meaningful and easily understood.
- e) Networking – ability to facilitate, negotiate and influence stakeholders to achieve mutually satisfactory outcomes for local communities.
- f) Ability to work as part of a team.

PART 9.8

FOLKESTONE AND HYTHE DISTRICT COUNCIL **MEMBERS' ALLOWANCES' SCHEME**

Folkestone and Hythe District Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, makes the following scheme:-

1. CITATION

This scheme may be cited as the Folkestone and Hythe District Council Members' Allowances' Scheme.

2. INTERPRETATION

In this scheme:-

'Councillor' means a member of the Folkestone and Hythe District Council who is a councillor.

'Year' means the 12 months ending with 31 March.

3. BASIC ALLOWANCE

Subject to paragraph 6, for each year a basic allowance shall be paid to each councillor. The amount is specified in Appendix 1 to this scheme.

4. SPECIAL RESPONSIBILITY ALLOWANCE

4.1 For each year, a special responsibility allowance (SRA) shall be paid to those councillors who have the special responsibilities, in relation to the authority, that are specified in Appendix 1 to this scheme.

4.2 Subject to paragraph 6, the amount of each such allowance shall be the amount specified, against that special responsibility, in the appendix.

4.3 The levels of SRA, for the different roles, are determined by a points system related to the basic allowance. The basic allowance is worth 100 points and SRAs are expressed, in points, as a percentage of this. The point scores are also shown in Appendix 1.

4.4 If a Councillor is entitled to more than one SRA, only one will be paid. Which SRA is paid is a matter for the relevant Councillor to decide. Both the Leader and Deputy Leader roles attract a cabinet member's SRA in virtue of their membership of the cabinet as well as the SRA relevant to their specific roles, of which only one may be taken.

5. RENUNCIATION

A councillor may, by notice in writing, given to the Chief Officer – Financial Services, elect to forego any part of his/her entitlement, to an allowance, under this scheme.

6. PART-YEAR ENTITLEMENTS

Where, in the course of a year, this scheme is amended, or a councillor accepts a special responsibility, in respect of which a special responsibility allowance is payable, then, subject to the provisions of paragraph 7 below, all adjustments to payments will be made pro-rata to the number of days in the year.

7. PROTECTION ARRANGEMENTS

7.1 The provisions of the following paragraphs shall apply where this scheme is amended, the result of which, would be, apart from the provisions of this paragraph, a decrease in an allowance paid to a councillor. The following paragraphs do not apply where the allowance that a councillor is entitled to is being abolished.

7.2 Where paragraph 7.1 applies, the allowance proposed to be decreased shall remain at the same level until:-

- a) The councillor concerned ceases to be an elected member of the authority; or
 - b) The councillor no longer fulfils the role which attracts the allowance; or
 - c) Inflationary increases make the requirement for protection redundant;
- whichever shall first occur.

8. DEPENDANTS' CARERS' ALLOWANCE

8.1 A councillor may claim a Dependants' Carers' Allowance, as set out in Appendix 2 to this scheme.

8.2 The allowance will be paid at either:

- (a) an hourly rate (or proportion thereof) equivalent to the adult national living wage applicable at the time and to a total of the costs reasonably incurred, or
- (b) paid on the basis of actual invoiced cost from a registered provider approved for the purposes of this scheme by the Monitoring Officer.

8.3 Paid receipts must be submitted to support claims for the Dependants' Carers' Allowance.

9. PARENTAL LEAVE

- 9.1 In the case of absence from their Councillor duties due to maternity, adoption or shared parental leave all Councillors shall continue to receive their Basic Allowance and the ICT allowance (if it is being claimed at the time notification of parental leave is given) in full, for a period up to six months.

10. SUPPORT FOR DISABLED COUNCILLORS

The Council will assist disabled Councillors and both voting and non-voting co-optees in accessing financial support to carry out their role from the Department for Work and Pensions 'Access to Work' scheme and any successor scheme.

Where external financial support is not available, the Council will assist with the necessarily incurred disability-related costs of being a Councillor (being costs over and above those for which the basic allowance is provided) on a case by case basis subject to (a) the approval of the Council's Monitoring Officer and at the discretion of the Monitoring Officer, (b) subject to the need being confirmed by an appropriate health professional.

Where such costs relate to a support worker or similar, such reimbursement to be (a) at an hourly rate (or proportion thereof) equivalent to the adult national living wage applicable at the time and to a total of the costs reasonably incurred or (b) paid on the basis of actual invoiced costs from a registered provider approved for the purposes of this scheme by the Council's Monitoring Officer.

Support under the scheme would not be for the political duties and activities of a Councillor which would include, but is not limited to; electioneering, canvassing votes, attending political rallies, attending political group meetings etc.

11. ICT ALLOWANCE

The Council uses electronic and digital means to conduct its business including the distribution of reports, agendas, minutes and similar. To assist with the costs of providing and using suitable electronic equipment, Councillors are eligible to claim an annual ICT allowance of £271 which is paid monthly in instalments (on an 'opt in' basis).

12. CO-OPTED MEMBERS

The Council may pay an allowance to those who are co-opted to committees. Where the Council does pay such an allowance, it shall have a value set at 15 points (the points scheme is explained in sub-paragraph 4.3).

13. INDEXATION

The allowances shall be automatically adjusted, annually, by reference to the Consumer Price Index (CPI). The adjustment will be calculated on the September CPI index, for implementation the following April.

13. TRAVEL AND SUBSISTENCE

14.1 Councillors are entitled to claim for reimbursement of travel and subsistence expenses incurred in the performance of an approved duty. The approved duties are set out in the scheme of approved duties in Appendix 4.

14.2 Travelling by public transport

14.2.1 Councillors using public transport, to travel to approved duties, should claim at standard rates and provide receipts. However, if there are exceptional circumstances when it is difficult to use public transport at standard rates, or otherwise, a councillor must get prior agreement, from the Council, to use other forms of transport, such as taxis.

14.2.2 Councillors, travelling by rail, should claim the second-class rail fare or any available cheap day fare.

14.3 Taxis

In cases of emergency, or where no public transport is available, councillors, who travel by taxi, may claim the actual fare and reasonable gratuity paid. In other cases the claim should be no more than the public transport fare.

14.4 Use of own vehicles

14.4.1 Councillors, who use their own vehicles to travel to an approved duty, may claim the approved HM Revenue and Customs' rates, which vary from time to time.

14.4.2 An additional allowance may be claimed for transporting another councillor to the same approved duty. This is the approved HM Revenue and Customs' rate and varies from time to time.

14.4.3 Travelling expenses, payable for member's own private mode of transport, are as follows:

| | |
|---------------|--------------|
| Cars and vans | 45p per mile |
| Motor cycles | 24p per mile |
| Bicycles | 20p per mile |

- 14.4.4** In respect of the carriage of councillors, to who a travelling allowance would otherwise be payable, an allowance of 5 pence per mile is recommended as payable.

14.5 Accommodation and subsistence

- 14.5.1** Wherever possible, the Council will pre-book and pre-pay meals, and accommodation, for councillors attending meetings out of the authority

- 14.5.2** If a councillor actually buys a meal or refreshments, as a result of carrying out an approved duty, then an allowance may be claimed. For example, if a councillor, who lives more than three miles from the Civic Centre, is away from home, for more than 4 hours, attending a meeting and buys a meal, or other refreshments, on the way home, then a claim can be made. If a councillor is required to attend more than one meeting during a day and cannot reasonably return home for a meal between meetings, then, provided a meal or refreshments are purchased, a claim may be made.

14.6 Receipts in support of claims

Where possible, councillors are required to obtain and submit receipts with their claims in support of hotel bills, subsistence etc.

14.7 Subsistence

- 14.7.1** Subsistence expenses must have been necessarily incurred carrying out an approved duty, at a place more than three miles from home. The claim should be for the actual amount spent, up to the maximum amounts set out below:

- 14.7.2** The allowance below, for absence overnight, is deemed to cover a continuous period of absence of 24 hours. Members should not claim for any meals provided free of charge.

| | |
|---|-------|
| Breakfast allowance (more than 4 hours away from normal place of residence before 11.00 am) up to | £5.88 |
|---|-------|

| | |
|--|-------|
| Lunch allowance (more than 4 hours from normal place of residence, including the lunch time between 12 noon and 2.00 pm) up to | £8.13 |
|--|-------|

| | |
|--|-------|
| Tea allowance (more than 4 hours away from normal place of residence, including the period 3.00 pm to 6.00 pm) up to | £3.21 |
|--|-------|

| | |
|--|--------|
| Evening meal allowance (more than 4 hours away from normal place of residence, ending after 7.00 pm) up to | £10.06 |
|--|--------|

14.8 Overnight provisions

Councillors, who are required to make overnight stays, in the performance of their official duties, will be reimbursed for approved expenses.

APPENDICES

APPENDIX 1 - Table of allowances/'point' scores

APPENDIX 2 – Dependants' carers' scheme

APPENDIX 3 – Parental leave policy

APPENDIX 4 - Approved duties for travel and subsistence

APPENDIX 1 - Table of Allowances/'Point' Scores

(NOTE: all figures include the increases arising from existing arrangements in 2015 and are rounded to the nearest £1.)

| Role | Point Score | Allowance from 1 April 2025 |
|--|--------------------|------------------------------------|
| | | |
| Basic Allowance (Note 1) | 100 | £6,117 |
| | | |
| Co-opted members | 15 | £875 |
| | | |
| Special Responsibility Allowance (SRA) | | |
| | | |
| Leader of the Council | 375 | £21,842 |
| Deputy Leader of the Council | 220 | £12,812 |
| Cabinet member (up to 8) | 200 | £11,647 |
| Chair of the Council | 150 | £8,737 |
| Vice-Chair of the Council | 30 | £1,749 |
| | | |
| Tier 1 committees | | |
| | | |
| Audit & Governance Committee Chair | 115 | £6,697 |
| Overview and Scrutiny Committee Chair | 115 | £6,697 |
| Planning and Licensing Committee Chair | 115 | £6,697 |
| | | |
| *Leader of the Opposition | 150/225 | £8,737/£13,106 |
| (*where the responsibilities of 'Leader of the Opposition' are divided between two or more individuals under the provisions of this scheme, the uplift to the relevant SRA before division will be equivalent to 75 basis points to 225 basis points). The distribution of the SRA will be set at the outset of the municipal year and not altered, irrespective of changes in group size, until the start of the next municipal year. | | |
| | | |

Note 1: Excludes ICT allowance

APPENDIX 2 – Dependants' Carers' Scheme

Dependants' Carers' Allowance

1. A Dependants' Carers' Allowance shall be payable to councillors, and both voting and non-voting co-optees who have declared an express need for such an allowance, and have completed a written declaration, which is lodged with the Assistant Director and Monitoring Officer, Governance and Law.
2. The allowance shall only be payable to councillors in respect of actual expenditure incurred in connection with, or relating to, approved Council duties.
3. The allowance shall only be payable, to a councillor, in respect of the expense of arranging care of a spouse, partner, child, parent, or a person who lives in the same household as that councillor, otherwise than by reason of being his/her employee, tenant, lodger or boarder.
4. The carer must not be a member of the claimant's immediate family i.e. spouse, partner, other children of the councillor, or councillor's spouse, or any member of the councillor's family who lives at the same address as the councillor; nor should it be an employee, tenant, lodger or boarder who lives at that address.
5. Payment of the allowance shall only be made on the production of receipts.
6. The allowance will be paid at either: (a) an hourly rate (or proportion thereof) equivalent to the adult national living wage applicable at the time and to a total of the costs reasonably incurred or (b) paid on the basis of actual invoiced cost from a registered provider approved for the purposes of this scheme by the council's Monitoring Officer.
7. Only one allowance may be claimed in respect of any one household. Any issues of interpretation, or application, of this scheme will be determined by the Assistant Director and Monitoring Officer, Governance and Law.

APPENDIX 3 – Parental Leave Policy

Parental Leave Policy for Councillors

1. In the case of absence from their Councillor duties due to maternity, adoption or shared parental leave all Councillors shall continue to receive their Basic Allowance and the ICT allowance (if it is being claimed at the time notification of parental leave is given) in full, for a period up to six months.
2. Where, for reasons connected with maternity, adoption, or shared parental leave a Councillor is unable to attend meetings of the Council for a period of more than six consecutive months from the date of their last attendance, the Councillor must inform the Head of Paid Service and seek a dispensation by the full Council in accordance with Section 85 of the Local Government Act 1972, within six months of their last attendance. Unless exceptional circumstances apply, this dispensation should be granted, so that the absence is no more than one year in total.
3. Special Responsibility Allowances will not be paid during such periods of absence as the special responsibilities for which the allowance is paid will not be being undertaken.
4. Any payments made under this provision will cease should the recipient cease to be a Councillor at any point during the period of absence.

APPENDIX 4 - Approved Duties for Travel and Subsistence

1. Travel and subsistence – scheme of approved duties

Appropriate travel and subsistence allowances, at rates determined by the Council, from time to time, may be claimed where such travel and/or subsistence has been undertaken in connection with one or more of the following duties:

- a) Attendance by any councillor at a meeting of the full Council or of the Council's Cabinet and, in the interests of the effective functioning of the democratic process, at one preparatory pre-meeting, whether organised on a political group basis, or otherwise, for each properly constituted meeting of the full Council or of the Council's Cabinet.
- b) Attendance at any committee, sub-committee, task group, working group, board, forum or panel of the Council, where the councillor making the claim is a member of that committee, sub-committee task group, working group, board, forum or panel, or where the councillor's attendance has been requested, by the relevant chairperson, to assist the work of that committee, sub-committee, task group, working group, board, forum or panel.
- c) Attendance at any sub-committee meeting of the Council's Cabinet.
- d) Attendance at meetings of any joint body, of which the Council is a member, and to which the councillor, making the claim, is appointed by the Council.
- e) Attendance at any meeting, including meetings of political sub-groups, and committees of any local government association or local government employers' organisation, of which the Council is a member, and, to which, the councillor, making the claim, has been appointed under the rules of that body, and where the appointment to that body has been approved by the Council.
- f) The attendance at any other meeting, the holding of which is authorised by the Council; or a committee or sub-committee of the Council; or a joint committee of the Council and one or more local authorities, within the meaning of section 270(1) of the Local Government Act 1972; or a sub-committee of such a joint committee, provided that:
 - i. where the authority is divided into two or more political groups, it is a meeting to which members, of at least two such groups, have been invited; or
 - ii. if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited.

- g) The performance of any duty, in pursuance of a standing order, requiring a councillor(s) to be present while tender documents are opened.
- h) The performance of any duty, in connection with the discharge of any function of the Council, conferred by, or under, any enactment, and empowering, or requiring, the Council to inspect, or authorise the inspection of, premises.
- i) The carrying-out of any other duty approved by the Council, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the Council, or any of its committees or sub-committees. All duties which derive from a position of responsibility, for which a councillor receives a special responsibility allowance, are approved duties for the purpose of this paragraph.
 - j)
 - a) Attendance at any training events organised by the Council, or to which the Council has authorised the attendance of the councillor making the claim, provided that such an event is not political in nature (either in whole or part) or organised by, or on behalf of, any political organisation or party.
 - b) attendance at any training event including training events of political sub-groups and committees of any local government association or local government employers' organisation where attendance at meetings of the same are authorised under para j (a) above.
- k) Conferences and meetings convened by a person, or body, whose objects are neither wholly nor partly political, and, otherwise, than in the course of a trade or business, for the purpose of discussing matters which, in the Council's opinion, will relate to the interests of Folkestone and Hythe or its inhabitants, or of part of Folkestone and Hythe or the inhabitants of part of it, are approved for the purposes of payment of travel and subsistence allowance. They are those conferences and meetings, convened by outside bodies, where the Head of Paid Service is satisfied that there is a direct connection with a function of the Council.

Subject to the budget not being exceeded, duties and activities undertaken by councillors, outside the District of Folkestone and Hythe, where the Head of Paid Service is satisfied that it is in the interests of the Council for those duties and activities to be undertaken.

2. Specific exclusions

- 2.1** Travel and subsistence expenses may not be claimed in connection with any matters related to the operation or management of political groups, or meetings of political groups, or the performance of political

duties, including, but not limited to, canvassing and attendance at party political conferences, except as specifically provided for in this scheme, where it is in the interests of the effective management of the political processes of the Council, or related to the proper functioning of local government associations and employers' organisations, of which the Council is a member.

2.2 Travel and subsistence expenses may not be claimed in relation to:

- a) Attendance at any community or voluntary group meetings, unless the councillor is nominated by the Council to represent the Council at that meeting;
- b) In connection with ward business including, but not limited to, meetings with, or on behalf of, ward residents.
- (c) By a passenger where the driver has made a claim based on carrying passengers

2.3 Travel and subsistence may not be claimed from the Council where there are separate arrangements available to reclaim travel and subsistence from a third party; for example, where a councillor is attending a meeting of an outside body, as a representative of the Council, and is eligible to submit a claim for travel and subsistence expense to that outside body.

3. Review

The provisions of this scheme will be kept under review by the Head of Democratic Services and Law and will be amended, from time to time, in consultation with the Head of Paid Service, in the light of changes to legislation and the changing needs of the Council.

4. Interpretation

The Head of Paid Service's decision, on any matter of interpretation of this scheme, will be final.

FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 10 – FINANCIAL PROCEDURE RULES, CONTRACT STANDING ORDERS AND AUDITING THE COUNCIL

| CONTENTS | | Page Ref |
|-----------------|---------------------------------------|---------------------|
| 10.1 | Financial Procedure Rules | ‘Part 10/2’ |
| 10.2 | Contract Standing Orders | ‘Part 10/19’ |
| 10.3 | Procedures for Auditing the Authority | ‘Part 10/32’ |

PART 10 – FINANCIAL AND OTHER RULES

PART 10.1 – INTRODUCTION AND STATUS OF THE FINANCIAL PROCEDURE RULES

1. WHAT ARE FINANCIAL PROCEDURE RULES?

- 1.1** The Financial Procedure Rules provide the framework for managing the Council's financial affairs and for resources that the Council and its employees manage on behalf of others. The rules identify the financial responsibilities of full Council, the Cabinet, the Audit and Governance Committee, the Head of Paid Service, the Chief Finance Officer (S151 Officer), the Monitoring Officer, Directors, and other employees.
- 1.2** The Financial Procedure Rules set out the minimum requirements to be followed and must be read in conjunction with the information and guidelines set out in the Council's Financial Procedure Rules Guidance which is set out on the Council's intranet under the Financial Information section.

2. WHO DO THE RULES APPLY TO?

The rules apply to every councillor and officer of the Council, and to trustees, directors and officers of council-related trusts, and of any council-related party, trust or company, and to anyone acting on its behalf.

3. WHAT ARE THE GENERAL RESPONSIBILITIES UNDER THE RULES AND FINANCIAL REGULATIONS?

- 3.1** The principles of sound financial management, proper exercise of responsibility and accountability, as set out in these rules, should be applied in all circumstances.
- 3.2** All councillors and officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.
- 3.3** The Chief Finance Officer is responsible for maintaining a continuous review of the rules and for submitting any additions or changes, necessary, to the Audit and Governance Committee, prior to submission to full Council, for approval. The Chief Finance Officer (S151 Officer) is also responsible for reporting, where s/he thinks appropriate, breaches of the rules to the Council and/or to the Cabinet.
- 3.4** The Chief Finance Officer (S151 Officer) is responsible for issuing procedure notes, advice and guidance to underpin the rules and the financial regulations that councillors, officers and others, acting on behalf of the Council, are required to follow.
- 3.5** Chief Officers, and those other officers reporting directly to a chief officer, are responsible for ensuring that all staff are aware of the existence of, and, in consultation with the Chief Finance Officer (S151 Officer), trained in the use and content of the rules, financial regulations and other internal regulatory documents, and that they comply.

4. WHAT HAPPENS IF THE RULES OR FINANCIAL REGULATIONS ARE BROKEN?

- 4.1.** All councillors and officers must exhibit the highest standards of probity when they deal with the Council's finances. It is a disciplinary offence for an officer to breach these rules or the financial regulations, and a councillor who breaches them may be the subject of a complaint that they are in breach of the councillors' Code of Conduct.
- 4.2.** All councillors and officers have a duty to act if they consider the rules or financial regulations are being broken. In such cases, councillors must inform the Monitoring Officer, and officers must inform their line manager (unless that person is suspected of being involved) and either the Chief Finance Officer or Monitoring Officer.
- 4.3.** Chief officers and must report any breaches to the Chief Finance Officer (S151 Officer) or Monitoring Officer.

5. WHAT HAPPENS IN AN EMERGENCY SITUATION?

- 5.1.** On rare occasions, officers are faced with an emergency and may need to act swiftly. It is recognised that, in these circumstances, officers need to use their best judgement, balancing the needs of the service, severity of the emergency and the financial consequences of their actions. Detailed notes of actions taken must be kept and wherever possible officers should seek clearance from their chief officer or the Head of Paid Service.
- 5.2.** Officers must seek retrospective approval for their actions. They must contact their chief officer who will be responsible for co-ordinating such information, and report the matter to the Chief Finance Officer (S151 Officer).

6. FINANCIAL REGULATION A – FINANCIAL MANAGEMENT

- 6.1** Financial management covers all financial accountabilities in relation to the running of the Council, including the Budget and Policy Framework.

6.2 Roles and responsibilities

6.2.1 Council, Cabinet and other committees

The roles and responsibilities of the full Council, Cabinet and other committees, in respect of the Budget framework, are set out in the Articles to this Constitution. The Audit and Governance Committee is established by full Council. It has right of access, through the Chief Finance Officer (S151 Officer), to all the information it considers necessary to fulfil its functions, and can consult with internal and external auditors. The Audit and Governance Committee is responsible for making sure the Council has appropriate financial management systems and processes in place, and for checking compliance with them.

6.2.2 The statutory officers

6.2.3 The Head of Paid Service

The Head of Paid Service is responsible for the corporate and overall strategic management of the Council as a whole. S/he must report to and provide information to the full Council, Cabinet, Overview and Scrutiny and other committees. S/he is responsible for establishing a framework for management direction and standards, and for monitoring the performance of the organisation.

6.2.4 The Chief Finance Officer (S151 Officer)

6.2.4(a) The Chief Finance Officer (S151 Officer) has statutory duties in relation to the financial administration and stewardship of the Council. This statutory responsibility cannot be overridden. The statutory duties arise from:

- i. Section 151 of the Local Government Act 1972;
- ii. The Local Government Finance Act 1988;
- iii. The Local Government and Housing Act 1989;
- iv. The Local Government Act 2003;
- v. The Accounts and Audit Regulations 2011;
- vi. The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 and amendment regulations.

6.2.4(b) The Chief Finance Officer (S151 Officer) is responsible for:

- i. The proper administration of the Council's financial affairs;
- ii. Setting and monitoring compliance with financial management standards;
- iii. Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;
- iv. Providing financial information;
- v. Preparing the Budget and capital programme;
- vi. Treasury management;
- vii. Advising full Council on prudent levels of reserves for the Council, in accordance with Section 25 of the Local Government Act 2003.

6.2.4(c) Section 114 of the Local Government Finance Act 1988 requires the Chief Finance Officer (S151 Officer) to report to full Council, Cabinet and the Council's external auditor, if the Council or one of its officers:

- i. Has made, or is about to make, a decision which involves incurring unlawful expenditure;
- ii. Has taken, or is about to take, an unlawful action which has resulted in, or would result in a loss or deficiency to the Council;

- iii. Is about to make an unlawful entry in the Council's accounts.

6.2.4(d) Section 114 of the 1988 Act also requires:

- i. The Chief Finance Officer (S151 Officer) to nominate a properly qualified member of staff to deputise should s/he be unable to perform the duties under Section 114 personally;
- ii. The Council to provide the Chief Finance Officer (S151 Officer) with sufficient staff, accommodation and other resources – including legal advice, where this is necessary, – to carry out the duties under Section 114;
- iii. Should a situation arise whereby the Chief Finance Officer (S151 Officer) is not a member of the Corporate Leadership Team, then an appropriate protocol will be submitted, for approval by Council, to facilitate access to this group, to allow him/her to fulfil his/her statutory duties.

6.2.5 The Monitoring Officer

6.2.5(a) The Monitoring Officer is responsible for promoting and maintaining high standards of conduct and providing support to the Audit and Governance Committee. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law, or maladministration, to the full Council and/or Cabinet.

6.2.5(b) The Monitoring Officer and the Chief Finance Officer (S151 Officer), acting together or individually (but in consultation with each other), are responsible for advising the full Council, or Cabinet, about whether a decision is likely to be contrary to, or not wholly in accordance with, the Budget. Actions that may be contrary to the Budget include:

- i. Initiating a new policy;
- ii. Committing expenditure, in future years, above the budget level;
- iii. Incurring transfers above the virement limits;
- iv. Causing the total expenditure financed from council tax, grants and corporately held reserves to increase beyond the agreed Budget and Policy Framework;
- v. Transfers from reserves that are not part of the approved Budget strategy;
- viii. Increasing the level of borrowing beyond that approved in the Budget strategy and the Council's prudential indicators.

6.2.6 Chief officers and those other officers reporting directly to a chief officer

6.2.6(a) Chief officers, and those other officers reporting directly to a chief officer are responsible for:

- i. Ensuring that Cabinet members are advised of the financial implications of all proposals and that the financial implications have been agreed by the Chief Finance Officer (S151 Officer), prior to Cabinet approval.
- ii. Ensuring compliance with Contract Standing Orders and signing contracts, on behalf of the Council, in accordance with them;
- iii. Controlling and monitoring income and expenditure within the approved Budget, and should ensure that anticipated variations, between budget and actual, are highlighted to the Chief Finance Officer (S151 Officer), or his/her representative, at the earliest opportunity.

6.2.6(b) It is the responsibility of the chief officers and those other officers reporting directly to a chief officer, to consult with the Chief Finance Officer (S151 Officer) and seek approval on any matter liable to affect the Council's finances, before any commitments are made.

6.2.7 Head of Audit and Internal Audit

6.2.7(a) The Chief Finance Officer (S151 Officer) is responsible for Internal Audit. Internal Audit will provide a continuous audit of the accounting, financial and other operations of the Council.

6.2.7(b) Internal Audit has authority to:

- i. Enter at any time all Council premises or land;
- ii. Have unrestricted access to all records, documents and correspondence, including computerised hardware and software relating to any financial and other transactions;
- iii. Remove and/or secure any record, document or correspondence of the Council;
- iv. Ask questions and receive explanations concerning any matter under examination by the internal auditor; and
- v. Obtain from Council employees cash, stores or any other property owned, hired, leased or borrowed by the Council.

6.2.7(c) The decision to report financial irregularities to the police will be made by the Chief Finance Officer (S151 Officer), who will inform the Head of Paid Service of any such action.

6.2.7(d) Internal Audit may report, to any body of the Council, matters which are considered to adversely affect the efficient or proper use of the Council's resources.

6.2.8 Other financial accountabilities

6.2.8(a) Virement

- i. Full Council is responsible for agreeing procedures for virement of expenditure between budget heads. Virements will only be permitted where the expenditure is in accordance with the Budget and Policy Framework agreed by full Council. Chief officers are responsible for agreeing in-year virements, within delegated limits.
- ii. All virements will be reported retrospectively to Cabinet, as part of the Council's budget monitoring procedures.

6.2.8(b) Treatment of year-end balances on budgets

The Chief Finance Officer (S151 Officer) is responsible for agreeing the procedures for the treatment of year-end balances, including carrying forward under and overspending on budget headings, and transfers to reserves.

6.2.8(c) Accounting policies

The Chief Finance Officer (S151 Officer) is responsible for selecting accounting policies and ensuring that they are applied consistently and in accordance with relevant guidelines and regulations.

6.2.8(d) Accounting records, procedures and returns

The Chief Finance Officer (S151 Officer) is responsible for determining the accounting procedures and records for the Council. Such procedures shall include procedures and timetables for the preparation of the Budget and the Council's financial statements.

6.2.8(e) The annual Statement of Accounts

The Chief Finance Officer (S151 Officer) is responsible for ensuring that the annual Statement of Accounts is prepared in accordance with the 'Code of Practice on Local Authority Accounting in the United Kingdom' based on International Financial Reporting Standards (CIPFA/LASAAC) and other regulations, codes and guidance in force, from time to time. The Chief Finance Officer (S151 Officer) has the authority to make such amendments to the treatment of the Council's transactions, as are in the overall interest of the Council, including optimising of the capital financing position and the management of approved reserves, within the framework approved by the Council. The Audit and Governance Committee is responsible for approving the annual Statement of Accounts.

6.2.8(f) Bribery, corruption and financial irregularities

- i. All councillors and employees shall conduct themselves to the highest standards. Bribery, corruption, fraud or deception, by councillors and employees, will not be tolerated by the Council.

- ii. It is a criminal offence for any person to use their position with the Council to accept or ask for any gift, reward or other advantage for work done in an official capacity. Councillors and staff must also act with absolute honesty when dealing with the assets of the Council and any other assets for which the Council is responsible.

6.2.8(g) All councillors and staff must ensure that any irregularity, or suspected irregularity, involving Council funds, property or other assets for which the Council is responsible, is reported immediately to the Chief Finance Officer (S151 Officer). The Chief Finance Officer (S151 Officer) will decide how such matters should be investigated.

7. FINANCIAL REGULATION B – FINANCIAL PLANNING

7.1 Introduction

Full Council is responsible for agreeing the Council's Policy Framework and Budget, which will be proposed by the Cabinet. In terms of financial planning, the key elements are:

- a) The Medium Term Financial Strategy;
- b) The General Fund and Housing Revenue Account (HRA) Budgets and the Capital Programme;
- c) Capital and Investment Strategy;
- d) Minimum Revenue Provision Strategy.

7.2 Policy Framework

7.2.1 Full Council is responsible for approving the Policy Framework and Budget. The Policy Framework comprises those plans and strategies set out in Part 2 (Article 4) and Part 4 of the Constitution.

7.2.2 Full Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the Policy Framework.

7.2.3 Full Council is responsible for setting the level at which the Cabinet may reallocate budget funds from one service to another. The Cabinet is responsible for taking in-year decisions on resources and priorities, in order to deliver the Budget and Policy Framework within the financial limits set by the Council.

7.3 Budgeting

7.3.1 Budget preparation

7.3.1(a) The Chief Finance Officer (S151 Officer) is responsible for ensuring that a revenue budget is prepared, on an annual basis, for consideration by the Cabinet, before submission to full Council. The process for budget preparation and approval is set out in the Budget and Policy Framework Rules in this Constitution.

7.3.1(b) The Chief Finance Officer (S151 Officer) also has a responsibility, under Section 25 of the Local Government Act 2003, to comment on:

- i. The robustness of the annual estimates submitted to Council for approval; and
- ii. The adequacy of the proposed financial reserves.

7.3.1(c) It is the responsibility of chief officers, and those other officers reporting directly to a chief officer, to ensure that the budget estimates, reflecting agreed service plans, are submitted to the Chief Finance Officer (S151 Officer), and that these estimates are prepared in line with guidance issued by the Cabinet.

7.3.1(d) The Chief Finance Officer (S151 Officer) is responsible for issuing guidance on the general content of the Budget, as soon as possible following approval by full Council.

7.3.2 Budget monitoring and control

7.3.2(a) The Chief Finance Officer (S151 Officer) is responsible for providing appropriate financial information to enable budgets to be monitored effectively. S/he must control expenditure against budget allocations and report to the Cabinet on a regular basis.

7.3.2(b) It is the responsibility of chief officers, and those other officers reporting directly to a chief officer, to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Chief Finance Officer (S151 Officer). They must report on variances within their own areas. They must also take any action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer (S151 Officer) of any problems, or potential problems, at the earliest opportunity.

7.3.3 Preparation of the capital programme

The Chief Finance Officer (S151 Officer) is responsible for ensuring that a rolling 5-year capital programme is prepared, on an annual basis, for consideration by the Cabinet, before submission to full Council. The process for budget preparation and approval is set out in the Budget and Policy Framework Rules, in Part 4.4 of this Constitution.

7.3.4 Budget guidelines

Guidelines on budget preparation (the Budget Strategy) are issued to councillors, chief officers by the Cabinet, following agreement with the Chief Finance Officer (S151 Officer). The guidelines will take account of:

- a) Legal requirements;
- b) Medium-term planning prospects;
- c) The Corporate Plan;
- d) Available resources;

- e) Spending pressures;
- f) Relevant Government guidelines;
- g) Other internal policy documents;
- h) Relevant cross-cutting issues.

8. FINANCIAL REGULATION C – RISK MANAGEMENT AND CONTROL OF RESOURCES

8.1 Introduction

It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant corporate and operational risks to the Council. This must be done in line with the Council's Risk Management Strategy, and should include the proactive participation of all those associated with planning and delivering services.

8.2 Risk management

8.2.1 Regulation 4 of the Accounts and Audit Regulations 2011 requires the Council to be responsible for ensuring that its financial management is adequate and that it has a sound system of internal control, which facilitates the effective exercise of its functions, including arrangements for the management of risk.

8.2.2 The Cabinet is responsible for approving the Council's Risk Management Policy and Strategy and reviewing it on an annual basis. Cabinet is responsible for reviewing the effectiveness of risk management. The Cabinet is also responsible for ensuring that proper insurance exists, where appropriate, to mitigate any risks identified.

8.2.3 The Head of Paid Service is responsible for preparing the Council's Risk Management Policy Statement and for promoting it throughout the Council.

8.2.4 The Chief Finance Officer (S151 Officer) is responsible for ensuring proper insurance cover and advising Cabinet accordingly.

8.2.5 Chief officers, and those other officers reporting directly to a chief officer shall promptly notify the Chief Finance Officer (S151 Officer) and Head of Paid Service, in writing, of all insurable risks, and ensure compliance with the Council's Risk Management Strategy.

8.3 Internal control

8.3.1 Internal control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economic, efficient and effective use of resources and that the Council's assets and interests are safeguarded.

8.3.2 The Chief Finance Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and

used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.

- 8.3.3** It is the responsibility of chief officers to establish sound arrangements for planning, appraising, authorising and controlling their operations, in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

8.4 Audit Requirements

- 8.4.1** The Accounts and Audit Regulations 2015 require every local authority to maintain an adequate and effective internal audit. The role and rights of internal audit are set out in these rules.
- 8.4.2** Public Sector Audit Appointments is responsible for appointing external auditors to each local authority. The basic duties of the external auditor are governed by the Local Audit and Accountability Act 2014.
- 8.4.3** The Council may, from time to time, be subject to audit, inspection or investigation by external bodies, such as, HM Revenue and Customs and Government offices, or personnel working on their behalf, who have statutory rights of access.

8.5 Corporate governance

- 8.5.1** The Audit and Governance Committee is responsible for approving the Council's Code of Corporate Governance and reviewing the Authority's governance arrangements.
- 8.5.2** The Monitoring Officer is responsible for preparing the Council's Code of Corporate Governance, in line with CIPFA/SOLACE guidance, and promoting it throughout the Council, and for advising the Cabinet, where appropriate.
- 8.5.3** Chief officers shall ensure compliance with the Code of Corporate Governance.

8.6 Preventing fraud and corruption

The Chief Finance Officer (S151 Officer) is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

8.7 Assets

Chief officers, and those other officers reporting directly to a chief officer, must ensure that records and assets are properly maintained and securely held. They must also ensure that contingency plans for the security of assets and continuity of service, in the event of a disaster or system failure, are in place. Any disposal of an asset, no longer required by the Council, must be done in a manner approved by the Chief Finance Officer (S151 Officer) and in accordance with the relevant law, regulations and government guidance, issued from time to time.

8.8 Treasury management

- 8.8.1** The Council has adopted CIPFA's 'Code of Practice for Treasury Management in Local Authorities' (the Code).
- 8.8.2** The Council will create and maintain, as the cornerstones for effective treasury management:
- a) A Treasury Management and Investment Strategy, stating the policies and objectives of its treasury management activities;
 - b) Suitable treasury management practices (TMPs), setting out the manner in which the organisation will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- 8.8.3** Cabinet is responsible for approving the Treasury Management and Investment Strategy, setting out the matters detailed in Treasury Management Practice 5 of the Code.
- 8.8.4** Cabinet will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan, in advance of the year, and an annual report, after its close, in the form prescribed in its TMPs.
- 8.8.5** The Chief Finance Officer (S151 Officer) has a delegated responsibility for the implementation and monitoring of treasury management policies and practices, and for the execution and administration of treasury management decisions. He/she will act in accordance with the Council's policy statement and TMPs and, if a CIPFA member, with CIPFA's Standard of Professional Practice on Treasury Management.
- 8.8.6** All money in the hands of the Council is controlled by the Chief Finance Officer (S151 Officer).

8.9 Staffing

- 8.9.1** The Head of Paid Service is responsible for providing overall management of staff, and for ensuring compliance with the Council's employment policies. S/he is also responsible for ensuring that there is proper use of the evaluation, or other agreed systems, for determining the remuneration of posts.
- 8.9.2** Chief officers, and those other officers reporting directly to a chief officer, are responsible for controlling total staff numbers by:
- a) Advising the Cabinet on the budget necessary, in any given year, to cover estimated staffing levels;
 - b) Adjusting the staffing to a level that can be funded within approved budget provision, varying the provision, as necessary, within that constraint, in order to meet changing operational needs;
 - c) The proper use of appointment procedures.

9. FINANCIAL REGULATION D – SYSTEMS AND PROCEDURES

9.1 Sound systems and procedures are essential to an effective framework of accountability and control.

9.2 **General**

9.2.1 The Chief Finance Officer (S151 Officer) is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by chief officers, and those other officers reporting directly to a chief officer, to the existing financial systems, or the establishment of new systems, must be approved, in advance, by the Chief Finance Officer (S151 Officer). Chief officers, and those other officers reporting directly to a chief officer, however, are responsible for the proper operation of financial processes in their individual departments.

9.2.2 Any changes to agreed procedures by chief officers, to meet their own specific service needs, must be agreed in advance with the Chief Finance Officer (S151 Officer).

9.2.3 Chief officers must ensure that their staff receives relevant financial training that has been approved by the Chief Finance Officer (S151 Officer).

9.2.4 Chief officers, and those other officers reporting directly to a chief officer, must ensure that, where appropriate, computer and other systems are registered in accordance with Data Protection legislation. Chief officers must also ensure that their staff are aware of their responsibilities, under Data Protection and Freedom of Information legislation.

9.3 **Income and expenditure**

9.3.1 It is the responsibility of chief officers to ensure that a proper scheme of delegation has been established, within their sections, and that it is operating effectively. The scheme of delegation must identify staff authorised to act on the chief officer's behalf, in respect of payments, income collection and placing orders, together with the limits of their authority.

9.3.2 The Chief Finance Officer (S151 Officer) (or his/her nominated representative) has the delegated authority to write off bad debt, stores deficiencies and surplus goods, in accordance with the Scheme of Delegation.

9.4 **Payment to employees and members**

The Head of Paid Service is responsible for making all payments of salaries, wages and allowances to all staff, and for making payments of allowances to councillors.

9.5 **Taxation**

9.5.1 The Chief Finance Officer (S151 Officer) is responsible for advising chief officers, in the light of guidance issued by appropriate bodies and relevant legislation, on all taxation issues that affect the Council.

9.5.2 The Head of Paid Service is responsible for maintaining the Council's tax records, making all tax payments, receiving any tax credits and submitting tax returns by their due date.

9.6 Trading accounts

It is the responsibility of the Chief Finance Officer (S151 Officer) to advise on the establishment and operation of any trading accounts within the Council.

9.7 Banking

9.7.1 All cheques and payment forms, and credit cards, shall be ordered only on the authority of the Chief Finance Officer (S151 Officer), and proper arrangements for their safe custody will be made. The method of electronic payments shall also be controlled by the Chief Finance Officer (S151 Officer).

9.7.2 Cheques on the Council's banking accounts shall bear the facsimile signature of the Chief Finance Officer (S151 Officer) and be signed by either the Chief Finance Officer (S151 Officer) or his/her representative.

9.7.3 Every cheque for £20,000, or more, or amendments to cheques, shall bear the personal signature of the Chief Finance Officer (S151 Officer) or his/her authorised representative.

10. FINANCIAL REGULATION E – EXTERNAL ARRANGEMENTS

10.1 The Council provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental well-being of the area.

10.2 Partnerships

10.2.1 The Leader is responsible for approving delegations, including frameworks for partnerships, which the Council is involved in. The Cabinet is the focus for forming partnerships with other public, private, voluntary and community sector organisations to address local needs.

10.2.2 The Leader can delegate functions, including those relating to partnerships, to officers. Those that exist are set out in the Scheme of Delegation, within Parts 6 and 8 of the Council's Constitution. Where functions are delegated, the Leader remains accountable for them to full Council.

10.2.3 Representation of the Council on partnerships and external bodies will be decided in accordance with the Scheme of Delegation.

10.2.4 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct, with regard to financial administration in partnerships, that apply throughout the Council. The Monitoring Officer must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies.

10.2.5 The Chief Finance Officer (S151 Officer) must ensure that the accounting arrangements, to be adopted in relation to partnerships and joint ventures, are satisfactory.

10.2.6 The Head of Paid Service, in consultation with the relevant Corporate Director/Chief Officer, must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

10.2.7 Chief officers, and those other officers reporting directly to a chief officer, are responsible for ensuring that the Chief Finance Officer (S151 Officer) and Monitoring Officer are consulted on the progress of negotiations, and that the appropriate approvals are obtained before any negotiations are concluded, and decisions are made, in relation to work with external bodies.

10.3 External funding

10.3.1 Corporate Leadership Team approval must be sought for all external funding applications which are of a value of less than £20,000. If the external funding is of a value greater than £20,000, then CMT must approve the application, provided the following criteria apply:

- a) The application refers to an area which is within the current policy and budgetary framework;
- b) There are no ongoing financial implications arising out of the application;
- c) A suitable exit strategy is in place;
- d) There has been consultation with the relevant portfolio holder.

10.3.2 The Cabinet is responsible for approving all applications if the above conditions are not met.

10.3.3 The Chief Finance Officer (S151 Officer) has overall responsibility for external funding and is responsible for ensuring that all funding, notified by external bodies, is received and properly recorded in the Council's accounts.

10.3.4 The relevant chief officer, and those other officers reporting directly to a chief officer, also have overall responsibility for ensuring that appropriate records and supporting documentation, in relation to any output measures, are kept to enable him/her to submit funding claim forms at the relevant times.

10.4 Work for third parties

The Cabinet is responsible for approving the contractual arrangements for any work undertaken for third parties or external bodies, unless this is delegated to officers, in accordance with the Scheme of Delegation.

11. FINANCIAL REGULATION F - THE VIREMENT POLICY

11.1 Introduction

11.1.1 A virement is the switching of resources between approved estimates (budgets) or heads of expenditure. The scheme is intended to enable the Cabinet, chief officers and their staff, to manage budgets with a degree of flexibility within the overall policy framework determined by full Council, and therefore to optimise the use of resources.

11.1.2 Where an approved budget is a lump sum budget or contingency, intended for allocation during the year, its allocation will not be treated as a virement provided that:-

- a) The amount is used in accordance with the purpose for which it has been established;
- b) That Cabinet has approved the basis and the terms, including financial limits, on which it will be allocated. Individual allocations, in excess of the financial limits, should be reported to Cabinet.

11.1.3 In accordance with the scheme of delegation, which enables the Head of Paid Service to determine and amend staffing structures, movements between salary budgets will not be considered a virement, providing the total cost of staffing remains within the overall sum approved by full Council.

11.2 Virement authorisation limits

11.2.1 The Head of Paid Service can vire the payroll budget to various budget headings, to facilitate delivery of existing policies.

11.2.2 Chief officers can (subject to the conditions below) vire funds, within a budget heading, up to a limit of £20,000.

11.2.3 Chief Officers can (subject to the conditions below) vire funds across budget headings, for which they are responsible, for of up to £20,000.

11.2.4 The Head of Paid Service, in consultation with the Corporate Leadership Team, can (subject to the conditions below) authorise any transfer between budget headings of up to £15,000.

11.2.5 Cabinet approval should be sought for all virements which are in excess of £25,000.

11.2.6 Full Council approval shall be sought for all virements which are outside the Budget and Policy Framework.

11.2.7 All virements will be reported, retrospectively, to Cabinet, as part of the Council's budget monitoring procedures.

11.2.8 For the purposes of this, a budget heading is a line in the estimates, or, as a minimum, at an equivalent level to the standard service subdivision, as defined by CIPFA in its Service Expenditure Analysis. For capital schemes, the budget headings are considered to be the scheme budgets.

11.3 Conditions applying to virement

The following conditions apply to all virements:

- a) Virements will only be permitted where the expenditure is in accordance with the Budget and Policy framework agreed by full Council. Virements are not permitted to fund new initiatives or policies.
- b) There can be no virements between the General Fund and the Housing Revenue Account or from reserves, building maintenance budgets or central recharges.

- c) No virement, relating to a specific financial year, should be made after 31 March in that year.
- d) The limit, specified for the year, is cumulative for the financial year in which the virement takes place.
- e) Virements should be processed in the manner prescribed by the Chief Finance Officer (S151 Officer).
- f) A virement shall not be made if it causes a budget to overspend on its annual allocation.

12. FINANCIAL REGULATION G – PROTOCOL FOR THE MANAGEMENT AND USE OF RESERVES

12.1 For each reserve established, the purpose, usage and basis of transactions should be clearly identified. Usage of reserves is to be undertaken in accordance with the Budget and Policy Framework approved by full Council.

12.2 When a reserve is to be established, the Chief Finance Officer (S151 Officer) must be satisfied:

- a) Of the reason for the reserve, and its purpose;
- b) That setting up the reserve complies with the latest version of the Code of Practice on Local Authority Accounting in the United Kingdom.

12.3 Contributions, to and from reserves, shall be included in the Council's accounts, which are approved by the Audit and Governance Committee and the Chief Finance Officer (S151 Officer).

12.4 Control of reserves shall involve:

- a) An annual review of the relevance and adequacy of reserves, as part of the annual budget report.
- b) Quarterly budget monitoring of the Council's overall revenue position to assess the potential extent of the use of general reserves in any year.
- c) Withdrawal from reserves can be approved by Cabinet, provided that Council has approved the adequacy of reserves based on the recommendation of the Chief Finance Officer (S151 Officer). This will be considered at its annual budget meeting. Any withdrawal from reserves will be subject to this overall minimum level not being breached.

PART 10.2 - CONTRACT STANDING ORDERS

CONTRACT STANDING ORDERS

1. INTRODUCTION – PURPOSE OF THE CONTRACT STANDING ORDERS

- 1.1** The purpose of the Contract Standing Orders is to provide a structure for the procurement decisions to be made to ensure that the Council:
- a) Furthers its corporate objectives;
 - b) Uses its resources efficiently;
 - c) Purchases quality works, supplies (goods) and services;
 - d) Safeguards its reputation from any implication of dishonesty or corruption;
 - e) Improves the economic, social and environmental well being of the district; and
 - f) Embeds the core values in all contracts.
- 1.2** Procurement by the Council, from planning to delivery, shall incorporate principles of sustainability, efficiency, whole life costings and cost savings.
- 1.3** The Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4** These Contract Standing Orders shall apply equally to procurement by non-Council Officers (e.g. agents, consultants, partners and external bodies) and Council Officers when undertaking procurement on behalf of the Council.
- 1.5** The Contract Standing Orders do not provide guidelines on what is the best way to procure works, supplies (goods) and services. They set out minimum requirements to be followed and must be read in conjunction with the information and guidelines set out in the Council's Procurement Guide and the guidance documents available on the Intranet.

2. GENERAL PRINCIPLES – APPLICATION AND COMPLIANCE WITH CONTRACT STANDING ORDERS

- 2.1** The Contract Standing Orders apply to the procurement by or on behalf of the Council of works, supplies (goods) and services.
- 2.2** The Contract Standing Orders apply to all contracts regardless of value including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts that are listed in 2.3.
- 2.3** These Contract Standing Orders do not apply to:
- a) Employment contracts;
 - b) Contracts relating solely to the purchase or sale of interests in land;

- c) Contracts for the appointment and retention of legal counsel or expert witnesses in legal proceedings;
- d) Grant agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.

3. GENERAL PRINCIPLES APPLYING TO ALL CONTRACTS AND PURCHASE ORDERS

- 3.1** There should be a detailed audit trail of all purchases.
- 3.2** The Responsible Officer (defined in 5.2 below) must consider the appropriate procurement process for each contract based on its value.
- 3.3** All contracts up to a value of £10,000 may be entered into utilising Purchase Order Terms and Conditions, unless the contract is sufficiently complex so as to require specific Terms and Conditions in its own right. Advice may be sought from Procurement and Legal Services, as appropriate.
- 3.4** All contracts of a value of £10,000 or more shall be made using either;
 - a) The Council's current Standard Terms and Conditions of Contract, as maintained by Procurement and Legal Services; or
 - b) Alternative Terms and Conditions specifically prepared by Legal Services (or their nominated representative) as a consequence of the type and/or circumstances of the procurement; or
 - c) A standard form of contract (e.g. JCT, NEC, etc) to include special conditions, as maintained by Procurement and Legal Services; or
 - d) The Terms and Conditions stipulated under any Procurement Scheme; or
 - e) The suppliers Terms and Conditions, where the requirement is as such that these are deemed appropriate.

Where deemed appropriate by the Responsible Officer, advice and agreement may be sought from Procurement and Legal Services prior to award.

- 3.5** As a minimum, all such contracts (excluding purchase orders approved by the relevant Chief Officer) shall include clauses which set out:
 - a) The works, supplies (goods), services, material, matters and/or things to be carried out or supplied;
 - b) The contract start date, end date and any capacity for extension;
 - c) The price to be paid, the estimated price or the basis on which the price is to be calculated, and payment terms;
 - d) Quality requirements and/or standards which must be met

- e) Requirements of the contractor to hold and maintain appropriate insurance throughout the contract, for which advice may be sought from the Insurance department;
- f) What the consequences of the contractor failing to comply with its contractual obligations (in whole or in part) are;
- g) Requirements on the contractor to comply with all relevant equalities and health and safety legislation, and safeguarding (child protection) legislation;
- h) That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010 or s117(2) Local Government Act 1972.

3.6 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council and necessary to enable or facilitate the Council's compliance with public sector equality duty or any duty imposed on it by the Equality Act 2010. In this context, "non commercial" means requirements unrelated to the actual performance of the contract.

3.7 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Procurement Guide.

3.8 All contracts of a value of £10,000 or more must be subject to a written risk assessment, which should be kept on the contract file with the Responsible Officer.

4. REGULATORY CONTEXT

4.1 All purchasing shall be conducted in accordance with regulatory provisions which are:

- a) All relevant statutory provisions;
- b) The Procurement Act 2023 (PA 2023) or other applicable legislation;
- c) The Council's Constitution including the Contract Standing Orders, the Council's Financial Procedure Rules and Scheme of Delegation;
- d) The Council's Procurement Guide and other policies and procedures of the Council as appropriate.

4.2 In the event of conflict between the above, UK legislation will take precedence, followed by the Council's Constitution, the Council's Procurement Guide and guidelines, policies and procedures.

5. RESPONSIBILITIES OF CHIEF OFFICERS AND RESPONSIBLE OFFICERS

- 5.1** The term “Chief Officer” as used in these Contract Standing Orders means a Director, Assistant Director or Chief Service Officer, or Lead Specialist.
- 5.2** A Responsible Officer is an Officer with responsibility for conducting purchasing processes for the purchase of works, supplies and/or services on behalf of the Council.
- 5.3** Each Chief Officer shall have overall responsibility for the procurement undertaken by their service area and shall;
- a) Be responsible for the procurement undertaken by their service area ;
 - b) Be accountable to Cabinet for the performance of their duties in relation to procurement;
 - c) Comply with the Council's decision-making processes including, where appropriate, implementing and operating a Scheme of Delegation;
 - d) Immediately report any suspected or actual breach of these Contract Standing Orders to the S151 Officer and the Monitoring Officer.
- 5.4** A Responsible Officer's duties in respect of procurement are to ensure:
- a) Compliance with all regulatory provisions (4.1) and integrity of the tender process;
 - b) That the relevant Officers are reminded of the relevant regulatory provisions and the Council's requirements relating to declarations of interest affecting any procurement process in order for them to comply with these requirements;
 - c) That there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used;
 - d) The procurement process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings;
 - e) Compliance with the Council's decision making processes;
 - f) That all contracts of a value of £5,000 or more are included on the Council's Contract Register;
 - g) That proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £10,000 or more;
 - h) That value for money is achieved;
 - i) That adequate and appropriate security (such as a bond or parent company guarantee) is taken to protect the Council in the event of non-performance.
- 5.5** In considering how best to procure works, supplies (goods) and/or services, Chief Officers and/or Responsible Officers (as appropriate in the context), shall consult with Procurement to take into account wider contractual delivery

opportunities and procurement methods including the use of Procurement Schemes (as defined in CSO 17) and e-procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003 and the Localism Act 2011.

- 5.6** It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Procurement Guide. All employees have a duty to report any suspected or actual breaches of the Contract Standing Orders to the S151 Officer and the Monitoring Officer.
- 5.7** Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and/or services must refer to the Council's Whistleblowing Policy.

6. Scheme of Delegation

- 6.1** Council procurement may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation. Chief Officers may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the Chief Officer.
- 6.2** Each Chief Officer shall inform officers, where appropriate, of the extent of any delegated authority and applicable financial thresholds.

7. FINANCIAL THRESHOLDS AND PROCEDURES

- 7.1** The table below sets out the general rules applying to the choice of procurement procedure for contracts at the stated threshold values.
- 7.2** There is a general presumption in favour of competition. Wherever possible contract opportunities should be advertised by way of a public notice via the Council's e-tendering portal.
- 7.3** The publication of a notice referred to at paragraph 7.2 and 7.3 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals or Find a Tender ("FTS") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.
- 7.4** In accordance with the Procurement Act 2023 and guidance issued by the Cabinet Office;
 - a) All contract opportunities with a value of £30,000 inclusive of VAT (£25,000 exclusive of VAT) and above must be published on 'Contracts Finder' where the Council has advertised such opportunity in the form of a notice or advertisement;

b) All contracts opportunities with a value above the relevant threshold of the Procurement Act 2023 must be published in the Find a Tender (FTS) e-notification service;

c) All contract opportunities for which a Contract Notice was sent to the Find a Tender (FTS) e-notification service for publication must also be published on 'Contracts Finder'.

Table setting out financial thresholds and procedures:

| Total value £ (exclusive of VAT) | Type of contract | Procedure to be used |
|--|---|---|
| 0 up to £10,000 | Works, Supplies, Services and Concessions | At least one written quote in advance |
| £10,000 up to £100,000 | Works, Supplies, Services and Concessions | At least three written quotes in advance or Open competitive process with tenders following advertisement by public notice using the Council's Invitation to Tender document. |
| £100,000 up to £173,100 | Supplies and Services | Open competitive process with tenders following advertisement by public notice using the Council's Invitation to Tender document. |
| £173,100 plus NOTE: £552,950 threshold applies for some specific services listed within Schedule 1 of the Procurement Regulations 2024 | Supplies and Services | Full competitive process following advertisement in the applicable FTS e-notification service for supplies and some services. For social and some specific services, Light Touch contracts under the Procurement Act 2023 apply with reduced procedural requirements a presumption in favour of competition. |

| | | |
|--|------------------------------|--|
| <p>£100,000 up to £4,327,500</p> <p>NOTE: £4,477,174 threshold applies for some specific services listed within Schedule 1 of the Procurement Regulations 2024</p> | <p>Works and Concessions</p> | <p>Open competitive process with tenders following advertisement by public notice using the Council's Invitation to Tender document.</p> |
| <p>£4,327,500 plus</p> | <p>Works and Concessions</p> | <p>Subject to PA 2023: Full competitive process following advertisement in the FTS e-notification service.</p> |

Responsible Officers must always seek procurement advice when considering the procedure to be used in the application of the Procurement Act 2023 to their procurement and for the current threshold levels.

7.5 Contracts are subject to the Procurement Act 2023 if they exceed the relevant threshold set out in [Schedule 1 of the Act](#).

7.6 Care must be taken to ensure that the correct and most appropriate procedure is used for the type and value of any contract and assistance on the choice and use of procedure should be sought from Legal Services and Procurement.

8. FINANCIAL THRESHOLDS AND PROCESSES APPLYING TO APPROVAL AND EXECUTION OF CONTRACTS

8.1 For contracts over the relevant published threshold (as outlined in Schedule 1 of the Procurement Act 2023of), the choice of procurement procedure to be used and the decision to proceed to advertisement must be authorised in advance and in writing by the relevant Chief Officer.

- 8.2** When a decision is made to award a contract then the Responsible Officer must, in addition to complying with their general obligations under these Contract Standing Orders, must in particular ensure, that:
- a) The appropriate approvals, including budget approval, have been obtained to authorise that decision; and
 - b) where appropriate, a standstill period complying with Section 51 of the Procurement Act 2023 is incorporated into the final award process.
- 8.3** Any contracts valued at £100,000 or above shall be executed as a deed using the Council's seal (available in legal). Officers with appropriate delegated authority may sign all other contracts under hand.
- 8.4** Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved in advance by the Assistant Director - Governance and Law.

9. CALCULATING THE CONTRACT VALUE

- 9.1** The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire whole life of the contract excluding Value Added Tax. This includes all payments to be made, for the whole of the predicted contract and for the whole of the predicted contract period (including proposed extensions and options).
- 9.2** There shall be no artificial splitting of a contract to avoid the application of the provisions of the Procurement Act 2023 or these Contract Standing Orders.
- 9.3** The Responsible Officer should be particularly conscious that the Procurement Act 2023 may apply where repeat purchases and/or purchases of a similar type in a specified period are involved. Responsible Officers should seek guidance from Procurement regarding the application of the Procurement Act 2023 where they envisage this may occur.

10. PRINCIPLES UNDERLYING TENDERING PROCESSES AND TENDER EVALUATION

- 10.1** All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- a) Sufficient time is given to plan and run the process;
 - b) Equal opportunity and equal treatment;

- c) Openness and transparency;
- d) Probity (moral correctness);
- e) Outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

11. SUBMISSION AND OPENING OF TENDERS

- 11.1** An Invitation to Tender shall be issued by the Council for all contracts over £100,000, via the Councils e-tendering system, and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.
- 11.2** Any tenders received shall be kept secure electronically and unopened until the time and date specified for the opening.
- 11.3** No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless agreed by the Monitoring Officer in exceptional circumstances.
- 11.4** Tenders shall be opened, certified and recorded electronically by an Authorised Officer of the Council via the Councils e-tendering system.

12. EVALUATION OF QUOTES AND TENDERS

- 12.1** All quotes and tenders shall be evaluated in accordance with the evaluation criteria notified in advance to those submitting quotes/tenders.
- 12.2** Tenders subject to Procurement Act 2023 shall be evaluated in accordance with the regulations.

13. WAIVERS

- 13.1** Subject to 13.5, the requirement for the Council to conduct a competitive procurement process for contracts in excess of £10,000 may be waived in the following circumstances.
 - a) For contracts which are not subject to Procurement Act 2023, the work, supply or service or grant of service concession is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
 - b) If the goods or materials to be purchased are available from only one manufacturer / supplier; or
 - c) Where the supply is for parts for existing machinery, or where the terms of supply of equipment require that maintenance be undertaken by a specified provider; or

- d) Where the work is of a specialist nature, the skill of the contractor is of primary importance, and the supply market has been tested and found to be limited; or
 - e) Where the supply is for maintenance to existing IT equipment or software, including enhancements to current software, which can only be performed by the licensed developer or owner of the system; or
 - g) At the discretion of the relevant Chief Officer who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 13.2** A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Procurement Guide.
- 13.3** All waivers from these Contract Standing Orders must be:
- a) Fully documented;
 - b) Subject to a written report in an approved format to be submitted in advance to the relevant Chief Officer which shall include reasons for the waiver which demonstrate that the waiver is genuinely required;
 - c) Subject to approval in advance by the S151 Officer and the Monitoring Officer, or their nominated deputies, who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 13.4** All decisions on waivers must take into account:
- a) Probity (e.g. the decision should not be influenced by personal gain)
 - b) Best value/value for money principles
- 13.5** For contracts subject to the Procurement Act 2023, any waiver from the requirement for competition must meet the conditions set out in the regulations in addition to the general requirements above.

14. EXTENSIONS / VARIATIONS TO EXISTING CONTRACTS

- 14.1** Where extensions / variations to existing contracts are made the extensions must be:
- a) Determined in accordance with any statutory restrictions and any specific contract terms;
 - b) In the case of an extension only for a specified period;

- c) Made in accordance with the principles set out in the Council's Procurement Guide;
- d) In a format approved by legal services.

14.2 All extensions / variations, including the option to extend or vary an existing contract in accordance with the agreed terms, must be:

- a) Fully documented;
- b) Agreed by the relevant Chief Officer following the submission of a written report in an approved format which shall include the reasons for any extension and demonstrate that the need for the requested extension is both genuine and offers the Council continuing value for money;
- c) Authorised by the S151 Officer and the Monitoring Officer who shall record that they;
 - i) have considered the reasons for the extension;
 - ii) are satisfied the circumstances justify the extension and are either genuinely exceptional or in their opinion are in the Council's best interest.

14.3 Any extension must take into account:

- a) Probity (e.g. the decision should not be influenced by personal gain)
- b) Best value/value for money principles.

14.4 For contracts subject to the Procurement Act, any extension must meet the conditions set out in Section 74 in addition to the more general requirements set out above;

Or for contracts subject to Part 2 of the Public Contracts Regulations, any extension must meet the conditions set out in Regulation 72 in addition to the more general requirements set out above.

15. THE USE OF LETTERS OF INTENT

15.1 A letter of intent normally precedes the commencement of the contract. Letters of Intent shall only be permitted as follows:

- a) Where the Council's form of tender has not included a statement that until such time as a formal contract is executed, the Council's written acceptance of a tender shall bind the parties into a contractual relationship;
- b) Exceptionally where a contractor is required to provide services, supplies or works prior to written acceptance by the Council.

15.2 In all cases the letter of intent must be in a format agreed by legal services and signed by the Monitoring Officer: who shall record that he has considered the reasons for requiring a Letter of Intent and that he is satisfied that the circumstances are genuinely exceptional.

16. ASSIGNMENT OF EXISTING CONTRACTS

16.1 Where a Responsible Officer is considering assigning an existing contract, the assignment must be decided in accordance with the relevant contract terms and made in line with the principles set out in the Council's Procurement Guide. An assignment of a contract is where the contract is moved to a replacement contractor, who takes over all the obligations of the original contractor under the contract.

16.2 Any assignment must be;

- a) Fully documented and take into account probity and best value/value for money principles. In all cases the assignment must be in a format agreed by legal services;
- b) Agreed by the relevant Chief Officer following the submission of a written report in an approved format which shall include the reasons for any assignment and demonstrate that the proposed assignment is both genuine and offers the Council continuing value for money.
- c) Authorised by the S151 Officer and the Monitoring Officer who shall record that they:
 - i) have considered the reasons for assignment;
 - ii) are satisfied as to the financial standing and the technical competence of the proposed new contractor/assignee;
 - iii) are satisfied the circumstances justify the assignment and agree that the assignment is in their opinion, in the Council's best interests.

For contracts subject to Procurement Act 2023, any assignment must meet the conditions set out in the regulations in addition to the more general requirements set out above.

17. PROCUREMENT SCHEMES

17.1 A Responsible Officer may use Procurement Schemes authorised by Procurement subject to the following conditions and the Council's Procurement Guide.

17.2 Responsible Officers must check in advance with Procurement, that;

- a) The Council is legally entitled to use the Procurement Scheme;
- b) The purchases to be made properly fall within the ambit of the Procurement Scheme;
- c) The establishment and operation of each Procurement Scheme is in compliance with the Procurement Act 2023 (or relevant legislation) and meets the Council's own requirements.

17.3 A “Procurement Scheme” may include:

- a) Contractor prequalification lists/select lists;
- b) Framework arrangements;
- c) Procurement arrangements set up by central procurement bodies and commercial organisations;
- d) Consortium procurement;
- e) Collaborative working arrangements;
- f) Formal agency arrangements;
- g) E-procurement/procurement schemes and methods;
- h) Other similar arrangements, such as the Government eMarketplace.

17.4 Where a Procurement Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council’s Procurement Guide.

17.5 Where the use of a Procurement Scheme would result in the direct award of a contract without further competition, the justifications for the use of the selected Procurement Scheme must be:

- a) Fully documented;
- b) Agreed by the relevant Chief Officer following the submission of a written report in an approved format which shall include the reasons for the selection of the Procurement Scheme and demonstrate that the proposed direct award is both genuine and offers the Council continuing value for money;
- c) Subject to approval in advance by the Procurement Manager or nominated deputy, who shall record that they have considered the reasons for the direct award and are satisfied that the circumstances justifying the direct award are genuine and / or in their opinion are in the Council's best interest.

17.6 Any direct award via a Procurement Scheme must take into account:

- a) Probity (e.g. the decision should not be influenced by personal gain)
- b) Best value/value for money principles.

18. REVIEW AND CHANGES TO THESE CONTRACT STANDING ORDERS

18.1 These Contract Standing Orders shall be reviewed and updated on a regular basis.

18.2 The Monitoring Officer shall be entitled to make minor amendments to these Contract Standing Orders (to include, but not limited to, updating prevailing financial thresholds or other legislative change).

18.3 Amended Contract Standing Orders shall be recommended by the Audit and Compliance Committee to Full Council.

PART 10.3 – PROCEDURES FOR AUDITING THE AUTHORITY

1. INTERNAL AUDIT

1.1 Internal Audit is an independent appraisal function, established by the Council, for the review of the internal control system, as a service to the organisation. It objectively examines, evaluates and reports on the adequacy of internal control, as a contribution to the proper, economic, efficient and effective use of resources.

1.2 In accordance with the Accounts and Audit Regulations 2011 (as amended), the Council shall:

- a) Make arrangements for the proper administration of its financial affairs and shall secure that one of its officers has the responsibility for the administration of those affairs and
- b) Shall maintain an adequate and effective system of internal audit of their accounting records and control systems.

1.3 Chief officers shall establish sound arrangements for the planning, appraisal, authorisation and control of the use of resources, and to ensure that they are working properly, as set out in the Council's approved Financial Procedure Rules. Maintaining adequate and effective controls, within the Council, is necessary:

- a) To carry out activities in an orderly, efficient and effective manner;
- b) To ensure that policies and directives are adhered to;
- c) To ensure compliance with statutory requirements;
- d) To safeguard assets to prevent fraud;
- e) To maintain complete and reliable records and information; and
- f) To prevent waste and promote good value for money.

1.4 It is the responsibility of Internal Audit to:

- a) Advise chief officers on risk management and appropriate internal controls;

- b) Assist chief officers in the way that organisational objectives are achieved at operational levels;
- c) Assure chief officers on the reliability and integrity of systems, and that they are adequately and effectively controlled;
- d) Alert chief officers and Assistant Directors/Chief Service Officer to any system weaknesses or irregularities.

1.5 Internal Audit shall appraise and review:

- a) The completeness, reliability and integrity of information, both financial and operational;
- b) The systems established to ensure compliance with policies, plans, procedures, laws and regulations, i.e. rules established by the management of the organisation, or externally;
- c) The means of safeguarding assets;
- d) The economy, efficiency and effectiveness with which resources are employed; and
- e) Whether operations are being carried out, as planned, and objectives and goals are being met.

1.6 The Internal Audit Team, in consultation with the Council's Chief Finance Officer (S151 Officer), shall, each year, produce an audit plan setting out the areas that it intends to audit. This plan shall be approved by the Corporate Leadership Team.

2. EXTERNAL AUDIT

The relationship between internal and external audit needs to take into account their differing roles and responsibilities. The external auditor has a statutory responsibility to express an independent opinion on the financial statements and stewardship of the organisation. The Council's external auditor is Grant Thornton UK.

FOLKESTONE AND HYTHE DISTRICT COUNCIL **CONSTITUTION**

PART 11 – OTHER BODIES, INCLUDING PANELS AND BOARDS

| CONTENTS | Page Ref |
|--|--------------------|
| Advisory Panels | ‘Part 11/2’ |
| Grants Advisory Panel | ‘Part 11/3’ |
| Joint Staff Consultative Panel | ‘Part 11/4’ |
| Joint Transportation Board | ‘Part 11/4’ |
| Folkestone District and Parish Councils’ Joint Committee | ‘Part 11/5’ |

PART 11 – OTHER BODIES, INCLUDING PANELS AND BOARDS

1. OTHER ADVISORY AND STRATEGIC BODIES

- 1.1** The Council has appointed other bodies, which are not committees, to assist in the discharge of its functions. They do not have delegated powers.

1.2 Advisory Panels

1.2.1 General

- 1.2.1(a)** The Cabinet, or any member of it, may establish such advisory panels and/or appoint advisers to it, as s/he considers necessary, in order to advise on matters relating to a Cabinet or portfolio holder decision.

- 1.2.1(b)** An advisory panel, or an adviser, cannot exercise any Cabinet functions and its/his/her functions shall be solely advisory. The Cabinet, or any member of the Cabinet, shall not be bound to exercise its/his/her discretion in accordance with any report of an advisory panel or an adviser.

1.2.2 Membership

An advisory panel may consist of councillors, non-councillors, or both. The councillors' Code of Conduct shall apply to any voting non-councillor on an advisory panel. Any local protocol shall apply to voting and non-voting councillors, if the protocol so states.

1.2.3 Overview and scrutiny

A councillor, who is on an advisory panel, shall not sit on the Overview and Scrutiny Committee when it is scrutinising a decision made by the Cabinet after receiving a report of the advisory panel on which the councillor sits.

1.2.4 Cabinet procedure rules

The Cabinet Procedure Rules shall apply to advisory panels, subject to the rule that the Chair of the advisory panel shall be chosen from amongst its members.

1.2.5 Dissolution

An advisory panel may be dissolved by the Cabinet at any time.

1.2.6 Publicity

The Cabinet shall publish, as soon as reasonably practical, the names of those persons serving on advisory panels.

2. GRANTS ADVISORY PANEL

2.1 Purpose

2.1.1 To consider and make recommendations, to the Leader of the Council, on the following applications:-

- a) Applications for funding from the Community Chest.
- b) Applications for funding from the ward plan funding scheme.

2.1.2 The panel must ensure, in all cases, that it meets the agreed criteria and conditions.

2.2 Composition

2.2.1 The Grants Advisory Panel is established, and its members appointed, by the Leader of the Council.

2.2.2 The panel shall comprise of:-

- a) The portfolio holder responsible for finance;
- b) The portfolio holder responsible for communities (or the equivalent);
- c) One councillor drawn from the wards of North Downs West and North Downs East;
- d) One councillor drawn from the wards of Hythe and Hythe Rural;
- e) Two councillors drawn from the wards of New Romney, Romney Marsh, and Walland and Denge Marsh
- f) Four councillors drawn from the wards of Broadmead, Cheriton, East Folkestone, Folkestone Central, Folkestone Harbour, and Sandgate and West Folkestone.

2.2.3 The advisory panel shall consist of at least one member from a political group not forming part of the administration, or an independent member, so long as he/she is not part of the administration of the Council.

2.3 Interests under the members' Code of Conduct

Where a member of the advisory panel has a Disclosable Pecuniary Interest or an Other Significant Interest, under the members' Code of Conduct, he/she shall not participate in the decision (i.e. agreeing the recommendation of the panel).

2.4 Quorum and frequency of meetings

2.4.1 The quorum shall be five members.

2.4.2 The advisory panel shall meet at least once every two months.

3. JOINT STAFF CONSULTATIVE PANEL

3.1 Purpose

To provide a forum for effective and inclusive consultation and negotiation on key workforce matters, including: pay negotiations; consultation on changes to terms and conditions; consultation on major reviews affecting a significant proportion of the workforce.

3.2 Composition

3.2.1 District Council members are appointed by the Personnel Committee.

3.2.2 There is no requirement to comply with the political balance rules in Section 15 of the Local Government and Housing Act 1989 and no requirement to meet in public.

3.2.3 Elected members:

- Leader of the Council (rotating Chair)
- 1 member from each political group

3.2.4 Staff representatives:

- 2 staff representatives nominated by the Staff Consultation Forum

3.2.5 Trade Union representatives:

- 2 Trade Union representatives nominated by recognised trade unions

3.2.6 Other officers may be invited, as appropriate, and will include the Head of Paid Service and Chief Human Resources Officer.

4. JOINT TRANSPORTATION BOARD

4.1 Purpose

The Board will consider capital and revenue funded works programmes; traffic regulation orders; street management proposals and provide advice on these matters to the relevant executive, as appropriate

4.2 Terms of Reference:

The Joint Transportation Board will:

a) Consider:

- i. Capital and revenue funded works programmes;
- ii. Traffic regulation orders;

iii. Street management proposals;

and will provide advice on these matters to the relevant executive, as appropriate;

- b) Be a forum for consultation between Kent County Council and the Council on policies, plans and strategies related to highways, road traffic and public transport;
- c) Review the progress and outturn of works and business performance indicators;
- d) Recommend and advise on the prioritisation of bids for future programmes of work;
- e) Receive reports on highways and transportation needs within the District.

4.3 Composition

4.3.1 Membership:

4.3.1(a) All KCC members for divisions in the District Council's area and an equal number of members appointed by the District Council, and a representative of the parish and town councils within the District.

4.3.1(b) District Council members are appointed by the Leader of the Council.

4.4 Chair

In alternate years, a member of KCC (who is a member of the JTB) will chair the JTB and a District Council member (who is a member of the JTB) will be Vice-Chair of the JTB, and then a member of the District Council will chair the JTB and a KCC member will be Vice-Chair of the JTB and so on, following on the arrangements which existed in the year before the new agreement came into force. The respective councils will appoint the Chair and Vice-Chair, as they may determine, within their constitutional arrangements. The Chair and Vice-Chair of the JTB will take office at the first meeting of the JTB, following the annual meetings of both councils each year.

5. FOLKESTONE AND HYTHE DISTRICT AND PARISH COUNCILS' JOINT COMMITTEE

5.1 Purpose

- a) To discuss and explore ways of the District and town/parish councils working together for the common good of the citizens;
- b) To be one of the ways that the District Council consults town/parish councils on proposals;

- c) To enable town/parish councils to inform the District Council about their proposals and obtain comments;
- d) To be a forum for the exchange of good practice;
- e) To enable questions to be raised about the District Councils policies, in relation to towns/parishes and community issues;
- f) The town/parish councils and the District Council may ask questions about the effect and/or outcome of the decisions taken by the other party but they may not be used by one party to scrutinise or examine the reasons for the other party's decision;
- g) Not to be used for attacks on individuals or organisations.

5.2 Agendas

The Monitoring Officer may reject an agenda item if it:

- a) Is not about a matter which is within the purposes of the joint committee;
- b) Is defamatory, frivolous or offensive; or
- c) Is substantially the same as an item which has been put at a meeting of the joint committee in the past six months and there has been no change in circumstances.

5.3 Composition

5.3.1 Membership:

5.3.1(a) Three members of the District Council (at least one of whom shall be a member of the Cabinet) and eight members of parish/town councils, in the area, nominated by the Kent Association of Local Councils.

5.3.1(b) District Council members are appointed by the Leader of the Council.

5.4 Chair

The Chair shall be elected at each meeting for that meeting alone. The Chairship shall alternate between the representatives of the District and parish councils.

5.5 Open meetings

5.5.1 The agenda of the meetings of the joint committee shall be made publically available, unless the Head of Paid Service considers that they disclose confidential or exempt information.

5.5.2 The meetings of the committee shall be open to the public, unless confidential or exempt information will be considered.

FOLKESTONE AND HYTHE DISTRICT COUNCIL CONSTITUTION

PART 12 – JOINT ARRANGEMENTS

| CONTENTS | | Page Ref |
|-----------------|-----------------------------------|--------------------|
| 12.1 | Joint Standards Hearing Committee | ‘Part 12/2’ |

PART 12 – JOINT ARRANGEMENTS

PART 12.1 – JOINT STANDARDS HEARING COMMITTEE

1. JOINT STANDARDS HEARING COMMITTEE

1.1 Terms of reference proposed for the joint hearing committee are:

In respect of allegations made against parish / town councillors, concerning breaches of the code of conduct of their parish or town council –

- a) At the request of the Monitoring Officer, to consider whether an allegation of breaches of the code of conduct should be referred for local investigation or other action, but not to make any finding of fact at that stage;
- b) To consider the report of the investigating officer;
- c) Where the investigating officer has concluded that there has been a potential breach of the code of conduct, to hear and determine the allegation;
- d) To impose or recommend the imposition of appropriate sanctions, where it finds that there has been a breach of the code of conduct.

1.2 Composition

2 district councillors drawn from the Audit and Governance Committee and 2 parish/town representatives nominated by the parish / town councils.

1.3 Chairship

The Chairship alternates at each meeting, between a parish/town councillor and a district councillor. The quorum is 2, with a district councillor and a parish/town representative present.

APPENDIX 1 – REGISTER OF MEMBERS AND WARD MAP

A map, showing the wards, is contained in this appendix. More information can be searched for on the Interactive Map on Folkestone and Hythe District Council's website.

REGISTER OF COUNCILLORS

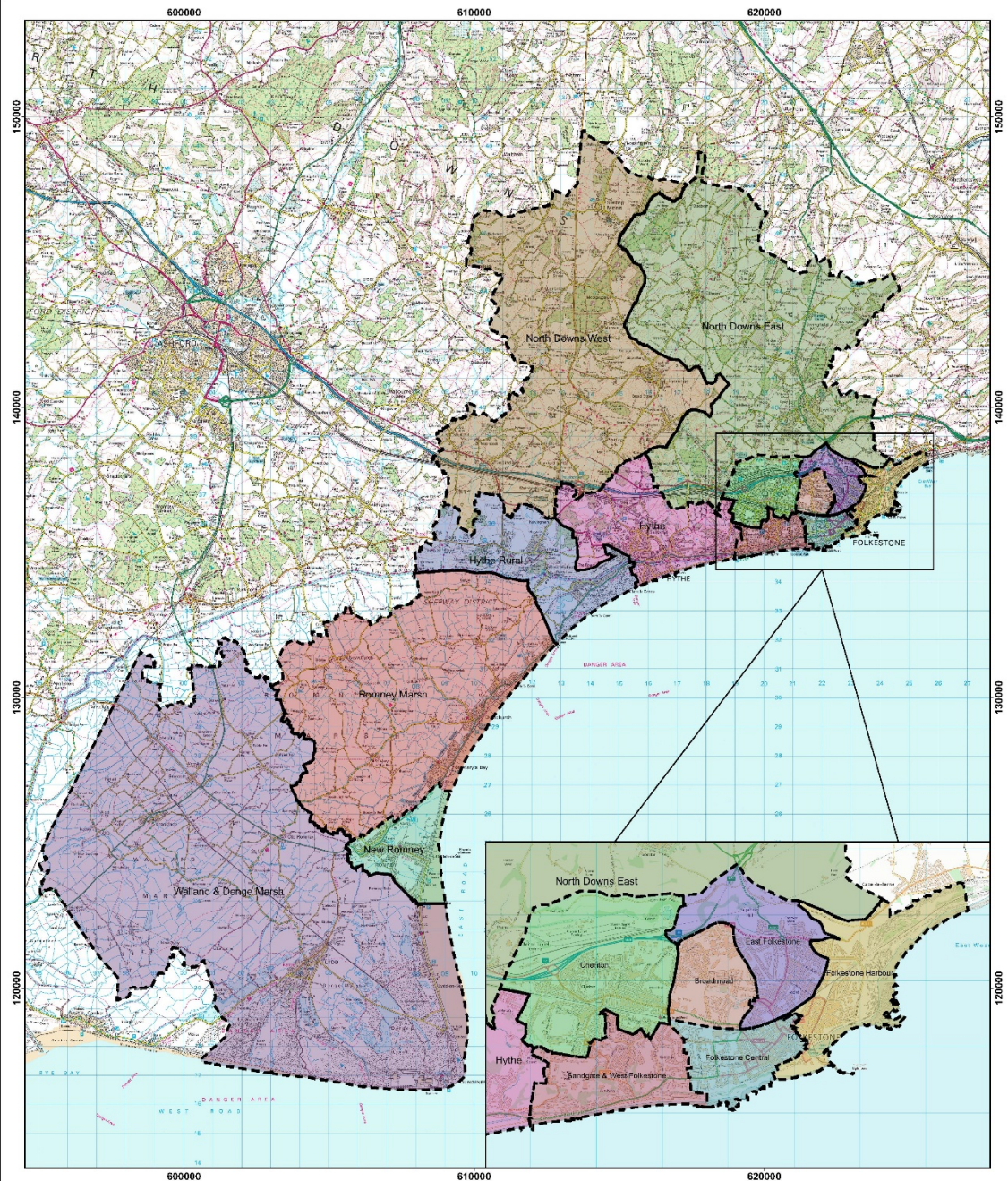
| Councillor | Ward | Party |
|--------------------|------------------------------|--------------------------|
| Belinda Walker | Broadmead | Labour |
| Rebecca Shoob | Cheriton | Green |
| Polly Blakemore | Cheriton | Green |
| Mike Blakemore | Cheriton | Green |
| Adrian Lockwood | East Folkestone | Labour |
| Connor McConville | East Folkestone | Indep (LD and & Group) |
| Jackie Meade | East Folkestone | Labour |
| Abena Akuffo-Kelly | Folkestone Central | Labour |
| Liz McShane | Folkestone Central | Labour |
| Laura Davison | Folkestone Central | Labour |
| Bridget Chapman | Harbour | Labour |
| Nicola Keen | Harbour | Labour |
| Jim Martin | Hythe | Green |
| Rich Holgate | Hythe | Green |
| Anita Jones | Hythe | Green |
| Jeremy Speakman | Hythe Rural | Green |
| John Wing | Hythe Rural | Green |
| David Wimble | New Romney | Reform |
| Paul Thomas | New Romney | Indep (LD and & Group) |
| David Godfrey | North Downs East | Conservative |
| James Butcher | North Downs East | Green |
| Stephen Scoffham | North Downs East | Green |
| Jenny Hollingsbee | North Downs West | Conservative |
| Elaine Martin | North Downs West | Green |
| Tony Hills | Romney Marsh | Conservative |
| Tony Cooper | Romney Marsh | Labour |
| Tim Prater | Sandgate and West Folkestone | Lib Dem (LD and & Group) |
| Gary Fuller | Sandgate and West Folkestone | Lib Dem (LD and & Group) |
| Alan Martin | Walland and Dengemarsh | Conservative |
| Clive Goddard | Walland and Dengemarsh | Conservative |

For Member addresses, please go to:

<http://www.folkestone-hythe.gov.uk/moderngov/mgMemberIndex.aspx?bcr=1>

FOLKESTONE AND HYTHE DISTRICT WARD MAP

Folkestone & Hythe District Wards



Drawn date:
15 Mar 2019

Drawn by:
Brian Harper

Drawing ref:
FHDC/DSO/SB

Contains Ordnance Survey data
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Folkestone & Hythe Council 100019677 - 2019

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Drawn at 1:125,000 on A3

APPENDIX 2 – MEMBERSHIP OF COMMITTEES, ADVISORY BODIES AND DIAGRAMMATIC REPRESENTATION OF THE COUNCIL'S STRUCTURE

A2.1 COMMITTEE MEMBERSHIP

Grey shading indicates co-opted members or members appointed by other authorities.

1. Audit and Governance Committee

| | Membership | Group |
|---|--------------------------|----------------------|
| 1 | Cllr David Godfrey | Cons |
| 2 | Cllr Rich Holgate – Vice | Green |
| 3 | Cllr John Wing | Green |
| 4 | Cllr Liz McShane – Chair | Labour |
| 5 | Cllr Belinda Walker | Labour |
| 6 | Cllr David Wimble | Reform |
| 7 | Andy Vanburen | (independent person) |

2. Joint Standards Hearing Committee

| | Membership |
|---|--|
| 1 | Membership to be drawn from the Audit and Governance Committee |
| 2 | Membership to be drawn from the Audit and Governance Committee |
| 3 | *Parish Councillor Frank Hobbs |
| 4 | *Parish Councillor Peter Geering |

*2 members only to be present, from parish/town representatives, at each meeting.

3. Overview and Scrutiny Committee

| | Membership | Party |
|---|-----------------------------|--------------|
| 1 | Cllr Tony Hills | Cons |
| 2 | Cllr Alan Martin | Cons |
| 3 | Cllr John Wing (Vice-Chair) | Green |
| 4 | Cllr Anita Jones | Green |
| 5 | Cllr Rich Holgate | Green |
| 6 | Cllr Elaine Martin | Green |
| 7 | Cllr Akuffo-Kelly (Chair) | Labour |
| 8 | Cllr Laura Davison | Labour |
| 9 | Cllr Bridget Chapman | Indep |

| | | |
|----|------------------|------------------------|
| 10 | Cllr Paul Thomas | Indep (LD and & Group) |
|----|------------------|------------------------|

Finance and Performance Scrutiny Sub-Committee

| | | |
|---|---------------------------------|------------------------|
| 1 | Cllr Alan Martin | Cons |
| 2 | Cllr John Wing | Green |
| 3 | Cllr Rich Holgate | Green |
| 4 | Cllr Paul Thomas | Indep (LD and & Group) |
| 5 | Cllr Abena Akuffo-Kelly (Chair) | Lab |

4. Personnel Committee

| | Membership | Party |
|---|--------------------------------|------------------------|
| 1 | Cllr Jenny Hollingsbee | Cons |
| 2 | Cllr Rich Holgate – Vice | Green |
| 3 | Cllr Elaine Martin | Green |
| 4 | Cllr Connor McConville - Chair | Indep (LD and & Group) |
| 5 | Cllr Nicola Keen | Labour |
| 6 | Cllr Jenny Hollingsbee | Cons |

5. Planning and Licensing Committee and Licensing Act Committee (created May 2024)

| | Membership | Party |
|----|-------------------------------|--------------------------|
| 1 | Cllr Clive Goddard | Cons |
| 2 | Cllr Jenny Hollingsbee | Cons |
| 3 | Cllr Rebecca Shoob | Green |
| 4 | Cllr P Blakemore | Green |
| 5 | Cllr M Blakemore | Green |
| 6 | Cllr Speakman | Green |
| 7 | Cllr Jackie Meade – Chair | Labour |
| 8 | Cllr Nicola Keen – Vice-Chair | Labour |
| 9 | Cllr Tony Cooper | Labour |
| 10 | Cllr Adrian Lockwood | Labour |
| 11 | Cllr Gary Fuller | Lib Dem (LD and & Group) |
| 12 | Cllr Paul Thomas | Indep (LD and & Group) |

A2.2 MEMBERSHIP OF ADVISORY BODIES

Grey shading indicates co-opted members or members appointed by other authorities.

1. Joint Staff Consultative Panel

| | Membership |
|---|----------------------------|
| 1 | Cllr J Martin (Green) |
| 2 | Cllr Keen (Lab) |
| 3 | Cllr Hollingsbee (Cons) |
| 4 | Cllr E Martin (Green) |
| 5 | Staff representative |
| 6 | Staff representative |
| 7 | Trade union representative |
| 8 | Trade union representative |

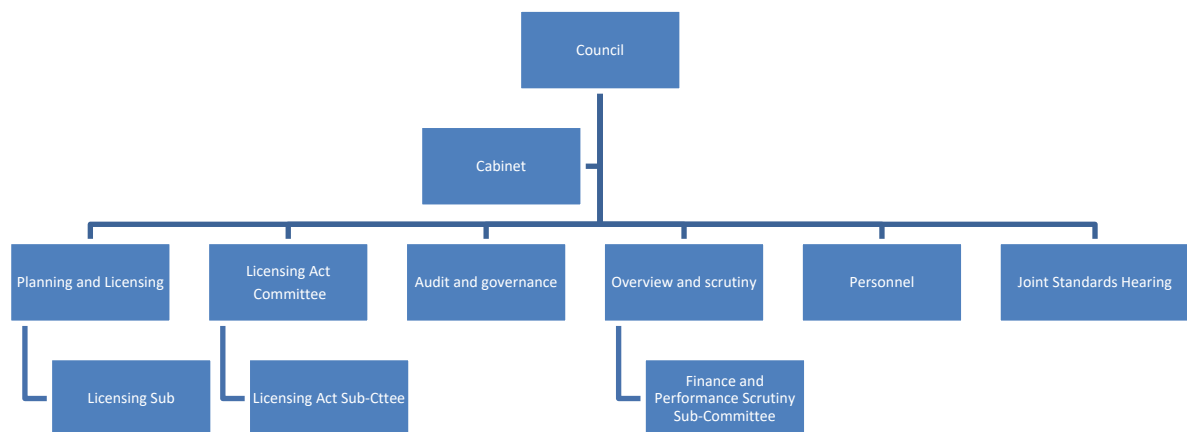
2. Folkestone and Hythe District and Parish Councils' Joint Committee

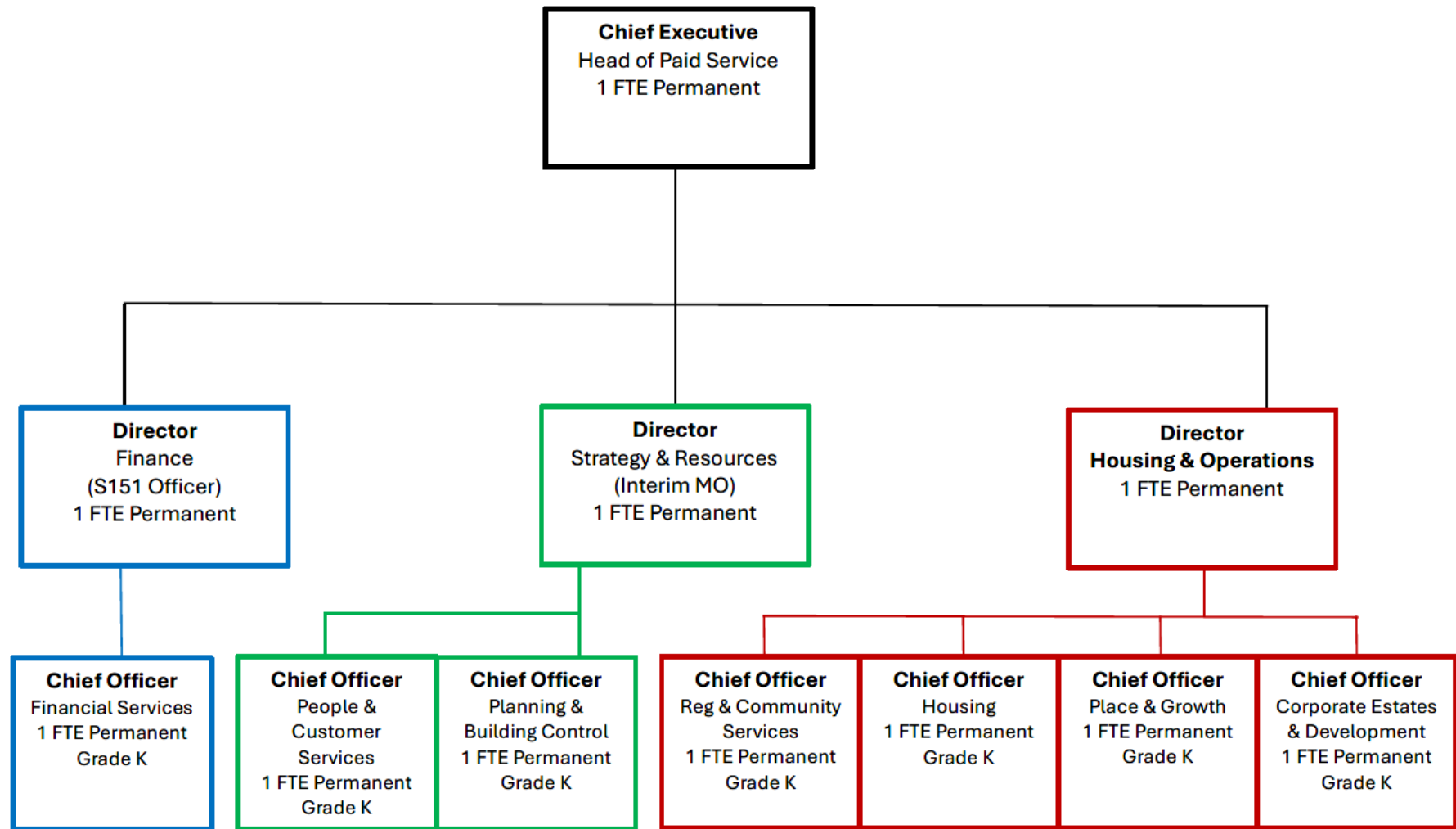
| | Membership |
|----|----------------------------|
| 1 | Cllr Tim Prater |
| 2 | Cllr Paul Thomas |
| 3 | Cllr Mike Blakemore |
| 4 | Cllr Hobbs (Parish/Town) |
| 5 | Cllr Allison (Parish/Town) |
| 6 | Cllr Burgess (Parish/Town) |
| 7 | Cllr Terry (Parish/Town) |
| 8 | Cllr Darling (Parish/Town) |
| 9 | Cllr Beales (Parish/Town) |
| 10 | Cllr Joyce (Parish/Town) |
| 11 | Vacant |

3. Folkestone and Hythe Joint Transportation Board

| | Membership |
|----|-------------------------------|
| 1 | Cllr P Blakemore |
| 2 | Cllr Fuller |
| 3 | Cllr McConville |
| 4 | Cllr Wing |
| 5 | Cllr A Martin |
| 6 | Cllr Mary Lawes (KCC - Chair) |
| 7 | Cllr John Baker (KCC) |
| 8 | Cllr David Wimbles (KCC) |
| 9 | Cllr Tim Prater (KCC) |
| 10 | Cllr Peter Osborne (KCC) |
| 11 | Cllr Christopher Hespe (KCC) |
| 12 | Cllr Frank Hobbs (KALC) |

A2.3 DIAGRAMMATIC REPRESENTATION OF THE COUNCIL'S STRUCTURE





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APPENDIX 4 - CONSTITUTION – CHANGE LOG – MAY 2015 ONWARDS

| AMENDMENT | DATE ACTIONED |
|---|-----------------|
| Part 6 – Executive Function Rules | 20 May 2015 |
| Appendix 2 – Committee Membership | 20 May 2015 |
| Part 8 – Officers Rules and Procedures | 25 May 2015 |
| Part 9 – Councillors | 25 May 2015 |
| Part 5 – Terms of Reference | 14 July 2015 |
| Part 8.2 – Officer Employment Rules | 14 July 2015 |
| Part 9 – Members Allowances | 6 August 2015 |
| Part 2 – Articles 6 and 11 | 13 October 2015 |
| Part 5 – Personnel Committee | 13 October 2015 |
| Part 7 – Resources Scrutiny Committee and Decisions not subject to call-in | 13 October 2015 |
| Part 9 – Members Allowances | 13 October 2015 |
| Part 2 – Articles 11 and 14 | 22 March 2016 |
| Part 8 – Contents (page numbers) Part 8.1 – Delegation to Officers Part 8.2, para 6.3 (typo) | 22 March 2016 |
| All parts updated following amendments to committee structure, councillors' allowances' scheme, contract standing orders, call-in rules of procedure and annual appointments to committees/advisory bodies, including some minor amendments. | 9 June 2016 |
| Appendix 2 – Changes to committees | 1 July 2016 |
| Part 4.2, paragraph 24 (Recording meetings) Part 5.2, paragraph 26 (Recording meetings) Part 6.2, sub-paragraph 1.9 (Recording meetings) Part 6.4, sub-paragraph 11.2.1 (Publicity – key decisions) Part 9.2, Annex 3, sub-paragraph 3.7 (Arrangements for dealing with members' Code of Conduct complaints) Appendix 2 (Committee Membership) | 18 October 2016 |
| Part 6 – THE EXECUTIVE FUNCTIONS, RULES AND PROCEDURES Annex A – Members of the Executive | 12 May 2017 |
| Appendix 1 – Register of Members | 1 June 2017 |
| Appendix 1 Register of Members, Appendix 2 – Membership of Cttee's Appendix 3 – Structure chart | 25 July 2017 |
| Appendix 2 – Membership of Cttee's | 10 August 2017 |

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| Part 9 – Members Allowance Scheme | 11 September 2017 |
| Part 8 – Officer delegations | 12 January 2018 |
| Appendix 2 – Membership of Cttee's Appendix 3 – Structure chart | 12 April 2018 |
| Part 8 – Officer delegations | 24 April 2018 |
| Part 9 – Member Allowance Scheme | 24 April 2018 |
| All parts – removed reference to Shepway District Council | 24 April 2018 |
| Part 9 – Member Allowance Scheme p.9/81 | 30 August 2018 |
| Appendix 3 – Management Structure | 24 October 2018 |
| Part 8 – Officer delegations | 21 January 2019 |
| Part 9 – Member allowance scheme | 3 April 2019 |
| Appendix 1 – Register of Members | 7 May 2019 |
| Appendix 2 – Membership of Cttee's | 23 May 2019 |
| Part 6 – Executive Functions, rules and procedures | 23 May 2019 |
| Part 6 – Executive Functions, rules and procedures | 24 May 2019 |
| Part 10 - Financial Procedure Rules, Contract Standing Orders and Auditing the Council' | 2 July 2019 |
| Part 4 (paragraph 12.6) – as per motion at Council on 25 September 2019 | 27 September 2019 |
| Part 5 (paragraph 6.2) – as per motion at Council on 16 October 2019 | 17 October 2019 |
| Appendix 1 and 2 – Change of name (Cllr Keutenius, formerly Dorrell). | 27 November 2019 |
| Part 10 – Contract Standing Orders | 24 December 2019 |
| Part 6 – Cabinet Membership Appendix 2 – committee membership | 1 February 2020 |
| Part 6 – Cabinet Membership | 19 February 2020 |
| Appendix 2 - Committee membership | 1 June 2020 |
| Appendix 3 – Management structure | 2 June 2020 |
| Part 8 – officer delegations | 5 June 2020 |
| Appendix 2 – Membership of Cttee's | 3 July 2020 |
| Part 8 – officer delegations | 28 September 2020 |
| Part 7 – Overview and Scrutiny rules Part 2 – Articles of the constitution Appendix 2 – membership of Committees | 7 October 2020 |
| Part 9 – Code of Conduct complaints | 30 November 2020 |
| Part 10 – Contract Standing Orders | 24 December 2020 |
| Part 7 – Update to Overview and Scrutiny Terms of Reference | 7 January 2021 |
| Part 12 – removal of reference to East Kent Housing joint arrangements and part 6 (Executive delegations to East Kent Housing) | 2 February 2021 |

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| Part 10 – Financial Procedure rules - minor updates to reflect current legislation and regulations. | 22 April 2021 |
| Part 7 – Overview and Scrutiny Terms of Reference (update following agreement at Annual Meeting of the Council) | 7 May 2021 |
| Appendix 2 – update to Cttee Membership (following changes at Annual Meeting of the Council) | 7 May 2021 |
| Part 2 Article 4 – addition of policies and strategies into the Policy Framework (following decision at Annual meeting of the Council) | 7 May 2021 |
| Part 10 – Financial Procedure rules Update to the Contract Standing orders to include the reference to the specific changes such as Find A Tender Services (FTS) and the deletion of reference to Light Touch Regime (LTR), which not applicable anymore post Brexit, as tenders are no longer published on OJEU for the cross-border interest. | 20 May 2021 |
| Part 9 – Councillors, Appendix 1 Table of Allowances updated to reflect increase in figures applicable from April 2021 based on September 2020 CPI index | June 2021 |
| Part 10 - Financial Procedure rules – removal of references to ‘Heads of Service’, to reflect current structure of Council | 16 September 2021 |
| Part 6.1 – Annex B – change to leader’s delegations (Cabinet Member for Digital Transformation has taken on Transport). | 17 September 2021 |
| Part 10 – Contract Standing orders – statutory update to financial thresholds, to take effect 1 Jan 22 | 23 December 2021 |
| Part 6 – Cabinet Member responsibilities (Leader taking on Planning policy and Cabinet Member for the District economy taking on communications and PR, WEF 1 Jan 22). | 4 January 2022 |
| Appendix 3 – update to Management structure | 1 April 2022 |
| Part 9 – uprating of Member allowances | 4 April 2022 |
| Part 8 – changes to officer delegations, to reflect changes to organisational structure | 25 April 2022 |
| Part 2 and Part 4 – Update to policy framework following Annual Council meeting (addition of various policies and removal of Budget Strategy and Treasury | 5 May 2022 |

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| Management Strategy) | |
| Part 2/27, para 11.1.2(a) – update to Chief Officer titles | 5 May 2022 |
| Part 5, Personnel Terms of reference updated following approval at Annual meeting | 5 May 2022 |
| Appendix 2 – committee membership updated to reflect changes made at Annual meeting | 5 May 2022 |
| Parts 2 and 4 – update to the Policy framework to remove references to outdated policies (Crime & Disorder Reduction Strategy; the Drugs & Alcohol Strategy and the Sustainable Community Strategy) | 14 June 2022 |
| Part 10 – Contract Standing Orders – two minor amendments (one a correction, the other updated wording without operational change) | 10 Jan 23 |
| Appendix 2 – Management Structure. Updated to reflect organisational changes | 24 Jan 23 |
| Part 8 – update to officer delegations to reflect officer and officer structural changes | 16 May 2023 |
| Part 6 – Cabinet Members – altered to reflect names of new cabinet members and their new portfolios Appendix 2 – List of cttee appointments – altered to show changes made at Annual meeting Appendix 1 – Register of Members | 25 May 2023 |
| Appendix 2 – change to P&L membership | 26 May 2023 |
| Part 6 – change in Cabinet Member title (The Cabinet Member for Climate Change and Transport renamed to Climate, Environment and Bio Diversity) | 30 May 2023 |
| Appendix 2 - Further changes to cttee membership (changes to A&G, OSC and P&L membership for the green group) | 1 June 2023 |
| Part 6 – change to 2 x cabinet responsibilities and 1 change to membership | 1 June 2023 |
| Appendix 2 – Changes to cttee membership (OSC and A&G) | 18 July 2023 |
| Appendix 2 – Management Structure. Updated to reflect organisational changes | 4 August 2023 |
| Part 10.2 - Contract Standing orders update to the CSOs following PPN 11/23 . | 12 January 2024 |

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| Part 9 0 – member allowances (uprated for new financial year) | 2 April 2024 |
| Part 8 – update to officer delegations to reflect officer and officer structural changes | 26 April 2024 |
| Part 5 – amendment to Planning and Licensing terms of Ref, and inclusion of Licensing Act terms of reference Appendix 2 – update to cttee structure to include Licensing Act Committee and Sub-Committee | 9 May 2024 |
| Part 9 – Member allowances scheme – update to various aspects following the IRP recommendations being agreed at full council on 24 July 24 | 12 August 2024 |
| Part 10 – Financial procedure rules – amendment to virement levels (following officer decision). | 6 September 2024 |
| Part 10 – Financial procedure rules – update to take into account changes to Procurement Act 2023 | 3 February 2025 |
| Appendices 1 and 2 – update to reflect new Committee seat allocations following Cllrs Prater, Fuller, McConville and Thomas forming a group | 27 February 2025 |
| Part 9 – uprating of Member allowances | 1 April 2025 |
| Part 8 - officer delegations to reflect officer and officer structural changes | 11 April 2025 |
| Appendix 2 – update to cttee membership | 9 May 2025 |
| Part 6 – update to list of Cabinet Members | 12 May 2025 |
| Appendix 2 – update to officer structure | 22 May 2025 |
| Appendix 2 – update to cttee membership (OSC and FPSC) | 30 May 2025 |
| Part 2 – removal of references to European elections, and update to job titles | 23 July 2025 |
| Appendix 2 – update to cttee membership (A&G – new Vice elected) | 31 July 2025 |
| Part 3 – deletion of references to Legal Services Manager | 20 October 2025 |
| Part 10 – Financial procedure rules – Contract standing orders (part 7.4) – figures updated to align to new Procurement Act 2023 thresholds applicable from 1 January 2026. | 15 December 2025 |

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| <p>Part 8 (Officers' rules and procedures) – Appendix 1, tier one officers (amendment to the Director of Housing and Operations to include events; and Appendix 2, Second tier officer delegations – amendment to the Chief Officer Regulatory and Community Services to include events</p> | <p>23 December 2025</p> |